

A regular meeting of the Town of LaGrange Planning Board was held at the LaGrange Town Hall, 120 Stringham Road on Tuesday December 19, 2013. Chairman Stacy Olyha called the meeting to order at 7:00 p.m. Board members John Gunn, Bob Straub, Dennis Rosenfeld, Joe Zeidan, and Tony Brenner were present. Mark Komorsky and Frank Sforza were absent. Also present was Wanda Livigni, Administrator of Public Works, Walter Artus from Storm water Management Consultants Greg Bolner from CPL and Ron Blass from VanDeWater & VanDeWater

Ms. Olyha said the minutes would be accepted next month.

PUBLIC HEARINGS:

SHELL STATION SPECIAL USE PERMIT: LOT LINE REALIGNMENT –
Proposed Special Use Permit: Lot Line Realignment located on Rte. 55
(Grid No. 6460-02-827873)

Mr. Gary Beck from Z3 Consultants was present. He said they are here for the drive-thru on Rte. 55/Dunkin Donuts. He introduced Chris Lapine from Chazen and said if the board had any questions they could ask Chris, Bob Turner from Tinkelman Architecture or himself.

Mr. Zeidan recused himself.

Mr. Chris Lapine spoke. He presented the public hearing affidavit and documents. He said Gasland purchased the site in 2011 and it was a pre-existing contaminated site. It was under a consent order for a clean up from the DEC. The applicant voluntarily cleaned up the site and concluded that work in 2012 and received the DEC sign off and in conjunction with the clean up the applicant worked with the Building Department in improving the façade of the existing building to conform to the existing architectural standards of the town center business district. He said following the improvements the owner decided to apply earlier this year for a drive-thru for a Dunkin Donuts brand as an accessory use to his convenience store. He said we are here now in discussion of that. Ms. Olyha declared the public hearing open. She stated this is not a question/answer format, comments come in, the applicant must respond in writing.

Ms. Connie Kustas representing her mother Dimitra Kustas. She said her mother's property is adjacent to the station. She said she received

information the day before and was in the process of reviewing it all. She wants assurance for the stormwater management system. She said her property has had flooding issues with another property owner next door and wants assurance there will be no flooding on to the property and of course there is a concern for the Blandings Turtles habitat which is on her property too. Ms. Kustas also mentioned the Indiana Bat habitat also. She asked about landscaping and what additional landscaping would be done on the drive thru area. Mr. Turner said as part of the requirement of the town center, they are creating a buffer along of evergreen trees and there is going to be a fence in the area he showed Ms. Kustas to shield the adjoining properties from the drive-thru area. Ms. Kustas said there are trees there. Mr. Turner said the trees are on the Kustas property but they figured they would put more on to create the buffer. Ms. Kustas mentioned storm water management and Ms. Olyha said that would be extensive so that would have to be in writing after all of the reports come in from the engineers. Ms. Olyha said the board received a letter from the County and have not received all the letters back from the agencies and she said she also believed the board did not get a determination back from the Building Inspector.

Ms. Livigni said Ken McLaughlin issued a letter in October that has not been responded to by the applicant as of yet. October 7, 2013. Ms. Olyha asked for a motion to adjourn.

Mr. Richard Cantor from Teahan & Constantino appeared on behalf of the applicant. He said he has been working with Jon Adams from Corbally & Gartland. He said in December of 2012 Ken McLaughlin provided a verbal determination to the applicant that a drive thru is permitted and based upon that verbal approval, the applicant made an application in January of 2013 for site plan/special permit approval which included the drive thru. Thereafter Ken McLaughlin issued a written decision on May 3, 2013 and his letter said he was making 2 determinations, the 1st on May 3 he made in writing is that there are 2 separate and distinct uses on this property, one use is the non-conforming gas station and the other is the permitted convenience store use. Mr. Cantor quoted: "I determined that a convenience store falls within the definition of retail establishment". Mr. Cantor said the 2nd determination Mr. McLaughlin made on May 3rd he said that "based on the information and facts known to me at the present time, I determined that a convenience store is a retail establishment and neither a fast food restaurant or a restaurant. On the same basis I further determine

that a drive thru service facility is permitted as an accessory use to a convenience store in the TCB Zoning District and would therefore be eligible for Special Use Permit approval.” Mr. Cantor said in a response to a series of questions and comments from the Planning Board Ken issued a September 18 memorandum addressed to the Madam Chairwoman in which he said “My determination of May 3 still stands as the drive-thru remains an accessory use to a convenience store and the goods and services provided by Dunkin Donuts have always been served by the convenience store, additionally there appears there is only one primary entrance to the store.” Mr. Cantor said when he wrote his 2nd determination in September, he had the benefit of the plans that he didn’t have when he wrote his May 3 letter and he reaffirmed it. Both of those are in fact zoning determinations, neither of those have been appealed and you, the Planning Board site here this evening, respectfully you are bound in carrying out your Planning Board functions by Ken’s determinations that this drive-thru is eligible and permitted for consideration for a Special Use Permit. Ms. Olyha said we received plans in October and that’s when Ken wrote his November letter. Mr. Cantor said there are in fact, 2 written decisions neither of which have been revoked by Ken, neither of which have been appealed. Ms. Olyha said according to the letter as she read it, they were both open ended, no actual determination, he gave a bunch of either ors and possibilities but he never actually came out and said this is it. Mr. Cantor said he wrote explicitly on May 3rd. Ms. Olyha said you are reading a portion of the entire letter. Mr. Blass said there is an extensive paper trail here with respect to this issue and back on October 7th the Planning Board Chairman corresponded with Mr. McLaughlin and basically pursued some of the content of his letter of May 3, 2013 and particularly pointed out the following portion of Mr. McLaughlin’s letter of May 3rd, “I am compelled to point out to the board that my determinations are expressly limited by the facts about this project that are before me and the board at the present time. No proposed floor plans showing the intended use of the interior of the building have been provided to the board. While I understand that perhaps some of this is due to the fact that my characterization of the present uses on the site have been uncertain until the issuance of my determination I would respectfully recommend with this determination in hand the applicant should provide it’s proposed plan for the intended use for the interior of the building”. Mr. Blass said based upon that open factual element of Mr. McLaughlin’s determination, the Planning Board asked him for a ruling, an interpretation on the following issue: whether or not the use of this facility for a Dunkin Donuts franchise would constitute a fast food

restaurant for purposes of the town code, it being a provision of the town code that drive thru restaurants in the TCB zone are not permissible with respect to fast food restaurants. He said the board seized upon or commented upon the openness of Mr. McLaughlin's factual determinations and went right to a different question and that is whether or not the actual proposal of the applicant which maybe we should get clear before we should proceed as to whether or not it is for a Dunkin Donuts franchise, whether or not that use would be for a fast food restaurant relevant to the prohibition against drive through in the TCB zone. That's the issue that has been presented to Mr. McLaughlin, that's an issue he has not yet determined as far as he said he interprets Mr. McLaughlin's rulings and that is the issue with respect to which he issued 40 questions after review of the floor plan that has come in from the applicant as suggested by Mr. McLaughlin on May 3rd. He said that's "the background for the current zoning interpretation issue. Mr. Cantor said on September 18th on the 2nd writing Mr. McLaughlin wrote "my determination, not my questioning, but my determination of May 3 still stands". Under the Town of LaGrange definitions of fast food restaurant is a use which is the primary business of a facility, if it's not the primary business of a facility, it doesn't matter whether it's a franchise, it doesn't matter if it sells prepared foods, that is the lynch pin. You have 2 determinations, respectfully I suggest to you that the Planning Board has and continues to go beyond its proper bounds, your job is to implement the special permit and site plan and subdivision provisions, not to interpret the code which has already been interpreted for you by Mr. McLaughlin.

Ms. Olyha asked for a motion for the public hearing. Mr. Cantor said he would ask the Board close the public hearing given the limited comment from the public, there is no need to continue the public hearing.

Kevin Donohue of 35 Pond Gut Road spoke. He addressed the chairman and asked her if she had a list from the Building Inspector of questions and asked who have you not received comments from in your distribution. Ms. Livigni said the applicant is required to respond to the letter and he has not.

Mr. Donohue repeated his question to Madam Chairman and said who did not respond to the distribution that was made. He asked did the DOT, Health Department? That's what he was asking. Ms. Olyha said so far we have County Planning to our knowledge. Mr. Donohue said and the list from the Building Inspector, were they questions for the Planning Board to

consider or where they questions more about building permit process. Ms. Olyha said they were questions pertaining to the plans he was looking at. Mr. Donohue asked if he had those questions, would they become part of this record because he didn't see the questions. Ms. Livigni said they can be foiled.

Mr. Donohue continued to ask about these questions and if Ms. Olyha knew what they were and so did the board. Mr. Donohue asked if they were considered valid as part of this application and Ms. Olyha said several of them yes. Mr. Donohue asked if you have several of them, did you identify them to the applicant to respond to those several questions or to all of them. Ms. Olyha said she doesn't have a specialty in all of them so she couldn't say.

Mr. Donohue and Ms. Olyha continued to discuss the issue of the questions. Mr. Blass said the discussion is drifting off of the facts at hand. The Board Chairman in a letter asked the Building Inspector if he would make a determination as to whether or not the use of the premises with a drive thru for a Dunkin Donuts franchise constituted a fast food restaurant for purposes of the Town Code. The Building Inspector then, independently, in the exercise of his own jurisdiction without consultation with the Planning Board issued a list of 40 questions to the applicant who is in possession of those questions, which he found to be relevant to the issue of whether or not the use of the premises for a Dunkin Donuts franchise with a drive thru was devoted to a fast food restaurant or not. The questions that are out there are issued by the Building Inspector to the applicant, they are the work product of the Building Inspector, they are in the possession of the applicant and they are part and parcel of a process under which the Planning Board is deferring to the Building Inspector with respect to the making of the interpretation of the question that he just posed. So, none of the questions basically are issued by the Planning Board they are issued by the Building Inspector as an aid in concept to make the requested zoning interpretation requested of him.

Mr. Donohue responded by saying back to the matter at hand. Mr. Donohue referred to the website and the agenda but there was no back up information and his reason he asked about the 40 questions, was because it was new to him in reading the minutes and he asked if the board had them because how relevant are those questions to the public hearing, were they supposed to be answered before it, do they stop the process dead,

are they relevant to SEQR, you have comments from Dutchess County Planning but they are not being entered into the record and they are not available either by website or copy here. Procedurally there is a couple of things missing. Ms. Olyha said everything does not go on the website and Mr. Donohue said not according to the amended law. They are either available electronically or in copy at the meetings. He said you all get a very giant packet for these meetings and that is not on the website. The packet is for us, replied Ms. Olyha. The packet is for the public also, said Mr. Donohue, if you read the amendment to the law, it's for the public, what you have, we have. Mr. Blass said the comments are on file with the Planning Board and they are available tonight if anyone wanted to read them and comment at the public hearing.

Mr. Straub made a motion to adjourn the public hearing. Mr. Brenner made a motion to close and Mr. Gunn said I second to close. Ms. Olyha said all in favor and the board was polled to close the public hearing as follows:

Tony Brenner	Yes
John Gunn	Yes
Stacy Olyha	Nay
Robert Straub	Nay
Dennis Rosenfeld	Yes

The motion passed to close the public hearing by a vote of 3-2.

Mr. Lapine said with regard to the letter they received from the Building Inspector, we were asked at the October Planning Board meeting to provide a summary and a clarification of the association between the proposed drive-thru and convenience store and the use classification assigned to this project, that letter was submitted on October 22 to the Planning Board Chair. He said the Building inspector's comment letter did not reference not one comment or speak of the letter they were asked to provide at the Planning Board meeting, he referenced other documents that we weren't asked to actually provide at that meeting. He said he is asking why we have 40 questions and they don't pertain to what they were asked to provide. Mr. Blass said he could go back and say the same thing he just said but would repeat it briefly. The Planning Board asked the Building Inspector for an interpretation on a particular question, whether or not the proposed use is a fast food restaurant within the meaning of the town code and it's prohibition against fast food restaurants in the TCB zone. Those 40

questions issued by the Building inspector were issued by him, not by the Planning Board as an aid to gather facts to make that determination. He said if he recalled the letter to which you are speaking it followed a planning board discussion during which there was some confusion with respect to answering questions as to whether or not there would be shared use for instance of the drive through facility for the sale and distribution of all of the products sold by the convenience store or whether the use of the drive through would be limited to a particular aspect of the use of the site. He said if he recalled the letter just as if it were to say that for purposes of convenience and added correct me if I'm wrong because I haven't read the letter in a while, that for purposes of convenience there would be a division of the sale at the points of sale and the implication being, as he read it, that the drive through point of sale would be devoted to the use of the facility for the sale of coffee and food and related items and not for the sale of newspapers, pens, pencils or soda that was sold in the convenience store. He said he didn't think there was all that much of a connection between what the Building Inspector is asked to do and what he is doing relative to gathering facts to make an interpretation and the content of the letter, they cancel one another out. Mr. Lapine asked why were they asked to prepare it. Mr. Blass said he doesn't recall it one way or the other and if you are correct, the minutes will speak for themselves. Mr. Lapine said Mr. McLaughlin has had the information and has made a determination based on information he has already had. Mr. Blass said are you asking the Planning Board why the Building Inspector is doing what he is doing. Mr. Lapine said correct and Mr. Blass said they are not in a position to answer that question. Ms. Livigni said she thought that should be put in writing and we will get it to the Building Inspector. Mr. Lapine said they were directed that all communication come through the Planning Department and Ms. Livigni said correct, so you write it to the Planning Department, the Chairman and we will get the question answered by Ken McLaughlin. She said anything you are asking right now, put it in writing and we'll get you an answer from the Building Inspector. Mr. Cantor said to the extent that we have questions of Mr. McLaughlin, we will write to Mr. McLaughlin and ask him those questions. Ms. Livigni addressed Mr. Cantor and said with all due respect the Building Inspector agreed that in order for the Planning Board file to be complete, it would go through the Planning Department. Mr. Cantor said we will copy the Planning Board. Mr. Cantor said there is a reality answer to the question of why Mr. McLaughlin wrote that letter, although it is not going to be stated here by anyone from the town. The reality of the answer is notwithstanding his verbal determination and his 2

written determinations, he's been pressured to change his position and to hold up this application pending a vote on the moratorium, that's the reality issue and reality answer, and added he understood nobody here would say that but it needs saying in public and we will find out what happens with all of that. Ms. Livigni said she finds that pretty disrespectful to the Building Inspector. Mr. Blass said there is also a trend in the proceedings to date based on his observations as to whether or not there is a legitimate issue as to the use of the drive through and this portion of the convenience store. There have been fairly accusatory denials on the record that this facility will not be devoted to a service of a Dunkin Donuts franchise and there have been accusatory denials that it's not the case, that this will not be a Dunkin Donuts franchise and there has been a continuing effort by the Planning Board to develop a record relative to that. He asked is that still an open issue because he said he thought he should get a reality check on what we are really talking about in that regard. Mr. Cantor asked is what an open issue, whether this applicant would like to have a Dunkin Donut facility in that property. Mr. Blass said whether or not there is a proposal to establish a Dunkin Donuts franchise restaurant at this facility. Mr. Cantor said it's not a restaurant and it doesn't matter whether it's a franchise but this applicant is proposing to include the sale of Dunkin Donuts products with a proposed drive-through and that's set forth on the plans that are before this Planning Board. Mr. Blass said thank you for making that clear but he added he's not too sure it's clear on the plans up until this point of time and we've been trying to develop that for some time. Mr. Cantor said if it is not as clear as you would like it Mr. Lapine and Mr. Turner will supplement the plans to make it as clear as needs to be. Mr. Blass asked is there any factual issue that the drive-through, as proposed, will be exclusively devoted to that Dunkin Donuts operation. Mr. Lapine said their letter of October 22 to the Planning Board addressed all the comments that you have, that was a part of the meeting minutes we were asked to comment on in their letter. Mr. Blass said he is trying to develop a record here. Mr. Blass said I know you refer to the October 22 letter. Mr. Lapine said that letter talked about the products that would be served in the driveway, the purpose of the drive through, what the menu board would consist of, so it elaborated much more than what he is doing now, at your request, in a 3 page letter, that's why we are here asking why Ken didn't comment on that. Mr. Cantor said to Mr. Lapine this body cannot comment on that. Mr. Lapine said ok, but it was addressed. Mr. Blass said on the evening of the proceedings before the Planning Board that led up to the eventual letter you are referring to, there was discussion as to whether

or not a Dunkin Donuts franchise would or would not be set up at this facility and whether or not the drive through would be exclusively devoted to that Dunkin Donuts use and there was a great deal of cloudiness and perhaps denial that that was the case. Mr. Cantor said that's not a relative question under your definition of fast food restaurant. Mr. McLaughlin has already determined that the Dunkin Donuts is a part of the convenience store and the relative inquiry of whether it's a fast food is whether it's the principal or primary business of that use. Mr. Blass said the record will show that the Planning Board has asked the Building Inspector a more precise and specific question and that is whether or not the use of the premises for a Dunkin Donuts franchise would be devoted to a fast food restaurant within the meaning of the town code and that is the issue that has been presented and that is the issue he is working on and that is the issue in connection which he issued 40 questions, the gist of, he recalled reading them, went to the degree to which this is a distinct and primary use of the premises so that he could get to a specific and precise ruling on that issue, but that's not something the Planning Board is doing, that is something that he is doing. Mr. Cantor said the issue is why is he doing that and he said he thinks we all have our point of view as to why he is doing that. Mr. Blass said he is doing it because the Planning Board asked him to do in writing and its there in writing to read. Mr. Cantor said he thinks they've expounded on as much as can be usefully expounded this evening. Ms. Olyha said you have to respond to the comments from the public hearing in writing and take a look at it by next month. Ms. Cantor asked when is that and Ms. Livigni said 2 weeks prior to the next meeting in January.

WHISPERING PINES ESTATES – Proposed 12-lot subdivision located on Re. 55 containing 51.67 acres (Grid No. 6360-02-972772)

Mr. Brian Stokosa appeared before the board. Mr. Stokosa said Steve Page has gone into contract on this project. He said this originally came before the board in 2000 and we had a 12-lot subdivision with about 1,600 feet of road with 2 storm water holding ponds, some relatively large drainage associated with the town road and as the economy has turned and Steve has picked up the project you start looking at the numbers and for what was approved back in 2006 and the numbers based upon lot price, they just don't work out. He came back to the board about a year ago and shortened the road by about 450 feet and we went from a 12-lot to a 10-lot subdivision and hoping for a swing in the economy and we are not there

yet. He said like a lot of other applications, common driveways come up because the infrastructure is not so heavy so like they did on Hidden Ponds, it's basically the same concept. It's a 5 lot subdivision, 55 acres, larger estate parcels. He said you have to come in about 300 feet to get into the meat of the project so they extend the road up to the portion he showed the board, past a ditch line corridor that runs through the property. He said Steve has been trying to market this to a different type of clientele, more of a Westchester based, or clients that have horses and money behind them. Mr. Stokosa said they thought let's try and develop this project that is specific to the horse community and he showed them a white line, showed a horse riding area that would go across the lots and in talking to Ken in Building, they are trying to find a way to incorporate this open development idea across all 5 parcels. The one major item that comes into play is even though they have 55 acres, they only have about 100 feet of frontage on rte. 55 so if they did a common driveway they would have to provide frontage for all 5 lots, and added he thought they had to have 200 feet per lot, so obviously they don't have the frontage requirement. He said in talking to Ken, it was the mindset, let's try and approach this under a 280-a application where it's more of an open development concept. He said they reached out to John Lyons, the town's conflict attorney who is well versed in the open development concept and what this does, it allows relief on the frontage aspect. He said they still have the common drive, all 5 lots would share maintenance responsibilities associated with the common drive, as part of the 280-a design process, emergency access is specifically mentioned. He said in their other application, the common driveway just ended at the last house so they provided a turnaround area, so they have a bigger turnaround area. Stormwater remains the same, but smaller, a small pond up front, 5 homes with individual wells and septics. Mr. Stokosa said they approached the Town Board with this concept and the way the 280-a works is you have to have endorsement from the Town Board, and they may have already forwarded to the Planning Board what they want them to look at as far as developing the site plan and subdivision. He said he was here to present this concept to the Board. Ms. Livigni said they have been to the Town Board twice and the board received documents in their packets including a resolution from the town Board.

Ms. Olyha asked about a 6th driveway. Mr. Stokosa said he showed it as an easement which he thought that's how they discussed it. She said that

is something the Board has to think about too. Mr. Lyons, attorney in matters of conflict for the Town was present.

He said they've been working on this for a while and the stumbling block for this development was meeting the frontage requirement. He said this actually stems from the requirement in both the town zoning law and also in the town law that in order to be able to obtain a building permit a lot has to have a certain degree of frontage and the simple rationale for that, and it also has to have access onto a town or county road, is to provide safety to make sure there is reliable and safe access to a particular lot which for the land owner and for emergency service vehicles. He said section 280a of the New York State Town Law provides if you are not able to meet the frontage requirements, it provides an alternative by which you are able to get around the requirement using a private road or common driveway similar to the design being proposed in this case. He said there are 2 alternatives, one being an area variance which is not what we will be discussing with this project and the other is to establish an open development area and that is something that has to be done by the Town Board but before the town board can take action it requires getting a recommendation on that from the Planning Board. He said these open development areas are fairly common and are used in a lot of communities. There is an increasing trend in communities in the Hudson Valley toward more private roads and common driveways because there are a lot of municipalities that are not interested in taking on any more new roads. This is a procedure that is coming up fairly frequently and the rationale behind it is simply that if you are applying for a building permit the reason for the frontage requirement is that when you are going in for a building permit there is no review component for that. He said the frontage requirement is sort of a default way of making sure the frontage requirement and also the requirement that it be on a town or county road is a way of making sure that proper access can be had. In the absence of that the reason that the open development area alternative has been authorized is because it requires a Planning Board recommendation, the thinking behind allowing the alternative is that this these lots aren't going to have the same kind of frontage but what we will have before building permits are issued is that fact a that a planning board has taken a look at his development, they've taken a look at the proposed common driveway or private road and as a result of their review, they have been able to build as conditioned into the approval, sufficient safeguard to make sure there will be proper access or emergency vehicles and homeowners. He said that is

the thinking behind it, the state law does not provide a detailed process and we've had a couple of work shop meetings with the town board to talk about it and he helped the Town Board draft a resolution which he thought was passed along to the planning board. He said one of the things they tried to do in that resolution was to give some background about how we came to this particular point to layout the process that the Town Board expects to follow, which is basically they have considered complete this applicant's submission to the town Board for the establishment of an open development area and now the matter has been deferred to the Planning Board for review and a recommendation. He said the idea is that the Planning Board will conduct their review for that in parallel with the other review you will be conducting in connection with this project, which would be SEQR and site plan and subdivision reviews. He said if you get to the point of granting preliminary plat approval for this project, at that point you make your recommendation to the Town Board with regard to the open development area. He said you will probably have really had a very good chance to take a comprehensive look at this project. He said it will sent back to the town board with the planning board recommendations and also if you think conditions need to be attached to the establishment of the open development area and then the town board will take action. He said they've also asked that you make as a condition of your preliminary approval that the town board approved the establishment of the open development area as a condition of final approval. Ms. Olyha asked how lot lines work in an open development, where do they start, does one person get the access and then everybody has an easement over it? Mr. Lyons said it can vary, open development areas can be suitable in both common driveway and private road arrangement and in this particular case they are doing a common driveway and every landowner in this development easement of ingress and egress across the driveway. Ms. Olyha asked if it is tacked onto one particular lot. Mr. Lyons said the lot lines run down the middle of the driveway. Ms. Livigni said the Town Board has also talked about an HOA going in and she said we did share it with the applicant and it's attached to the resolution, the Providence Estates re-subdivision common driveway language. Mr. Lyons said it was a little bit of surprise to him that you haven't been involved with open development areas up to this point given the amount of development activity in your town.

Mr. Artus said given the frontage restrictions, do they have an issue with the minimum lot width at the set back where you may need variances,

without even seeing it, he said it might be an issue. Ms. Olyha asked how does that play into it. Mr. Stokosa said you take your minimum lot width at your front yard setback which is 55 feet, we do have that. Ms. Olyha said you have the lot width for all of them but 2. Mr. Stokosa said it depends, its 55 feet from the front setback so if the front setback for those lots are down here, then you don't. Mr. Stokosa said he could ask Ken to take a look at it. Mr. Stokosa asked could that be covered under the open development and the answer was unknown. Ms. Olyha said to recap, we went from 12 lots to 10 lots to 5 lots. We went from a road that went pretty far in with another driveway off one side, we had a shrunken road and now we have a private drive with the standards that are going to be done with the exception of an addition of an HOA. Ms. Olyha asked the board what they thought of the concept. Mr. Straub asked if that road gets blocked, what is the way out. Ms. Olyha asked is it going to be driveway width or wider. Mr. Lyons said one of the purposes of the open development area and review and getting a recommendation for you is for you to actually look at the design and to work with the applicant to make changes so whatever you feel is appropriate to address issues like that. He said in this particular case there really isn't an outlet for this lot other than on Rte. 55, and added that would be a part of the review process and then conditions the board would want attached to that. Mr. Gunn asked if there was once an entrance out the back by the signal tower. Mr. Stokosa said there was a ownership issue. Ms. Livigni said other questions are going to arise once we see an actual set of plans. Ms. Olyha said yes, we are looking at the concept. Do we like the conventional one with the 10 lots and the road or this with 5 lots and the common drive. Mr. Gunn said 5 lots would probably be a lot safer. The board liked the new concept. Mr. Brenner asked what kind of drainage would you put in with the common drive. Mr. Stokosa said it would be substantially reduced and they would hammer that out with Greg's office. Mr. Rosenfeld asked if we need input from the fire department. Ms. Olyha said we will work with the fire department after we decide on the concept.

HIDDEN POND ESTATES SUBDIVISION – Proposed 10-lot subdivision located on Noon Road containing 30.3 acres (Grid No. 6360-03-478160); update/discussion

Mr. Brian Stokosa appeared before the board. He said last time he was before the board, he was working with the Town Board in discussing the contract to purchase the municipal water parcel. He said they had a lower

attenuation basin shown in that parcel that was largely a function of how they revised the plan based upon their site visit. He said the Town Board gave him some pretty clear indication that they didn't like the pond there so in order to move forward, they were able to remove the attenuation basin associated with the 2 bio retention areas and there is a larger pond in the back, he said they tweaked it slightly and modified the outlet structure of it. He said he resubmitted to the Planning Board showing the numbers behind the modification to the pond. He said in addition to that revision they updated the sediment erosion control plan and he showed some monumentation markers. He said Wanda and the Town Board had some concerns about people and wanted to make sure that area was forever green and not disturbed so every couple of feet they put monuments along the existing stone wall and the property line intersection to highlight where they are going to put these things. He said he continued it along the limits of disturbance and he added he developed these in East Fishkill and said they were working with another project with Mid Hudson. He described it as a plastic pole with a sticker that can hold up to UV and harsh weather. He said you can modify the language on the pole however you like or change the color but that's the idea to give people a visual indication that you cannot go in that area.

Mr. Stokosa said the hope is that Greg and Walter can review this and hopefully be set up for preliminary in January. He said drainage was so important on this application. Ms. Olyha said she noticed Greg had some questions and we haven't gotten anything from Walter yet. Ms Livigni said he hasn't been authorized yet. Mr. Bolner asked is this now going to be a storm water management district. Ms. Olyha said it was the plan.

THE PINES AT OLD OVERLOOK PRE-APPLICATION DISCUSSION –

Proposed 9-lot subdivision located on Overlook Road.

Mr. Pat Riley appeared and said his Engineer couldn't make the meeting. Mr. Riley showed the board and reminded the Board of the original Pine Hill and they have totally revamped. Ms. Olyha said this was the old tree farm and Mr. Riley said yes. He said they never got approval on it, they were going through the process for a 32 lot subdivision and obviously following suit like everybody else the economy went south so now they are looking at the prior applicants were looking at, a common drive with lots and 4 other lots with their own access, all the lots will have frontage, there is not a frontage issue and they do have to get variances for the county road which

you guys require more frontage on county roads. He said they have 75 feet which is required on the town road and it's 100 feet on the county road. Mr. Riley said he's here to find out the Board's thoughts on this and knowing that we have to get variances, should we go to the Zoning Board first or come to Planning or can we do it simultaneously. The Board said we can do it simultaneously. Ms. Olyha said referred to a parcel and if it was included in the last plan and Mr. Riley replied no, we were never coming through there with a road, it's going to be 2 separate lots, and added that was done, we did that a couple of years ago and there is a house that was built and an existing lot but that is not in this application. Ms. Olyha said so that's existing? The 2 lots? And Mr. Riley said yes, and added it does not show it on here. Ms. Olyha said all these lots show and if these show, that should show what is existing. Ms. Olyha pointed out the power lines and she asked where are your 4 individuals coming from. Mr. Riley said there's going to be 2 lots here with a shared drive and they both have frontage, but they did a shared drive because of the wetland buffer. The common drive will come in over here and then there's going to be 5 lots off of that and there will be another driveway coming off of Old Overlook and there will be 1 driveway over here, off of Overlook, which was the original road was going to come in. Ms. Olyha asked what is the 100 yr. buffer for, Mr. Riley said that's for the wetlands on the side he referred to on the map. Mr. Riley said he presented this to the Highway Superintendent and he didn't have any problems with the driveways coming out onto Old Overlook and the other is county road so they will have to go through the process with them. He said basically that's what they are looking at, 9 lots on 64 acres. He referred to 2 of the lots that were quite large, 1 big lot of 20 acres mostly because of the wetland. Ms. Olyha asked where is the wetland buffer on this side and Mr. Riley said the dotted line. Ms. Olyha said the pond would be included in that too. They discussed where it extended and said where it extended was not shown, it was not their property. Mr. Riley said the last time they were in, they had 32 lots and Ms. Olyha added they are staying out of the wetlands and off the hill and Mr. Riley said there won't be any issue with road maintenance because there is no town road, it will be private. Mr. Rosenfeld said he liked the concept. Mr. Brenner said it's a good idea, better use, Mr. Straub commented going in the right direction, more open space. Mr. Zeidan commented preserve the open space. Ms. Livigni said there should be a submission and she said in discussing this with Walter, it's going to be really complicated storm water wise. She said she's sure John knows it

and has thought of it, and added it's going to be a tough one with the storm water regs.

REQUEST FOR RE-APPROVAL:

BURNHAM BUILDING – Project was granted a one year extension of site plan approval on December 20, 2012. Seeking a 3rd one-year extension of site plan approval.

Ms. Livigni asked for the letter that was submitted with this request, so Eileen Mang, Planning Board Secretary went to retrieve it from the file.

Mr. Gunn asked since we are looking for this letter, if it said it was approved for 5 years and it's only 3 years into 1 year extensions, doesn't it just mean that we are looking for a letter that says we have 5 years. Ms. Olyha said yes, we are looking for a letter that says they have all their approvals since the last approval. She said Health Department is 5 years. Mr. Gunn asked are we chasing a letter that says we have 5 years and that's it. Ms. Olyha said no we are looking to see what the date of the Health Department's original approval was so we can make sure we are still within the 5 years. Ms. Livigni said similar but much more modified from the subdivision re-approval process, and added she's pretty confident that everything is good but she wouldn't want this board to rule on it until you see the letter.

The board made a motion to grant the 1-year extension for the site plan contingent that the letter states that the Health Department and all approvals are still within the current time period.

The Planning Board Secretary retrieved the letter for the board.

Ms. Olyha informed the Board that the public hearing for the moratorium was not held by the Town Board on December 11th and has been rescheduled to January 8th so their comments are still valid and asked the board for additional comments, if any, and there were none.

REFERRALS FROM TOWN BOARD FOR DISCUSSION AND/OR COMMENT

**HARVEST RIDGE SUBDIVISION – SUPPLEMENTAL AGREEMENT
CONCERNING RE-APPROVAL (RESOLUTION ATTACHED)**

Mr. Joe Zeidan recused himself.

Mr. Blass said this is a matter that has been in front of the Town Board, there is a series of agreements between the project and the town relative to the time frame for bonding, performance bonding and the process of re-approval for the subdivision is contingent in the agreements upon the applicant putting up the bonding within a certain time frame and a certain amount to be determined. He said the applicant continues to work on that and there is a proposed supplemental agreement which designates the amount of the bond which calls for bonding to be provided by the end of the year, it's been approved by the Town Board, not yet approved by the applicant and the applicant has continued to work on obtaining the bonding by the end of the year. He said so the Town Board has not yet been in a position to recommend re-approval of the project by the Planning Board until these loose ends are cleaned up. He said if all goes well, this could be on the agenda of the Planning Board for January for purposes of obtaining a favorable recommendation of the Town Board to re-approve and thus to re-approve. Ms. Olyha said so no action at this time.

The Board adjourned the public hearing at 8:16.

Respectfully submitted,

Eileen Mang,
Planning Board Secretary