

**Minutes  
Work Session of the Planning Board  
Village/Town of Mount Kisco  
Tuesday January 23, 2007**

Meeting called to order at 7:45 PM, at the Municipal Building, Mount Kisco, New York.

**Members Present:**            **Chairman Joseph Cosentino  
Stanley Bernstein  
Ralph Vigliotti  
Joseph Morreale**

**Members Absent:**        **Vice Chairman Anthony Sturniolo  
Sol Gibbons  
Doug Hertz**

**Staff Present:**            **Nanette Bourne  
Jannine McColgan**

Chairman Cosentino: This is the Mount Kisco Planning Board. It is Tuesday, January 23, 2007. This is a regular session. As far as the minutes, we don't have the proper quorum to pass them, so we will skip the minutes. The first thing on our agenda is Buckingham Properties.

**Continuing Review:**      **Buckingham Properties  
Morgan Drive  
Application No:**

**Present:**                    **Robert S. Wasserman, Project Manager,  
Sr. Geologist, ECC  
Jon P. Dahlgren, Senior Environmental  
Geologist, Tim Miller Associates  
Brad K. Schwartz, Zarin & Steinmetz  
David S. Steinmetz, Zarin & Steinmetz  
Erik A. Kaeyer, VP, K G & D Architects  
Edward Cohen, Applicant**

Nanette Bourne: A few months ago the applicant was before you and presented to you their application for a wetland disturbance permit. The wetland disturbance permit was to permit the applicant to take charge of remediation clean up of the site. As I told the board at that time, because of concern that a few of you raised that this was an example of segmentation, I tried to encourage you to consider it something other than segmentation because any opportunity that the village has to clean up a contaminated site, in my opinion, you should take that opportunity and, if in the future, they build on the site, that's a whole other area of review. But because of the extent of the remediation and the fact that this contamination is adjacent to sensitive natural resources, they do require this permit. The applicant came to you and presented their preferred remediation plan, which involved re-mediating the contaminated materials on site rather than taking them off site. There were a couple of issues raised by Jannine; she writes a couple of points, and you all raised a couple of points. There is one concern whether or not there should be involvement from New York State Department of Environmental Conservation, DEC, as part of the clean up program, and the second concern, why would you do this on site? Why would you in essence fill up these contaminated concrete basins, which doesn't remove the sediments, it seals them, particularly if you are contemplating development to follow. What happens if you build on top of that? So you asked the applicant to provide you an assessment of what these options are their considerations, in more detail. They provided us, in a book called The Supplemental Information to Disturb Sensitive Natural Areas. Jannine has looked at it. I'm not an expert in HAZMAT, but I did have someone in my office do a review of this, and I have a memo for you but I'll present it orally so you have an idea of what the conclusions from my office are. Earlier this evening I received a copy of the memo from Jon Dahlgren reiterating a conversation that he had with DEC, that DEC is in fact not involved in this. This is outside of their area, and that was confirmed by people in my office. So this is really a matter for issues concerning DEP.

Chairman Cosentino: Do you want to go through your memo, and then we'll go through Jannine's?

Nanette Bourne: Sure. There are four points to the memo. Point Number 1 is that there are two reasonable options for taking care of contaminated materials. One is to do it on site; the other is to remove it off-site. The on-site treatment doesn't remove the

contaminants. It reduces their mobility but it doesn't reduce or remove the toxicity. It was recommended that if this method of treatment was being done for cost saving purposes, the applicant should provide you some of that information. If it's \$5,000,000 to remove the materials off-site, but \$500,000 to do it, I don't know those are just numbers out of the air; I think that's important information for you to have. Second point is that they provided detailed information about Pond One; they didn't provide detailed information about Pond Two. Some of the testing was done at a small area of Pond Two, and as a result of the testing, no further remediation of Pond Two is proposed, and additional information on the top as well as the bottom sediment is recommended. The third has to do with the issue of solidification with the cement. Further information should be provided by the applicant as to what happens if they, depending on the kind of construction that is being proposed for the site, what will that do to the concrete that is provided? That pretty well summarizes this.

Chairman Cosentino: Jannine, why don't you go over your memo?

Jannine McColgan: It's kind of an overlap what AKRF had done, but a general comment is that I've asked that the water course be located on a map. I don't think that location was accurate. You might want to go out there and verify it, because I don't think it was actually so close to the sanitary sewer right there. The other thing is, in talking with the Village Engineer, the total flow of 708 or total volume within the tanks according to one of the memos is 718,000 gallons, and the applicant is proposing to discharge it into the sanitary sewer. Because the Village of Mount Kisco is under an agreement with the Westchester County Pump Station, we have a particular flow that we have to meet on a daily basis. If the water does not have any contaminants, there is no reason why it should be discharged into the sanitary sewer. It can be discharged safely into the waters of the State of New York, so that is a recommendation that we are making. The other thing is we just want some clarification or a little more information regarding the fact that the tanks will have the soil stabilization, and then ultimately when the site will be developed, the foundation will be over these tanks. If there should be any problems with the foundation of the tanks in the future, will there be any potential for this material to leach into the ground water? We just wanted some additional information regarding that. One thing I was just reiterating from the last time is the fact that to access the site you were planning to go through the Village property and the Village access road there. Given that there are two other ways to access the site from Morgan Drive, it would be our recommendation that you use those. I know ultimately it is the town board's decision, but that's our recommendation.

Chairman Cosentino: I could be wrong, but are we gambling something here? Am I hearing this wrong?

Nanette Bourne: I don't think there is enough information to understand if it's a gamble or not. They have provided a lot of good information, and I think we've outlined some of the information that is missing.

Chairman Cosentino: So let me understand this. What they would be doing would be filling in the tanks with concrete?

Nanette Bourne: Right.

Chairman Cosentino: And then, if they build, they can't build on top of those tanks? Is that what I'm hearing?

Jannine McColgan: Their memo said if they could, they would require further geotechnical analysis for that. So my concern is if they do build on top of it, because the sub soils in that contain clays and other fine soil, there may be a potential that the foundation for those tanks may potentially crack, as you put, and build on top of that. So if it does crack, is there any potential for that cemented material to leach into the ground water, and that's what we're asking for clarification on.

David Steinmetz: Mr. Chairman, if I may, I obviously want you to hear from your consultants. We're here tonight on an isolated issue, and what Jannine and Nannette are both talking about first of all, we really appreciate the fact that AKRF has finally reviewed and gotten us comments on our submission. Hopefully we did supply, as Nannette said, a lot of valuable information response to the board meeting last time. I kind of want to start at the threshold here, and that is what we're here for is a Wetlands Permit, because in order to clean up this property we need to enter and disturb wetland buffers. So we are here for that limited permit. Now, you ask a very good question: how is this going to affect the ultimate applicant here? We all know Mr. Cohen and Buckingham have an application pending although it's been held in abeyance while we were dealing with this issue. That application, clearly relevant, is the next issue that

we're going to get to if as and when he cleans up the property. You weren't here, Mr. Chairman, when we made an explanation at the prior meeting, I believe, when you were out for illness, that the reason we're here and splitting this application. Nannette used the word segmentation from SEQRA. Segmentation is not a bad word, it's a technical word. There is permissive segmentation, and there is unlawful segmentation. This is an example of where SEQRA says if you've got a reason to carve something out of an application and come before a board for permission, it's a good thing, and it's permissible. Why is it a good thing? Because what Mr. Cohen is saying is, I'm the only game in town. I'm ready to clean up this piece of property and do something that the Village has been trying to do, and I'm going to get to in a moment, for an excess of twenty years. If he doesn't do it, the contract doesn't close, Sanctuary Ventures ends up with the property.

Chairman Cosentino: And it stays the way it is, yes.

David Steinmetz: So, what I want to make sure you guys understand is a little bit of the history here which I think can't be ignored. You can't just look at the technical data. You've got to go back in time. This property was operated as a sewage treatment plant by the State of New York since...

Chairman Cosentino: I used to play there when I was a kid.

David Steinmetz: Okay. I went through some historical records, and there are plans that go back to 1907. So, I can't tell you; I didn't find anything that tells me exactly when the facility operated, but I know that there are plans dated 1907 and there are plans dated in the '20's, and plans dated in the '30's, and there are clear records of its operation in the '40's and '50's, and probably into the '60's. The property was conveyed by the City of New York to the Village of Mount Kisco. The Village of Mount Kisco owned this property. I'm assuming everybody knows that, but if you didn't know that, to me it's critical that you understand, this was Village property. The Village corresponded with the DEC. It submitted information to the DEC in February 1988 trying to deal with the clean-up of this property. The DEC wrote a letter back, and we gave it to you dated March 24, 1988 in which the DEC said, we think what you want to do in cleaning up the property Village is acceptable, and one of the things that the Village appears to have been trying to do is exactly what Rob Wasserman has instructed Mr. Cohen would be advisable, mainly that the residue in the sand filter beds may remain on site. I'm reading from a letter approximately 20 years ago. Within two weeks of this letter from the DEC to your Village, the Village sold this property to Sanctuary Ventures. Sanctuary Ventures took a deed on April 7, 1988. So, historically the Village acquires a piece of property, it knows there is sewage residue on the property, it had been at that facility for 60-80 years at that point in time.

Chairman Cosentino: That's probably why they sold it.

David Steinmetz: The Village sold it to Sanctuary Ventures, and the Deed, Mr. Chairman and members of the board, that was given to Sanctuary Ventures; and Stan, I dug this up because I wanted to be able to converse with you in particular about this, because I felt it was relevant to comments you made to me at the last meeting; albeit on a different application, the deed from the Village of Mount Kisco to Sanctuary Ventures clearly contemplates that this property would ultimately be developed along with all of the lots in the Radio Circle Business Park, and this deed from the Village of Mount Kisco clearly contemplated that there would be a building on this property. So the reason that that all fits together is, this property was owned by the Village, sold to a private company which is in contract to sell this to Mr. Cohen.

Chairman Cosentino: I don't think this board or the Village of Mount Kisco or anybody is trying to stop a building from going on the property, it's just understanding what has to be done before the building goes there.

David Steinmetz: Fair enough, which is why we made sure to give you all the information that we could assemble, and we brought all these professionals to answer your questions. The agency with technical jurisdiction over normal brown fields, contaminated sites, etc., the DEC the primary agency that we initially turned to, has spoken with me, spoken with John, and corresponded and essentially said, this site it was a sewage treatment facility. It doesn't fit neatly within any of our normal remediation programs, and they are not, Mr. Chairman and members of the board, they are not exercising jurisdiction. As far as they are concerned, what we have put in front of them is acceptable. It was acceptable twenty years ago; it remains acceptable conduct today. There is an economic question that Nannette has identified; Rob will answer it. It will cost more than double for him to try and take this stuff, remove it from the site, transport it elsewhere, and then put it into a landfill. The Village didn't want to do that 20 years ago, and we don't want to do that today.

Chairman Cosentino: Nannette, you're happy with this, and Jannine, you're happy with this? You're giving your blessing on this, right?

Nanette Bourne: No, when you say happy what I think is appropriate is cleaning up the site, and there is no question, Jannine and I are in complete agreement that the opportunity to clean it up, with or without development following, should not be held up. So, separating the permissive segmentation; that's fine. It's a matter of you, as a board, because you are the, as David said, you are the approving authority in this, making a decision whether or not you're comfortable with their procedure for treating it on-site or requesting that they take the contaminated materials off site. I think what we're in agreement with is that on-site treatment is an acceptable way of treating this kind of site.

Chairman Cosentino: Any decision we make here, you understand, that we make this decision for the Village. Counsel is not here tonight, and I have a couple of questions for him. He's stuck in New Jersey. Unfortunately I can't ask him these questions tonight.

David Steinmetz: Can we know what those questions are so in the event, Mr. Chairman, that there is something that we need to do some homework on?

Chairman Cosentino: I need to know that the Village fathers are up-to-date on this and what is happening, and how he feels about it as far as any legal advice that he can give us.

David Steinmetz: The only thing I want to throw out there, because you all know me quite well; I want to be candid.

Chairman Cosentino: Mr. Cohen is a very reputable developer in the Village of Mount Kisco. I have a lot of respect for him, and you know I have a lot of respect for you and your firm. I don't have a problem with that. But we have counsel, and there are certain questions that we need to know. I need to protect this board; I need to protect the Village of Mount Kisco. He's not here.

David Steinmetz: Let me throw my comment out there because you may want to discuss my comment with Whitney, Mr. Chairman.

Chairman Cosentino: And you may want to call him also.

David Steinmetz: That's fine. Just so everybody is aware, he's been copied on all of our submissions, and we certainly have not received any inquiry from him but I will reach out to him. The only thing that Nannette said that I might quarrel with a little bit is: I kind of go back to my initial comment. We're here for a wetlands disturbance permit. That's the legal technical issue before you. I feel that some of the inquiry and discussion has morphed a little bit beyond that, and I understand, Mr. Chairman, if I were in your shoes, I, too, would want to know that the Village fathers were aware of what's going on. Whether that is relevant to a determination of whether Mr. Cohen can drive a vehicle into the wetland buffer, which is one of the things; we need to drive some vehicles in there, that's number one. Number two, there are some wetlands plantings that we need to do to do what you guys were trying to do twenty years ago by leaving the stuff in the pond area. This board, as far as I'm aware; and I'm happy if Jannine or Nannette want to correct me, I don't think you have mediation approval authority. I don't think it exists in the Village code. That doesn't mean we're not going to disclose. Joe, we give you guys everything you ask us, whenever you ask us. I can tell you that Sanctuary Ventures went crazy when they heard that Mr. Cohen was putting everything out there and explaining everything you've asked. They really objected that this was well beyond the Village's jurisdiction. That's not the way we play with you guys. We've got to live with you guys for the rest of the approval process.

Chairman Cosentino: So by giving the permit does this tie us into anything, or can we... I don't want to be tied into something.

David Steinmetz: The more you exercise jurisdiction, Mr. Chairman, with all due respect, that is an issue that if I were in your shoes, I would certainly engage in a discussion with Whitney, because the more you all engage in jurisdiction and control over what's happening here, the more you're taking on responsibility for something that if we didn't need a wetlands permit. Quite frankly, I don't know whether we would have had to come and discuss any of this with the Village of Mount Kisco. You all knew what was on the property, the Village sold the property. The Village did the testing on the property. The same sewage sludge that was there when you were a kid playing there is still on the bottom of these tanks now. We're trying to address that and re-mediate that in

accordance with established protocol. We didn't just get Rob out of the phone book. He's a leading environmental consultant that Ed hired to do this correctly. Why, because he wants to put a first rate office building on this property in accordance with the Village's deed of 1988. So, we just kind of want to advance the ball. The one thing I want to say and then I'll keep quiet, is the reason we are doing this now, Mr. Chairman, that you didn't hear, he told Sanctuary Ventures he's not closing on the property unless it's clean. He's now at a point in time where he's got to close on this property if he's going to be the game that is going to build this. Because he's run out of time with that seller, so he's got to deal with this issue up front. So we've permissibly broken it off from the rest of the approvals, Sharka has put the DEP, SPPP on hold, the design of the building has not changed; everything remains the same. We just want to clean it up. You have somebody who is willing to spend hundreds of thousands of dollars to clean up the sewage mess that was left behind here from long ago. I hope you'll help facilitate it, because we're actually here to do a good thing.

Chairman Cosentino: So what do we need to do tonight?

Nanette Bourne: What I would recommend, and David is right.

Chairman Cosentino: I understand that.

Nanette Bourne: But what he is being a bit dismissed about is you do have the authority and the obligation to look at the effectiveness and the impact that playing around on the site is going to have on the wetlands. So that is clearly in your court.

Chairman Cosentino: So, whether we give them permission tonight or not, we still later on can look into this.

Nanette Bourne: You can't give permission. You haven't had public hearing on this yet. We can schedule a public hearing tonight, but I'd recommend if you chose to schedule, which is fine, at the next meeting, that they come prepared to address the four or five comments in our letter and the issues in Jannine's memo.

Chairman Cosentino: Let's not hold up the process.

Nanette Bourne: We could do both of those in the same night.

David Steinmetz: Just so you know, folks, none of us intend, certainly I as the spokesperson, don't intend to be dismissive of the wetland impacts, and I apologize if Nannette interpreted my comments in that way. I was speaking more of what I think she agreed to, and that is the control over the remediation. We're ready to talk about wetlands. That's what John is here for. John is our environmental consultant ready to talk about wetland impacts. We would appreciate it if you would schedule a public hearing. We'll come next month.

Chairman Cosentino: Let's schedule the public hearing, so we'll keep the process going.

David Steinmetz: We will answer Nannette's questions. We can do some of that tonight, if anybody wants to hear that.

Chairman Cosentino: I don't want to hold up the process.

Nanette Bourne: I think there is 30 days.

David Steinmetz: To do a Notice? You would know better than I.

Nanette Bourne: If it's less, and I don't think it is less.

David Steinmetz: Then we'll do it the second meeting in February.

Chairman Cosentino: Why don't we do that, set up a public hearing for the 27<sup>th</sup>, and the same night we can go through the...or you go through it on the 12<sup>th</sup> and have the public hearing on the 27<sup>th</sup>.

David Steinmetz: We are happy to do that and come in and answer any questions.

Chairman Cosentino: Nannette, what do you think?

Nanette Bourne: To come back twice?

David Steinmetz: We love seeing you Nannette, even though you may not believe it.

Nanette Bourne: It doesn't make any difference to me.

Chairman Cosentino: Well, it would just save so you won't have long nights. I don't get paid time and a half after ten. Why don't we have the discussion on the 13<sup>th</sup> and have the public hearing on the 27<sup>th</sup>? It saves a lot of time that way.

David Steinmetz: That's fine. And we will provide written responses to the AKRF memo. I think we've already provided written responses to Jannine... oh, I'm sorry, we'll respond to that. We will reach out to Whitney, Mr. Chairman and members of the board, if there is anything you want us to go through with them.

Chairman Cosentino: We may have him call you on some items.

Ralph Vigliotti: Point of interest. The written responses have to be reached to us by the time we get our packets. I don't want to get the written responses the night of. So if the meeting is the 13<sup>th</sup>, they need to be in the packets to the Planning Board members prior to that 13<sup>th</sup> meeting. I just want to make sure that that is in place. We're not trying to hold back.

Brad Schwartz: That is going to give us about four or five days to get a new submission in, unless that deadline is waived.

David Steinmetz: Rob and John, is this something we can respond to in the next couple of days?

Robert Wasserman: Certainly, this letter, yes.

David Steinmetz: And has anybody got any concern about the ability to respond to Jannine's questions, as she said, some crossover. Eric, there may be some structural issues, there sounds like there were some structural issues.

Chairman Cosentino: You've got three or four days to do it. If you think you can do it, fine. If you can't do it, then...

Ralph Vigliotti: We're not trying to hold the process up, but there is a process.

Chairman Cosentino: So you've got the 13<sup>th</sup> and the 27<sup>th</sup>.

David Steinmetz: Procedural question. Do we want to link the public hearing on the 27<sup>th</sup> together with any other public hearing that needs to be conducted in connection with the balance of the application?

Nanette Bourne: What other public hearings do you need?

David Steinmetz: Is there a site plan public hearing?

Nanette Bourne: No, and as a matter of fact, your SEQRA; there has been no SEQRA determination.

David Steinmetz: I'm aware of that.

Nanette Bourne: That's something that needs to be discussed separate from this. So there are no public hearings that I can think of other than the wetlands.

David Steinmetz: Is there a wetlands permit in connection with the proposed building that we could link together and have a wetlands discussion on both?

Nanette Bourne: No. Because you don't know what is going to happen to your site plan.  
Chairman Cosentino: Let's just leave it at the one, so we get that done.

Nanette Bourne: You haven't submitted your SPPP, so you're still waiting to get input from DEP. You don't know what that's going to do.

Chairman Cosentino: There may be some changes there; we don't know that.

David Steinmetz: Understood.

Chairman Cosentino: So let's keep it the 13<sup>th</sup>, the 27<sup>th</sup>, and that keeps the process going.

David Steinmetz: Terrific.

Ralph Vigliotti: When you're answering Jannine's memo questions, Number 4, which is the integrity and solidification stabilization within the tanks. If that is something that you are trying to move on, then the question becomes whether or not it's build-able above the tanks.

Chairman Cosentino: They are going to have to answer to that.

Eric Kaeyer: There are questions that have been answered, and we will re-state that; how to re-remediate. We'd end up having to cut some of the concrete out to provide structural fill and a base, but we'll get into that.

Chairman Cosentino: You're very articulate and very good.

Stanley Bernstein: Mr. Chairman I have a couple of things to say. Not only is he articulate, but he's a pretty sharp operator. He knows how to get to each and every item and neutralize it.

Chairman Cosentino: That's what he gets paid for.

Stanley Bernstein: That's what he gets paid for, and I've watched him over many years and its admirable.

David Steinmetz: That's enough.

Stanley Bernstein: Enough gushing now, as far as the segmenting part. I'm aware of Jannine and Nannette wanting to go ahead with this for clean up purposes, and it is admirable, again, Mr. Cohen who wants to donate his money and his sweat and whatever to get this place cleaned up, not knowing whether he'll be able to go ahead with his project. But of course, he does know that once this is done this Planning Board is not going to modify that project too much. But the segmenting problem is a problem simply because we go ahead and we allow this to be done not knowing the impact of the building on top of this. We just don't know. Example: this is going to be slab on grade. It's going to be a floating foundation. You're not going down to bedrock; you don't even know where bedrock is. Do you know where bedrock is? Have you tested; done any soundings?

Eric Kaeyer: No.

Stanley Bernstein: No idea. If I could have the assurance that you're going to drive pilings down to bedrock, I wouldn't even think about it. But you're not. You're going to float your foundation on top of this. That's a consideration. Now, not knowing what's going to happen, if we agreed to this, the segmenting portion or problem raises its ugly head, unless you tell me that you're going down to bedrock or the building itself will not impact this. This will just be covered over with wetland plantings and so on and so forth. It is a problem that you have to think about, and you have to convince me; I don't know about the rest of the board, that it's going to work; that everything will be fine. Another problem is the way you're going to get into the site. Are you going to be bringing heavy concrete trucks in? What about the compaction of these trucks? I don't know how many trucks you are going to bring in to fill these ponds. What about the compaction in the wetland and the wetland buffer of all these trucks coming in and out. Another thing. If you come from Lexington Avenue the way I think you're proposing across Village property; that itself is a wetland buffer. It's less than 100 feet from the stream; from the Kisco River. So that itself is a wetland buffer. You're crossing a wetland buffer to get to a wetland buffer. And if you come the other way, from Morgan Drive, you are going to knock down a swath of trees to build a road. This is not so cut and dry, the way you make it out to be. There are a lot of considerations involved here, and this is a very interesting document; it gives us many items to mull over, as far as contamination and how you're going to mitigate the contamination and so on and so forth, but there are answers to these questions that I rose, which has not settled my mind. So, I just want you to bear all that in mind. There are bunch of experts up here, I'm sure you'll be able to work out something. I would like to know. I would honestly like to know if you have done soundings to find out where the bedrock is and whether it's feasible to drive pilings. That is a tremendous consideration on hydric soils.

Joseph Morreale: I just want to add one more thing. I was curious to know if you've ever had any experience with this type of thing before. Have you ever done a cement project where you did the cement built on top? Do you have any experience?

Robert Wasserman: We certainly have. I pose the question to you as well.

Eric Kaeyer: We've built on top of other building foundations, yes, but have we built on top of brown field sites? No.

Joseph Morreale: See this would be new, and it would be hypothetical in terms of what you would be able to tell us.

Eric Kaeyer: No. In terms of the engineering that was discussed and will be discussed and in terms of addressing the memo, there is two different ways in dealing with foundations in this case, that we're re-mediating on site; that we will be cutting these structures down seven feet below the ground, and then putting compacted structural fill on top.

Chairman Cosentino: The bottom line is that no matter what happens there, it is the developer that takes the full responsibility of whatever happens later on. Not the Village of Mount Kisco.

David Steinmetz: And this is not the first time anybody has done this.

Chairman Cosentino: If the concrete cracks on the first floor, it is the developer the one who has to make good for it. Not the Village of Mount Kisco. And that's what I want to know as legal advice. The Village is not responsible; the Planning Board is not responsible. They have all their engineers' reports; the developer is responsible. If he sells the building, the new guy is responsible. So we don't take any responsibility to what happens after awhile. If the building has to come down again, and whatever has got to come out, that's up to them. He's got to insure the building, not us.

Robert Wasserman: That's a structural issue. From an environmental standpoint, this would have no impact on what you're doing on top. We're not removing any material whatsoever. There are a couple of points that I wanted to clarify, and I will take this opportunity to do so. The stabilization process; not only will it change mobility, but it will also reduce toxicity. That's one of your comments, initially. It's an alteration to the chemical structure. Without getting too technical, if you've got free mercury that's available, and that's one of the contaminants of concern, this process will change it so that it's bound; so that you no longer have free mercury available. We will then add a contingency, which would be a solidification process to make sure that that change in the mercury would not be able to change back so to speak. So it would no longer be leach-able. It's a guarantee; you're locking in the change in the chemistry to make sure that you're okay moving forward, and that you're not going to end up having an exposure or potential of exposure later on. In doing so though, with the solidification process again you're talking about sediment and this is specific to Pond #1, you're talking about sediment that is already encased within a concrete basin. All we'd end up doing is maintaining that structure overall. So in terms of building on top of that, there would be no difference whatsoever. I don't think it would impact your plans at all. As far as the tanks are concerned, we've done that before, where we've removed concrete material. These tanks are complicated. They've got baffles, they need to be de-watered. There is only a little bit of sediment at the bottom. They are not exposed. The tanks are holding water, so they appear to be competent. It's a structural issue just to make sure and confirm that they remain confident throughout the process, and that there is no potential for any leaching further on. The process that we're proposing will make sure that that's the case. We can't speak to the structural integrity after the fact, when we remove some of the concrete from the top, and as far as the environmental concern, there really wouldn't be one going forward.

Chairman Cosentino: Has Jeff looked at this at all?

Jannine McColgan: This submission, I don't think so.

Chairman Cosentino: Would you make sure that he looks at this and reports back to us?

Jannine McColgan: Of course.

Chairman Cosentino: Okay, we'll see you on the 12<sup>th</sup>.

David Steinmetz: Good deal. Thank you.

**Final Action:**

**New Zion Realty  
96 Lexington Avenue  
Application #PB2006-18**

**Present: Scott Davidson  
Steve Finkelstein, Property Owner  
Brad Schwartz, Zarin and Steinmetz**

Chairman Cosentino: Good evening, gentlemen. We went ahead, and through your letter you wanted to have a continuing review. I felt its better we have a resolution and take this off our plate, so he can do what he has to do. Again, I don't have Whitney here, but Nannette.

Nanette Bourne: Whitney reviewed this resolution, and the tie-ups have been included.

Chairman Cosentino: So the resolution is all set to go?

Nanette Bourne: The resolution, based on our review and Whitney's comments.

Chairman Cosentino: There are some things that you have to abide by with the ZBA after this; not before. So we have a resolution before us gentlemen. Normally we get these before, but we wanted to get this off our plate.

Ralph Vigliotti: We're going to need a few minutes to read this because we just got it. Mr. Chairman, if you don't mind me asking why are we receiving this now?

Nanette Bourne: The reason why you're receiving this now is that this originally was on the agenda as a continuing item, and toward the end of last week the Chairman impressed to me to have this removed from a Continuing Item to a Final Action.

Ralph Vigliotti: There should have been a change in the agenda to reflect this. It's not fair that we get this two minutes before we go to vote on it.

Chairman Cosentino: That was Whitney; he's leaving New Jersey now. He's got to come back and lock everything up anyway. What were you saying, Ralph?

Ralph Vigliotti: In all fairness to the four of us here this evening, I got two e-mails today and two of the e-mails could have included this resolution.

Chairman Cosentino: Well, its here now. Take time, we've got a lot of time.

Ralph Vigliotti: That's not the point. Mr. Chairman, that's not the point.

Chairman Cosentino: Take time to read it.

Ralph Vigliotti: But that's not the point. And I don't want to be pejorative, but the bottom line is it's not on the agenda; we're just getting it now.

Chairman Cosentino: Yes it is; Final Action.

Ralph Vigliotti: It's not on the packet.

Chairman Cosentino: Just take time to read it; we have nothing to do tonight. But you're right, it should have been in the packet, I'm not arguing that point.

Brad Schwartz: Nannette, my only comment is just logistically for Village procedure. For instance, on top it says resolution approved for Change of Use Permit. It doesn't need a site plan on top of that. So the site plan and floor plan that we submitted as part of the application was just incorporated?

Nanette Bourne: Yes, your change is just to the garage doors.

Chairman Cosentino: That's the only changes. This is actually the same resolution that was passed for the prior scope of changes.

Brad Schwartz: There are some on-site changes just in terms of; the parking spaces, we're making them all code compliant.

Joseph Morreale: But the number hasn't changed.

Brad Schwartz: The number hasn't changed, no, it's just making the parking spaces code-compliant, and this plan is referenced in the application under your Number One.

Jannine McColgan: Has the site plan changed?

Brad Schwartz: No, same plan all along. Mr. Chairman, I believe we are already on the agenda for the ARB in late February to comply with this condition regarding the sign that says "by appointment only."

Chairman Cosentino: Yes.

Joseph Morreale: I noticed that's not in here.

Brad Schwartz: It's condition Number 15.

Joseph Morreale: Sorry, I missed it.

Ralph Vigliotti: What is the total square footage?

Chairman Cosentino: For what the usable space or the total? 1,600.

Brad Schwartz: It was 1,700; we made the showroom space. That came out of a condition with the Zoning Board.

Joseph Morreale: I guess I have two questions that I just need clarification on. One is if the number of employees and the number of employees who drive changes, what will happen? Will they have to come back to us? That's sort of the logic in this.

Chairman Cosentino: Let me explain. One, it's the same thing as saying let's take a hardware store and he starts off with three employees, and we say in the resolution he says only three employees, and all of a sudden he has one more, who is going to police this? There is nothing you could put in here to police it. It's a good question, don't get me wrong, but you can't police something like that twenty four hours a day. You take it for what it's worth. He says it's going to be two or three employees, that's going to be it. Now, ZBA gave him an option. He needs to, after passing of this resolution, go to the Village and get three off street parking spaces to protect him on that. That was part of the ZBA final resolution. He needs to do that after this. I think that's how he gets protected on that. If that answers your question, I don't know.

Joseph Morreale: So that would mean he has nine?

Nanette Bourne: Part of the answer to your question is that's why it's not a condition. It's the specifics regarding the employees is one of the whereas' that just explains a little bit of the background why he made the decision. If, technically it became a condition, then if they were found to have increased their employees they would have to go back.

Chairman Cosentino: Take for instance; there are places within the Village that can have, we say, six tables. You go there and you find seven or eight tables. Who is going to police this stuff? So what the ZBA did was say, you might have another person working for you, so we want you to go out and get three more spaces from the Village, and that's what he has to do after the passing of this resolution.

Joseph Morreale: Okay, so in other words he'll have a total of nine, because we are waiving 2/3<sup>rd</sup>'s of the requirement; that's why I raise the question.

Chairman Cosentino: The prior tenant also had ten spaces waived, but they also obtained eight or nine spaces across the street in the police parking lot.

Joseph Morreale: The other question I had was, if we allow this use, what would happen if they sell out to a different user, they have to come back before us?

Chairman Cosentino: Right. Any change of use has to come back here.

Nanette Bourne: If you look at Item 16 it addresses that issue.

Ralph Vigliotti: On the ZBA, a number of their additional conditions are on the resolution for approval, but there are a number of them that aren't. How are we addressing those that aren't? There were 11, and a good number of them were on the new resolution.

Chairman Cosentino: Pertaining to us?

Ralph Vigliotti: Right. There should be no Sunday operating hours for this use, should that be on the resolution, is it in there, did I miss it?

Nanette Bourne: Item 5 says it's subject to the conditions of the ZBA.

Ralph Vigliotti: Okay, good.

Chairman Cosentino: And you know at any time this could be called back in for any reason at all.

Joseph Morreale: Just a technical point. In the whereas Section 110 8K, why does it say 19 and 20? Why isn't one or the other?

Brad Schwartz: It's a typo.

Nanette Bourne: Yes, it's a typo.

Joseph Morreale: It should be 20.

Nanette Bourne: Yes.

Chairman Cosentino: When are they moving out, by the way?

Brad Schwartz: Early to mid-February.

Chairman Cosentino: In the agreement with us, they were supposed to get out right away.

Steven Finkelstein: They are moved out. They moved out last Thursday. They still have junk in there, they are going to have to get a dumpster or something, but they are not occupying it as of last Thursday.

Chairman Cosentino: Oh, they are? They were anxious to get out and pushing us and pushing us.

Ralph Vigliotti: It's pretty clean. When I drove by there all you see are sheet rocked walls.

Chairman Cosentino: It's good to see the buses out of there.

Joseph Morreale: One other point. When we say subject to the conditions of the ZBA and the Architectural Review Board, if those statements are there, why are we then listed on only some of the other ones that are actually in the resolutions from those boards?

Chairman Cosentino: Because there are certain things in the ZBA we have no control over.

Chairman Cosentino: Alright the chair calls for a resolution.

<b>Motion:</b>	<b>Ralph Vigliotti</b>
<b>Second:</b>	<b>Stanley Bernstein</b>
<b>Aye:</b>	<b>Joseph Morreale</b>
<b>Aye:</b>	<b>Chairman Cosentino</b>
<b>Aye:</b>	<b>Stanley Bernstein</b>
<b>Aye:</b>	<b>Ralph Vigliotti</b>
<b>Aye:</b>	<b>Stanley Bernstein</b>
<b>Aye:</b>	<b>Ralph Vigliotti</b>

**Special Discussion: The Flying Pig**  
**251 Lexington Avenue**

**Present:**  
**Larry Kraus, Manager & Treasurer, The Flying Pig**  
**Stan Fivekiller, General Manager, The Flying Pig**  
**Irving Melendez, Manager, Classic Valet Parking**

Chairman Cosentino: Okay what we have here is I guess, you started valet parking, and you closed off an entrance, not once but twice.

Larry Kraus: I'm not sure the history.

Chairman Cosentino: Well, I'm giving you the history.

Larry Kraus: Okay.

Chairman Cosentino: The Fire Marshals came, and you can't close off the road, and the following day it was closed off again. Is there any reason for that?

Larry Kraus: I won't be able to answer your question, because I've been with the organization now a week. I'm here to represent them, but I can't do the history for you. This gentleman might be able to; he knows the history better than me.

Stan Fivekiller: If I can address it. I am not sure of the history, I know that we started valet parking, I had spoken with Austin when we first bought out Café Antigo, and when we were getting whatever approvals we needed, I asked Austin, do we need any other approvals, not knowing we were going to do valet parking, and he said no. We started valet parking not knowing that we needed valet parking. I think two or three days after we started, I received a call from Austin saying that we need permission. The next day we stopped valet parking and then we came before board; we submitted an application to the board. So we didn't know that there was a procedure that we had to apply for the valet parking. We immediately stopped once we were advised to.

Chairman Cosentino: The resolution says you can park on your property and have valet parking. Have this gentleman park your cars on your own property. But that doesn't mean you're going to park them on Moore Avenue, one-half mile up the road.

Stan Fivekiller: The intent is only to have on-site valet parking. The firm Classic Valet Parking does valet parking in several facilities here in Mount Kisco; Mount Kisco Medical Group, the Northern Westchester Hospital, Coco Rumbas, Mount Kisco Country Club and then Kittle House down in Chappaqua.

Chairman Cosentino: Coco Rumbas?

Irving Melendez: Yes.

Chairman Cosentino: You don't park off-site, you know that don't you?

Irving Melendez: Yes.

Chairman Cosentino: You don't park a half mile down the road?

Irving Melendez: No, sir.

Chairman Cosentino: Or a mile down the road, or in back of somebody's house?

Irving Melendez: Not that I'm aware of. I don't work at the site; I'm one of the managers and supervisors, as far as we know we only operate that small area.

Chairman Cosentino: Well, you have to make sure they don't.

Larry Kraus: So what we're proposing is to have on-site parking Monday-Friday at lunchtime from 11:30 to 3:00, and we would have staffed with two people. We have a means of ingress and egress which will always be open, there are fire lanes, and we could show you the layouts, which Irwin had set up.

Chairman Cosentino: We don't have any problem with you parking on site. You need to clear with the fire marshals as far as the fire lanes; not us. On site, we don't have a problem. Now, we are getting complaints from the people that live on Moore Avenue.  
Larry Kraus: What type of complaints, may I ask?

Chairman Cosentino: All the cars are being parked there.

Larry Kraus: Well, if we have patrons coming and the lot is filled, and they are parking on the street...

Chairman Cosentino: You may find no parking signs there.

Larry Kraus: Okay.

Chairman Cosentino: Or fifteen minute parking signs there or something, because the people have a right also to park in front of their homes.

Larry Kraus: Well, I think if we have valet parking we won't have the overflow.

Chairman Cosentino: I'm just telling you the complaints that the Village is getting. There are cars on Moore Avenue, all the way up. And if you lived on Moore Avenue, and you wanted to come in front of your house to park and you couldn't do it, you'd be upset; everybody would be upset here. So let's not use an excuse saying, if there is no parking on your property, and because you can park there, you are going to park there. You've got to solve the problem some way.

Larry Kraus: Well, this should solve the problem because it's doubling the number of spaces that would otherwise be available.

Chairman Cosentino: We don't have a problem on your property, but you need to, before you get the blessings of this board, we need to have the fire marshals report back to us saying that its okay as far as what you're doing as far as the lanes. And there is no problem if you park there; it's good that you can do that.

Larry Kraus: Once we go to the fire marshal, then does this have to come back to the board for approval?

Chairman Cosentino: We want to know what he decided.

Nanette Bourne: It's not an application. You need to send the letter back.

Chairman Cosentino: It's just a memo back to us. A memo from the building inspector or from the Fire Marshall saying that he approves everything and everything is okay. We don't want to make you come back again.

Larry Kraus: So once we get the Fire Marshall Approval, we can then start?

Chairman Cosentino: We will notify the Fire Marshall that you are going to be in. And once they approve your plan, they'll let us know. But I emphasize keep in mind that Moore Avenue because there is a lot of complaints coming from the homeowners, and rightfully you can't blame them.

Larry Kraus: Understood. Again, just to be clear. Once the Fire Marshall approves our plan, we can start having valet parking?

Chairman Cosentino: Absolutely. As long as he says an ambulance can get in there, a fire truck can get in there, etc., fine.

Larry Kraus: Okay.

Chairman Cosentino: Is there anybody else on this board that would like to comment?

Joseph Morreale: I would like to ask a question about this because I'm concerned about something. Is the valet parking optional for the patrons?

Larry Kraus: No.

Joseph Morreale: So, in other words, you pull in and it's automatic that there is going to be valet parking.

Stan Fivekiller: We're going to be paying for the cost, so it is automatic.

Joseph Morreale: Okay, because that's important. I've often seen when it's optional it leads to tremendous overflow because people don't take it, and they look for parking elsewhere.

Stan Fivekiller: As far as I'm concerned, the intent is perhaps bi-fold. One of them is to first and foremost service our customers and make it easy for them to park in our parking lot and maximize that by having the professional valet parker do that and control that, and the second would be to alleviate or re-mediate as it were, any of the impact on the neighborhood and people parking on their own. I can't honestly say that they might park on their own, because they might not come into the lot, but they are not being charged for it, it will be we'll do everything we can to make sure that we absorb that, because if I were living there too, I would have the same feelings about the overflow parking.

Chairman Cosentino: You're in a neighborhood now and you want to be a neighbor.

Irving Melendez: The turn around time between the approvals of the marshal to the members to return to your board; what is the time frame?

Chairman Cosentino: Probably July or August.

Larry Kraus: But we can start once the Fire Marshall approves it.

Chairman Cosentino: The faster you do it, let him look over it, and he'll get back to us right away.

Larry Kraus: Okay. Thank you.

Chairman Cosentino: But remember not off the property. And I emphasize that. A lot of people have a lot of eyes in this village. I'm glad you're doing a great job there.

**Correspondence:**

Chairman Cosentino: We have a revised Planning Board calendar here, and also we have the rules and procedure and a letter from Joseph Maggio.

Nanette Bourne: I want to bring up something on the rules and procedure. I think Ralph brought up a good point about getting this stuff electronically, because this resolution could have gone out.

Chairman Cosentino: Ralph happens to be 100% right. I didn't want to make a big deal in front of everyone. We should have gotten this resolution when we got the packet or the day after or something, not the night of the meeting.

Nanette Bourne: We were instructed after the packet was assembled.

Ralph Vigliotti: And that happens, as I said, I got two e-mails today.

Nanette Bourne: But when there are special circumstances, we could have just as easily, and my concern would be what happens if only half of you have ready access to a computer to copy it? Some of you have it and some of you don't. But the reality is that more and more business is being done entirely that way.

Ralph Vigliotti: So if we get an emergency situation like this, Nancy could call us and say check your e-mail something important is coming over. Stan, do you have access?

Stanley Bernstein: I don't have a computer, but my son does and I get it through him. You have my e-mail on file.

Nanette Bourne: Right. I think it would be helpful in the procedures if we have something about the use of e-mail.

Chairman Cosentino: Write something up and we'll make an amendment.

Nanette Bourne: Do you agree with that?

Ralph Vigliotti: Yes. Not to take advantage that we're doing this everyday, but if there is an emergency situation and we could take advantage of the technology.

Nanette Bourne: I just wouldn't want Stan to be left out.

Stanley Bernstein: Nancy e-mails us all the time on various items. I get an e-mail from her twice a week on one subject or another.

Joseph Morreale: But I do think a telephone call is important. For example, I was away from my e-mail today, so I didn't see the things that came in, so a heads up so we can make sure we look at it.

**Motion to adjourn:**

**Motion:**        **Ralph Vigliotti**  
**Second:**      **Joseph Morreale**  
**Aye:**            **Stanley Bernstein**  
**Aye:**            **Chairman Cosentino**  
**Aye:**            **Joseph Morreale**  
**Aye:**            **Ralph Vigliotti**  
**Aye:**            **Joseph Morreale**

**Aye: Ralph Vigliotti**

Before we adjourn, Jannine, I want to thank you for helping us out these last few months. It's been a pleasure to have you here. We are sorry to lose you and Anthony Oliveri will be taking Jannine's place, and we're glad to have you aboard.

Anthony Oliveri: Glad to be here.

Chairman Cosentino: Jannine, just stop by and say hello once in awhile. We are probably going to have you transferred to White Plains.

Meeting adjourned at 8:55 pm

Respectfully Submitted By,

Stanley Bernstein  
Board Secretary