

Minutes
Meeting of the Planning Board
Regular/Work Session
Village/Town of Mount Kisco
Tuesday, January 22, 2008

Meeting called to order at 7:55 PM at the Municipal Building Mount Kisco, New York.

Members Present: **Vice Chairman Anthony Sturniolo**
 Sol Gibbons
 Doug Hertz
 Ralph Vigliotti
 Stanley Bernstein
 Joseph Morreale

Members Absent: **Chairman Joseph Cosentino**

Staff Present: **Nanette Bourne**
 Daniel Peluso, Dolph Rotfeld Engineering
 Whitney Singleton

Minutes: November 27, 2007

Motion: **Stanley Bernstein**
Second: **Doug Hertz**
Aye: **Sol Gibbons**
Aye: **Ralph Vigliotti**
Aye: **Joseph Morreale**
Aye: **Stanley Bernstein**
Aye: **Doug Hertz**
Aye: **Vice Chairman Sturniolo**

Minutes: December 11, 2007

Motion: **Stanley Bernstein**
Second: **Ralph Vigliotti**
Aye: **Sol Gibbons**
Aye: **Joseph Morreale**
Aye: **Doug Hertz**
Aye: **Stanley Bernstein**
Aye: **Ralph Vigliotti**
Aye: **Vice Chairman Sturniolo**

Continuing Review:

Filippo Simone
127 Barker Street
PB2006-05

Present: Dan Simone, Simone Design Group

Dan Simone: Good evening. We've been away awhile, it was a busy year, but I'm finally getting back to my pro bono work for my uncle. I wanted to bring this item back on the agenda for continuation of project review. The last time the board had seen this application I believe was springtime of last year. Since then we have gone to the Architectural Review Board over the summer and presented the plans to them. They were for the most part pleased with the architecture of the proposed building and comments to me were that they would take it up for final approval upon completion of the Planning Board and the issues that the Planning Board had. Subsequent to that we had prepared a storm water pollution prevention plan for the project. It was submitted with this latest revision and also forwarded to DEP for their review and comment. At this point I have followed up with them but have yet to hear from them whether they have any preliminary comments on the storm water pollution prevention plan. The building itself is a two story building, 2,250 square feet general office. There are currently ten exterior spaces and one interior parking space proposed for the structure. It is in compliance with all setbacks and parking regulations. It complies with the coverage requirements and storm water for the project is proposed to be treated and sub-surfaced storm water retention system galleys and the soils on the top are relatively deep, well drained, sandy runner bank soils. Excavations were taken to approximately 12 feet. There was no rock encountered.

Vice Chairman Sturniolo: Time frame wise when do you envision starting this project?

Dan Simone: We'd like to get in the ground sometime late spring this year. So hopefully being able to satisfy any comments DEP may have with the storm water and any comments the town engineer and Ms. Bourne would have from the planning perspective, we'd hope to wrap this up within the next few months, hopefully.

Vice Chairman Sturniolo: Last time you were here you said you went through the ARB, and one of the things you were trying to mimic was the fieldstone look or façade of your neighbor across the street.

Dan Simone: Correct.

Vice Chairman Sturniolo: How was that concept received by the ARB?

Dan Simone: I have a copy of the application material I submitted to the ARB, and I can leave this with you. It's rubble stone stonework that will be presented on the majority of the building façade. The tower section will be stone up to the eave line with a base of stone that would wrap around the foundation perimeter and a clap board siding on the rest of the building. The building across the street is a clapboard building with a rubble stone wall that obscures most of it, so we are bringing those elements in. The color selected for the siding is going to be heathered moss, which is off-tone light green beige, a weathered wood type of shingle for the roof, and the stonework also has the brown and gray tones similar to the fieldstone on the building across the street. The siding would be hearty plank and the stone is from a company called Ed Dorado.

Nanette Bourne: There are two memos related to site plan review. One comes from Dolph Rotfeld Engineering, and the other is from my office. There are some items that need to be added. The handicapped spaces are undersized. They should be 9.5. If you could explain why there is this interior parking?

Dan Simone: It was just a place to get an extra space. The building would require, I believe, nine spaces, we currently show ten exterior and it was a place to get an additional space.

Nanette Bourne: So that suggests that this is going to be an automotive related use?

Dan Simone: No; just a private garage, just for the building. The basement area is for the heating and air conditioning furnace and general utilities. This area was, due to the grade differential, we were able to get an exterior door on it.

Vice Chairman Sturniolo: So there will be no automotive repair?

Dan Simone: No, no, no. Strictly as an accessory parking use for the building itself.

Nanette Bourne: Finally, the access drive and handicapped parking aisle does not comply with the Village's requirement of 20 feet. You might need to look at shifting this, and the other items really would not require any modification to your site layout. I'd like to bring out to the board that the applicant submitted an Environmental Assessment Form way back when, and you had not initiated SEQRA at that time. You do need to declare your intent to be Lead Agency and get that kicked off so we can move that forward.

Dan Peluso: The only thing I would add is your storm water calculations and design need to be addressed. It's noted in our memo. That's the most important item on here at the moment. If you could call me we can go over it.

Whitney Singleton: Since it's been awhile, if you could not only touch base with Dan or Anthony to get up to speed, but you could also touch base with Austin. It says here these are revised plans, and I want to be sure Austin doesn't have any issues with it. So, just ask him to take a look at it when he gets back.

Dan Simone: In general, if the board has any concern with the look of the building or any of the layout parking, please feel free to give me your comments.

Motion of Intent to Become Lead Agency:

**Filippo Simone
127 Barker Street
PB2006-05**

Motion: Ralph Vigliotti
Second: Joseph Morreale
Aye: Sol Gibbons
Aye: Stanley Bernstein
Aye: Doug Hertz
Aye: Ralph Vigliotti
Aye: Joseph Morreale
Aye: Vice Chairman Sturniolo

Final Action:

Isidoro Albanese
134 Main Street
PB2006-06

Present: Clifford Munz, Architect, Munz Associates
Isidoro Albanese

Vice Chairman Sturniolo: Thank you for coming. The members of the Planning Board thought it was important that you be present tonight to hear and be a part of the approval process. I'm sorry the phone call got to you so late.

Stanley Bernstein: My preliminary comment is that I can't understand why you wouldn't want to come.

Vice Chairman Sturniolo: Mr. Munz was advised by the Assistant Village Manager that there was no need to appear tonight.

Stanley Bernstein: Well, it's a good thing you came because we would have changed your hours of operation and you wouldn't have known about it.

Nanette Bourne: This is the same resolution of approval except they have changed it according to the revisions in the plan. Whitney has a few clarifications to add to the conditions that reflect the board's earlier discussions.

Whitney Singleton: There were a couple of word changes. In Paragraph 28 the board asked that "The backing up of delivery vehicles from or onto Main Street shall be prohibited." That should read any. The same thing for Paragraph 29. In Paragraph 32, it reads "onsite parking shall be restricted to the approved principle use, no parking for accessory uses or off-site parking shall be permitted." That should be "off-site uses", not off-site parking. That's all to make sure that the parking required for this site was available for this site. Other than that, nobody contacted you with any other changes, and I don't have any issues with the resolution.

Doug Hertz: Either I missed a meeting, which I don't think I did; or I know that after we were here last, you went back to the Village board to deal with the issue of the parking spaces. If I might, and now I see a set of plans that have some significant changes including that parking space area, it also appears that because of recalculations of coverage that we created some green space. Just so we don't miss anything, could you synopsize the changes between these plans the last time you were here and what we're seeing now.

Clifford Munz: This is a compilation of the drawings subsequent to the meeting with the Village Board, so there is a note on there with a series of deltas. The first set of deltas that say "special note," and within the note is a general note saying that any work done off the property will be subject to the approval by the Village Board, which had identified each of the locations that we discussed in the field with the Village Board, Nannette and others. Then, what you're looking at is for the 90% of developed coverage and 10% undeveloped coverage, there is a chart on one of the sheets in the lower right hand corner, which actually give you the areas. Each of those areas is clouded. Those areas turn out to be and are best represented on your CS-120 Sheet on the upper left hand corner. All of these changes are Delta 3. Delta 3 and say January 22, 2008. The area in that upper left hand corner is now planted. There is also an area now as you come in, where the in and out is. It's a larger island, almost the size of a parking space, which are also plantings. Near the handicapped accessible you will find there is another undeveloped area which is next to the cross exterior. Then there is a single connection to the Town Right-of-way which is a paved connection. Then, the entire side-yard of the retail building is now planted. Then, if you head towards the back of the buildings towards the right there is a large clouded area and that large island takes the place of what was a ramp. Because of a change in elevations we've got the building so there are

no ramps necessary any longer. That also calculates into the undeveloped area that's planted; Area #5, to 203 square feet. Then, as you travel further to the right, we've taken the landlord area out. The trash area was slightly reduced, and we put a covered trash area. That has an undeveloped area in front of it, which is basically ground cover. That counts as another 108 square feet. Then, as you approach the center of the retail building, the only thing that's changed is the first floor elevations of 28325 and 28201. Hence, the illumination of the ramp. Then you have your clouded date in the right-hand corner, issue date, January 22, 2008. Then you have the elevation of the trash to cover the trash area, which is smaller than the other one used to be but is simply a boxed in area with a door. That is the entrance to the utility room, the smaller door, and then the larger double door which would be facing the other end, which is where you walk in and out with your garbage can.

Doug Hertz: Nannette, has the landscaping that's been developed here been reviewed by your office at this point?

Nanette Bourne: That had been reviewed by our office, and the only exception is the ground cover in front of the covered trash area. Is there something more specific?

Clifford Munz: It is a concrete apron. I have enough square footage of undeveloped, so it's along the front of it, about eight feet wide by about three feet. It takes care of the swing. The point is there is no gravel or pavement or groundcover.

Nanette Bourne: But what is the landscaping there?

Clifford Munz: It isn't landscaped, it's just groundcover. It's grass. The whole purpose is that it becomes part of undeveloped area. That is some of the conversation that I had with Jeff.

Nanette Bourne: I understand that, and it's good, but visually?

Clifford Munz: Visually it's grass. If we can, one could put a shrubbery or two, but the whole idea is that whoever is going to be walking in and out is going to be taking his trash can and putting his trash can on the edge.

Nanette Bourne: If there is going to be walking, there is no pathway?

Clifford Munz: I could put some stepping stones.

Nanette Bourne: Yes. You've done such a nice job landscaping.

Clifford Munz: I understand your point, but when I'm coming down and getting 1296 square feet of undeveloped area, you can either say I'll give you the 108 square feet or I do comply.

Nanette Bourne: I'm not asking that you change this from anything other than a pervious surface, but provide some treatment in the same way that you've provided landscaping treatment elsewhere. Even if it's patio stones.

Clifford Munz: I can do it right along the demising line between that and the parking lot. I suspect if you don't mind, we could put some Junipers or something of that nature. Just so that there is a small line of green that you could walk on. I tried a number of different options. There are waffle pavers, and permeable concrete, which are fantastic. As we were reading the code and being very specific about code, permeable concrete is falling into a gray area. I don't put permeable concrete there, which is 85% permeable. You could let water almost straight through, and you can walk on it, but as we read the undeveloped definition, it was very specific. I offered to do something like that, stepping stones or waffle pavers.

Nanette Bourne: If there are no stepping stones, it's going to look like dirt.

Clifford Munz: That was my first inclination; that developed and undeveloped is really pervious and impervious. That was the crux, the spirit of the writing albeit I know that you can go further with it with the term developed and undeveloped. Seats, chairs and tables on a patio, according to what we're reading, sounds like development.

Nanette Bourne: You may be taking interpretation to the detriment.

Whitney Singleton: I was trying to go the other way. I think what he's concerned with is that he doesn't want to leave here and have the person issuing or not issuing the building permit make a determination that does not meet development coverage

requirements. The definition of development coverage is the sum of the area of coverage or foot print of the building structures, paved areas and other improved surfaces on a site including areas covered with gravel, crushed stone or other materials used to support vehicles. But not including architectural landscape features, such as pools, ponds, patios decks and gazebos. I think the point is that they don't want to have a muddy patch. Do you think grass would actually hold up?

Clifford Munz: I think I'd prefer a nice little crushed stone or even wood chips or stones.

Nanette Bourne: You could use some porous pavers.

Clifford Munz: We could use the pavers that we are using as the connector over to the right-of-way; the same Hanover pavers.

Nanette Bourne: So you'd have a structure for somebody walking, but it would be green and it would be porous.

Ralph Vigliotti: But the curb would be lined with some greenery; an evergreen type that would last that would be green year-round.

Clifford Munz: Yes. It has to be an evergreen. Take a look at L-1, and make a selection of one of those evergreens.

(Discussion of various evergreens)

Doug Hertz: Before we end this discussion, in this changed plan I don't see any location for snow storage.

Clifford Munz: The location for snow storage are in the islands. There will be hearty plantings in there that can take some storage, but they'll go in either of these two areas or both.

Doug Hertz: Just so you're aware, because of snow storage, if these plantings get damaged or whatever, they are going to have to be replaced.

Clifford Munz: I spoke with my wife, and we are going to look for something hearty enough to take it.

Ralph Vigliotti: Whitney, is it permissible in our code to push snow into those areas?

Whitney Singleton: There is not a requirement per se, for snow accumulation. It is up to the discretion of the Planning Board to deem it to be appropriate.

Ralph Vigliotti: The areas in question, Whitney, is that going to be enough of an area to push snow? If we're using those areas, I certainly want to make sure that's enough of an area to accept snow. Otherwise, where is that snow going?

Whitney Singleton: In all due respect to you Ralph, that is not a legal determination.

Ralph Vigliotti: Okay. I know it's a planning piece. I don't know if that's enough space.

Clifford Munz: You've got two to three islands for it.

Nanette Bourne: I'm trying to formulate an additional condition. So the landscape plan for undeveloped area #4 shall be revised to provide landscaping material.

Clifford Munz: In area #4 to consist of evergreen, a pathway constructed of similar pavers, and then I guess you could pick another terminology for the pavers that we're using somewhere else. New paver infill.

Ralph Vigliotti: What is the size of that area?

Clifford Munz: 108 square feet.

Ralph Vigliotti: Can you describe the fence system?

Clifford Munz: There are two conditions. I have a fence and I have a timber rail.

Ralph Vigliotti: The back is a timber rail?

Clifford Munz: Yes, there is no fence any longer. There will be one when we're finished.

Isidoro Albanese: We're also working with the tenant next door to try to make that area where they have the compressors look better, on the left hand side.

Ralph Vigliotti: How are we preventing cars from pushing into the timber rail fence?

Clifford Munz: There is a concrete curb there presently, and the only thing one would have to do is; right now we got the Village to say it's alright, you're on our land with your 8 x 8's, and you can see that it almost lines up to the face of the curb. So you're probably going to hit the timber rail with your bumper unless you can tell us we can push it another foot or so into Village property.

Doug Hertz: I for one would rather not encroach onto Village property anymore than is absolutely necessary. Quite frankly, parking literally on the property line will mean maintenance to your timber rail and maintenance to the landscaping. The coverage on the site is as much as can possibly fit in there. Because there is no extra buffer space, you get the extra rental money for the additional size of the building, but some of it is going to require maintenance. That's a choice that you make.

Ralph Vigliotti: That area happens to be a frequent hang-out for kids in the Village with skateboards and so on. The height of that railing is going to be a convenient place for them to sit and hang out. Originally I thought we had a fence similar to what's there now. Now it's a railing system that's three feet high; that's going to become an attractive nuisance for that back area.

Clifford Munz: Its call a loafer's rail, but yes, you're correct.

Ralph Vigliotti: I thought that was a fence. I was hoping you would describe a similar fence to what we see now.

Clifford Munz: You could put loafer's rail on top. It's something that's not pleasant to sit upon. The beauty of what we've all be trying to do is by eliminating that fence; we're trying to get an expanse. Right now it's an avenue. It's a bowling alley. If you want to hide, hide behind the fence. If there's no fence, you can't hide. So the whole point is there's no front, no back, it's open, we've got more green than we've ever had before, it's a pleasant avenue coming up and down. I don't think you're going to see the same, and if you see a nuisance, the best part is that you saw the nuisance. If they're behind a fence you can't see it.

Ralph Vigliotti: Can that be raised so you almost have to jump up to get to sit on it?

Clifford Munz: If it becomes a nuisance, why don't we re-address it?

Doug Hertz: I sense this is low. This is bumper height.

Clifford Munz: This is your everyday guardrail. That came about because of the aversion to things like bumpers and wheel stops and things of that nature. You can also raise the 8 x 8's up a little higher, and you don't get a continuous line, so it will rail and fall off. There are ways around this. I want to see it become a nuisance before we have to worry about re-designing something. Let's protect the public, and that's what we're doing. It's not up to this particular parking lot to patrol that avenue.

Ralph Vigliotti: You said, Cliff that you would be willing to come back and re-design it if it becomes an attractive nuisance?

Clifford Munz: I would say we would re-address it.

Ralph Vigliotti: Then we should add that in that resolution.

Clifford Munz: And I would say leave that to the discretion of the building inspector that it has become said; so if we get a violation because of an attractive nuisance, then we'll come and readdress it.

Stanley Bernstein: Moving right along, has everyone looked at it; any questions of any of the items?

Ralph Vigliotti: What is on the other side of the railing?

Clifford Munz: This is all green.

Doug Hertz: On Item 4, of the resolution the first "to" should be deleted.

Stanley Bernstein: There will be three additions.

Nanette Bourne: One on page three, a "whereas" will be added - (reads from text) , on page five, we have a modification on #28 and #29, same on #32; offsite uses; adding #34, (reads from text).

Doug Hertz: Because of the discussion of the snow area, Whitney, is Number 11 adequate to enforce that? I know that's our standard.

Whitney Singleton: If you want to put an add-on to Paragraph 11, "all snowplowing shall be maintained on subject's site," that would be fine. In other words, what I foresee happening here is, someone's going to come in and plow. Because the pavement goes to the very edges of the property, is it going to be pushed on Village property? Theoretically they have three islands here that they can put it on top of. They can also put it in one parking space, and that will be one parking space short. If you get into a practice of just jamming onto the Village land, then we have to deal with it or we have to deal with the impact. That's a different issue.

Doug Hertz: There are already plenty of teeth in the code to deal with that if someone is impacting Village land.

Whitney Singleton: I can't tell you that I can make a determination whether or not these planting areas are going to withstand snow and salt and sand.

Doug Hertz: My question to you is, is the language in #11 adequate such that if their snow plowing land does damage this on a regular basis?

Whitney Singleton: It's going to be a policing issue like you have with TJ Maxx, A & P and everybody else.

Doug Hertz: If we could just put one additional phrase in there; just to acknowledge that we believe this could be an issue.

Whitney Singleton: Do you want to say that the applicant shall property dispose of any snow accumulation in a fashion which is not damaging to its own plantings and within its own property, that's fine.

Doug Hertz: It sounds unnecessary because if they want to put them on the plantings and replace the plantings, that will be up to them.

Motion to Accept the Resolution of Approval of Application PB2007-06

Date of Action: January 22, 2008

Tax Map Identification # 80.25-2-5 and #80.25-26

Motion: Ralph Vigliotti

Second: Doug Hertz

Aye: Sol Gibbons

Aye: Joseph Morreale

Aye: Stanley Bernstein

Aye: Vice Chairman Sturniolo

Continuing Review:

Westchester Residence and Club

Kisco Avenue

PB2006-19

Present: Patrick Hewes, Associate, Saccardi & Schiff, Inc.

Kory Salomone, Attorney at Law, Veneziano & Associates

Vice Chairman Sturniolo: We have a revision to the DEIS which is Volumes I and II that you submitted recently. Nannette will go through your memo and the overall concerns.

Nanette Bourne: We had given the applicant a rather lengthy completeness review and asked them the entire document be revised and submitted to the board, which you have before you. We reviewed the re-submitted document and compared it with the comments that we made last fall. The applicant has made substantial changes to the document as requested. There are a couple of outstanding items; none of them particularly substantive that will require probably just minor changes. I don't think the board is interested in having the entire document re-submitted. This outlines some of

the typos; paragraphs included twice, some word changes and minor revisions. There are a few items on the second page that require clarification. One has to do with why there are fewer employees than in other similar developments that you referenced. On section 57, we're not exactly sure what you were trying to say, so if you could clarify that, that would be helpful. Same for 58. Once these changes are made, the document will be revised and the Planning Board, as lead agency, will be in position to accept it as complete. Your choice tonight is to accept this as complete with the condition that these modifications be made and the pages resubmitted. Then, you can schedule a public hearing either tonight or at your next meeting. Alternatively, you can ask for these changes to be made for the changes to be re-submitted to you, you can review them at your next meeting and then schedule a public hearing. It's really up to you how you want to proceed. And, let me remind the board that once you accept it as complete, public hearing will be scheduled, and that will be your opportunity to really dig into the substance of this and come up with substantive comments that go beyond just making sure that the DEIS complies with what you had included in the scope.

Vice Chairman Sturniolo: Since the changes aren't very complicated or lengthy, I'd suggest that we see the changes made, and then at that point we can go ahead and look at a calendar and look at a public hearing date.

Vice Chairman Sturniolo: I want to mention the two missing pages. Your page numbers are off. Please review the numbering.

Vice Chairman Sturniolo: Is this approach acceptable to my fellow board members?

Whitney Singleton: So the applicant is going to make those changes and corrections, it is anticipated that at the next meeting; the first meeting in February, at that point in time your board is going to entertain the concept of scheduling the public hearing.

Vice Chairman Sturniolo: I'm sure those changes are not going to create something way out of left field that we preclude going ahead and looking at a calendar and a public hearing date. Anything else on your part?

Patrick Hewes: No. Thank you very much.

Correspondence:

Letter from Margaret Duke to Michael Fishman Dated Dec. 17, 2007 Re: Renewal of Permit

Vice Chairman Sturniolo: This is a DEC letter. Nannette, in it they refer to the construction of a sand play area approximately 50 square feet. Does that 50 square feet pretty much match what we've been looking at on their plans?

Nanette Bourne: Yes. As most of you know, in looking at the neighboring Buckingham Property, mercury was found to exist in some of the basins. A question was raised that if there is mercury on the Buckingham site, what does that mean about the Crème site? We went back and looked at the environmental documentation demonstrating the clean-up of the Crème site, and there was a document from their environmental consultant verifying in an almost an Affidavit form that the site was clean. They had conducted what is called; a Phase I because of prior use, there was no contamination. We questioned what that meant. I asked the attorneys for the Crème site if they could produce the actual Phase I report. When we reviewed it, we saw that they had actually mischaracterized how the land had been used on the Crème site. It was characterized as being a water treatment plant, not a sewage treatment plant. We met with them and asked that they conduct an appropriate Phase I, which is essentially the literature search, which we knew would conclude that there is a likelihood for contaminants that would require then a Phase II which is actually testing to be done on the Crème site. They tested and found that there was evidence of mercury in several locations at the surface of the site as well as some areas below the surface. They roughly correspond with where the former sludge areas were, where the sludge is actually being treated. They submitted a Phase II report with this information and recommended that the surface soils be taken off site and that the area be covered with two feet of clean fill. We really thought about the proposed use; you approved that being a day care center, and looked at it in relation to what you were requiring on the Buckingham site, and that was completely removing from the Buckingham site all of the mercury. In areas where mercury was found, it didn't seem to make sense that you would apply this clean-up to one site, you wouldn't do it to the other when it always functioned as a single site. As staff reviewed this information and felt that what they were recommending was not in the best interest of the Village and of the proposed use, we are asking the

representatives from both the Buckingham site and the Crème site to meet with us to really come up with a game plan on how to move forward. At the point we made this recommendation, we were going to ask that everybody meet together, the representatives for Crème asked that these two sides not be put together in this meeting; that there be a separate meeting for the Buckingham to send them off. They are interested to get back before the Planning Board, send them off doing their clean-up, and the Crème representatives do their clean-up; which could have been an okay idea, until we realized that the sludge drawing areas actually straddle the two sites. The areas on the Crème site that had the mercury are the same areas that extend across the Buckingham site.

Vice Chairman Sturniolo: Literally the property line?

Nanette Bourne: Yes. It would have really been an act of God had that property boundary separated the two, but it didn't.

Stanley Bernstein: It surprises me very much that it's a day care center. Aren't they open to extreme litigation if one of the parents decides that even though something happened to the kid and it wasn't caused by mercury, they know that this land is contaminated? They are opening themselves to an enormous liability. It surprises me that they don't want to take every possible step to overcome that and document every step.

Doug Hertz: We've had meeting after meeting and discussion after discussion about how to get into the Buckingham site with the least amount of disturbance and which way to go and trucking it in which direction. If the Crème site open and that provides access, why create two access points; do it twice, truck some waste in one direction and truck some in another direction when this can be done as a consolidated plan with the least impact to the Village and the least impact to the sites? What is the logic in Crème not wanting to co-mingle?

Nanette Bourne: Because Crème does not want to have to do the extensive clean-up that Buckingham has already agreed to. They are trying to do less, and they don't want to be faced with Buckingham saying how come you're letting those guys just clean the top of it and fill it with clean soil when we offered to do the same thing?

Doug Hertz: Then they're not going to get away with it. Based on the information we've been given about the contiguous site, I can't believe we would handle the two things differently.

Vice Chairman Sturniolo: That is the direction that the Village is going with, but one of the reasons to discuss this tonight is to get a feeling of everybody else's views that collectively the Planning Board views this property line as some imaginary barrier that really doesn't hold up when it comes to remedial work that needs to be done.

Doug Hertz: It is an imaginary line that was drawn by the property owner and had nothing to do with the site that caused the contamination.

Joseph Morreale: It's obvious to me that probably they don't want to clean their side of it up because of cost factors. They are not probably as well-endowed as a manufacturing firm. The boundary line does set the legal limit on who is responsible for what, so they can claim that they don't have to do the same thing, I suppose. My concern would be, and don't take this to mean that I don't want to see them clean it up, because it's not my position, but my concern would be they may decide if they have to pay the high price for this, they won't build the school. If that's the case, is that worse to the Village? Is the danger such that it's worth risking that the Village won't have the school?

Doug Hertz: I would rather the site safe and safe for the use that is proposed. If it's a good site and it gets cleaned it will go in for another use. We already have a day care center within a stone's throw of that site. The Village has certainly been building day care centers. We don't need to be the day care center capital.

Joseph Morreale: But I remember when we approved this, this was sort of an important addition to the community.

Doug Hertz: I think it's valuable, but I don't think it's valuable if it's dangerous.

Joseph Morreale: I agree with that. I wouldn't send my kid there knowing this, frankly. God forbid the mercury is in the water supply. I just wanted to raise this because I think it's an issue. The other question I had about this is that if we insisted that they

cleaned it up the way the plant next door would, could they claim that we were creating an economic hardship to them?

Doug Hertz: I think the first thing is to really get the answers as to what levels of contamination are there and what it will take to remediate it.

Nanette Bourne: Actually we have the levels. They're elevated; they are not extraordinarily high, but they are higher than what is the most restrictive residential use.

Vice Chairman Sturniolo: We also have a copy of the Phase II that's available to all of you to take a look at. The collective thinking, as I kind of alluded to earlier is, on the Village's part, to forget about the property line and let's get this clean up as it applies to both areas done. The documentation of this Phase II book as to what they found, where the areas are, how the two properties are co-mingled with the contaminants, and its in the process of developing a game plan to address with both property owners; Crème and Sanctuary Ventures.

Doug Hertz: When you think about a contamination like this, the concern is not just what is going to happen to a child playing in a playground, but if you have contaminants right next to the estuary of the river, those contaminants can get into the ground water and just be gone. I think it's our job when we know there is a potential problem to make sure it gets remediated.

Nanette Bourne: You should understand that we did water testing of the Kisco River both up and downstream, and there was no mercury found, no contaminants that would have come from this site. The expanded Phase II that was done for the Buckingham site that you had asked for to make sure that the mercury was contained within the basins demonstrated that it had not leached anywhere outside the basins.

Whitney Singleton: We had a meeting on this last week, and we went through the Phase II and we went through the recommendations that were proposed by the property owner's representatives, and we have recommendations from two separate HASMAT specialist, and in this unique circumstance I'm glad that there is actually two people looking at it because they seem to have some consistency as to what they think is appropriate remediation versus what the applicant thinks is appropriate remediation. I do think you want to harken back to what Nannette said; while there is contamination on this site, the primary reason that it is of concern is that it exceeds the residential level; the safest level. This probably would not raise a lot of eyebrows if this were a construction or industrial use. Even the hot spots on the property were not that great. But, I think what we're going to find is that what Crème is proposing to do does not rise to the level as to what our consultants feel should be done on the site, so, surprise, surprise we're not getting the level of remediation being offered up immediately by the applicant. Not to speak out of turn, our applicant has been pretty forthright. When I read this letter I get the sense that they haven't been. They make it sound like there are construction delays and that there is no proposed changes to the site and never mention the fact that the project was stopped because of hot spots of mercury within this state regulated wetland buffer. That was surprising to me.

Vice Chairman Sturniolo: It's almost like DEC is not really addressing the issues of why there was a delay.

Whitney Singleton: No, they're citing, we're doing this action based upon your representation.

Vice Chairman Sturniolo: Your representation that there was a construction delay, which sounds like some steel mill somewhere in Pennsylvania couldn't supply I-beams for us, and the reality is, it's a lot deeper than that, and having far more import.

Nanette Bourne: I suspect this might be a case of the right hand not knowing what the left hand is doing because DEC has been notified, but obviously not who wrote this. We've spoken with the DEC.

Vice Chairman Sturniolo: So that's where we are with Crème/Buckingham.

Doug Hertz: What's the next step with it?

Nanette Bourne: The next step is a letter is being drafted that outlines what our issues are; number one, the meeting is to be a joint meeting because the sludge beds are shared by both properties; two, the proposed remediation clean-up of the Crème site doesn't go far enough that it really needs to be consistent with the way that the

Buckingham site is being cleaned up; to give them a heads up and have them put their heads together and hopefully come to the next meeting with some ideas on how to work together. It should be a coordinated clean up as opposed to two sites going off in different directions.

Doug Hertz: The Village has the teeth to keep them from building until the site is remediated?

Whitney Singleton: Yes. I think the point that Joe was making earlier was a good one. Let's say this table is one of those beds and the whole thing is contaminated with mercury. How do you draw a line here? I want you to dig down ten feet, and remove everything over here, and then after you've filled that with clean fill tested, I want these people to come over and go down ten feet on the same plain. It doesn't really make sense, but at the same time you can't say, go clean up your neighbor's property. Whether that was chosen in an arbitrary fashion or not, it is still the delineation between two separate properties.

Nanette Bourne: Right now everybody is cooperating. Crème provided information that was not correct, so you based your approval on data that wasn't correct.

Whitney Singleton: The original subdivision approval on the site plan.

Nanette Bourne: Right.

Joseph Morreale: Was it known at the time?

Nanette Bourne: No. They said the site was clean.

Joseph Morreale: No, no. Was it known at the time that there was mercury there?

Nanette Bourne: No.

Joseph Morreale: So they didn't really misrepresent. It's just coming to light later.

Stanley Bernstein: On the DEIS they were specifically asked; which means they never even made a test. They never even looked.

Whitney Singleton: What happened, rather than think it was a sewage treatment plant, their Phase I indicated that it was a big water plant distribution center.

Nanette Bourne: They said since it was a facility owned by DEP it must be a water treatment plant and the water must be clean; not a sewage treatment plant.

Whitney Singleton: That's their mistake, though.

Vice Chairman Sturniolo: That's kind of an update where things are and what's going to happen next with this letter that is going out; this invitational meeting. And again that Part II is available for anyone to look at. Give Nancy a call.

Whitney Singleton: To follow up on the one item. We have a lot of people looking at this thing. They are not going to stroll in here on a Tuesday night and they are going to say we want to do X Y and Z and plant some flowers and we're done. We do have a lot of people that are looking at this that are familiar with the proper way to handle this situation and I don't think we're going to ultimately end up being short changed on this at all. Obviously a lot of this is being precipitated by the fact that they could not have chosen a worse use given the conditions on the site.

Correspondence:

Letter from Robert Leace, Vornado Realty Trust to A & P dated January 10, 2008 re Site Plan Compliance Rear Parking Lot for Employees:

Vice Chairman Sturniolo: A & P has complied and also complied so far with utilization of parking in the rear predicated on strictly my observation only.

Correspondence:

Letter from Robert Leace, Vornado Realty Trust to Target dated January 10, 2008 re Site Plan Compliance; Storage of Propane Tanks:

We are still waiting for Vornado Realty to address the propane tanks in the back of Target.

Correspondence:

Memorandum from Patti Tipa, Code Administrator to the Planning Board dated January 16, 2008 re Patio .com Outdoor Display Compliance:

Vice Chairman Sturniolo: When we were talking about Patio.com, again they have complied with their permit. I want to make note that we were talking in terms of the fact that it was a site plan that we had in front of us. In reality it was an outdoor display permit that we were referring to. Based on the fact that we did nothing, I want to point out to them that there was no resolution or anything; it becomes somewhat irrelevant in the terminology being a display or a site plan. What we looked at was a permit for outdoor display.

Ralph Vigliotti: I would like to bring back that document before this full Board one more time. I don't believe that that document that was submitted to us at the last meeting is a document. It appears as though the stamping of it is not current at that time. I have more questions about that and I ask Whitney to review that document and see whether or not it truly does satisfy an amendment to the site plan.

Whitney Singleton: You're talking about the outdoor storage?

Ralph Vigliotti: Yes.

Whitney Singleton: Isn't that stamped "Building Department"?

Ralph Vigliotti: There is a question on this. If we look at one of the pages, it appears as though this was sent - outside inventory. This is an inventory that was sent by R & R to the Village. And the Village, of course, received this inventory by them. This isn't necessarily Village approved. All it says is "received" and this was sent by Patio.com at that time it was another name, R & R Pool and Patio. So, I still have a legal question to ask; is it part of the approved site? Although Patti Tipa, who I respect dearly, has indicated that this is verification, I don't think this verifies anything. I still question that and I want to add one more piece. When they chain their furniture down to the ground so it is not vandalized or stolen, is that also part of a site plan or an approval for a patio display? Are they allowed to? Is anyone in this Village who has a site display in front of their business allowed to chain and lock their equipment in place, and are they allowed to keep it overnight? This is the only place in town that I can recall at this moment that has items on display 24/7. They have been in violation in the past. I hope things work out for them, but question to you is please verify whether or not this piece of paper that someone submitted to the Village was approved. All it says on here is "Received." It says approved by Planning Board 5/9/95; but I still don't know whether or not the Village approved this, or was this just stamped because this is what they had on hand? Whitney Singleton: But it's signed by the Planning Board Chairman.

Ralph Vigliotti: I know that. But this is what they had on site, so they approved what they sent to the Village. Is that what we're saying; that whatever they sent to the Village on this two page piece of paper was approved for the amount of square footage that's on that site in the front and side lots. I see that it was approved in '95. I'm not in agreement with it. I think this was just submitted to the Village without the Village going out and observing what was there.

Whitney Singleton: Why would the Planning Board Chairman sign off on this?

Ralph Vigliotti: I'm not sure.

Whitney Singleton: I think we can go back and look at the last resolution of approval, the last time they were on an agenda, and we can look at the minutes from that point.

Ralph Vigliotti: I thought we said we were going to do that at the last meeting.

Vice Chairman Sturniolo: May 9, 1995 are the minutes.

Ralph Vigliotti: I'd like to take a peek that night. I have one more question for you and that is, are they allowed to chain down their furniture, lock and chain on property, by permit?

Whitney Singleton: The question would be will that constitute a violation of their site plan?

Ralph Vigliotti: Yes.

Whitney Singleton: Right now we have a situation where there's a business that throughout Mount Kisco has chained their property to our signs throughout the Village, and we're being sued over that.

Ralph Vigliotti: We have two issues. Something being chained to Village property and a private property who has, according to this and I'm still questioning it, approval to have a display, are they allowed to chain their display down which makes it permanent?

Whitney Singleton: I can go back and research this and give you a memo, but the reality is it's a degree of specificity with which we approve site plans. Did we approve any colors out there for the chairs and the tables?

Ralph Vigliotti: I'm going to get right back down to it. I don't mean to be pejorative in any way. Legally, are they allowed to chain and bolt down their furniture? Yes or no? At some point I need to have that answer; and if it's a yes, fine. If it's a no; then they have a problem. We have a number of pieces of legislation that are enforceable if we chose to enforce them.

Whitney Singleton: I'm not disagreeing with you.

Ralph Vigliotti: Okay, and whether it be the patios out in front of the restaurants in which they have a permit to do that and they are supposed to take their furniture in each evening, and we either selectively enforce that or not, or we don't have the time to enforce it; that's an issue early on in which the legislation addressed. That all furniture be placed in front of stores to create an outdoor patio dining area. It's supposed to be removed every night.

Whitney Singleton: Difference being, that's specifically set forth that that's required.

Ralph Vigliotti: Let's get back to not blue, gray, pieces of furniture or umbrellas. Are they allowed to lock down their furniture?

Whitney Singleton: I'll do my best to come up with an answer.

Ralph Vigliotti: I'm sorry to throw that at you, but it's been unsightly for years, and they'll comply with us until the next time. Then it will take us another two years to get them back in. Thank you.

Stanley Bernstein: I have a comment. If you all remember, Mr. Birdoff promised the Village \$100,000 for open space. Does anyone have enough chutzpah to go to Vornado and ask him that perhaps it would be good publicity for them. "We took over a rats nest here from the previous owner and we're going to be the good guys and, we want to work with Mount Kisco." That should be something that someone higher up like the Mayor.

Whitney Singleton: There is an answer to that that the Vice Chairman is familiar with. It requires a little bit of an explanation, but they did give the \$100,000 to the Village. However, as part and parcel of that \$100,000 gift there was an application to seek a refund of certain fees that they paid in protest. The resolution was; give us the money and we'll see what we can do about the refund. They gave \$100,000; we refunded \$40,000. So, really to answer your question, it was a net of \$60,000.

Vice Chairman Sturniolo: \$40,000 was the parking fees. A lot of us fought a long time over this.

Whitney Singleton: Obviously the Vice Chairman is not happy with the outcome.

Vice Chairman Sturniolo: Just to continue the conversation, there was an article in one of the papers recently that some of that \$60,000 the Village Manager said it was going to be used for open space regarding the D'Allura property used on Maple Avenue.

Whitney Singleton: I was not aware of that, but what I can tell you is this. We had a very good case. It went before the Zoning Board of Appeals. The Zoning Board told the applicant's attorney: "you're not getting any of this money back." We pointed out to the applicant the Section of Code which they were previously unaware of that says if you

had an application which was a minor modification to your site plan, in other words, new trees and a couple of retaining walls, you have it within your right to seek a refund in part or in whole from any of the fees associated with this, because their position was you shouldn't have had to pay the fees multiple times. There may have been some validity if they were to make that claim up front. They were not aware of the provision until the night of the Zoning Board meeting. The subsequently said what if we make that application, would it be granted and then would we be fined \$1,000? We said there would be no quick (inaudible), give us the money and then make the application which is what happened. They handed us a \$100,000 check, they made the application and it was refunded. It's a little bit of a gray area, but the reality was there was already tens of thousands of dollars spent on litigation fees to get to the Zoning Board of Appeals. If they had challenged the decision of the Zoning Board of Appeals not to issue the refund, they would have sued, in my estimation they would have lost, the Village would have paid me \$20,000 in legal fees to fight it and all the administrative work that needs to go on in this building for me to assemble the records and everything else. There would have been no affirmative obligation on Birdoff's part to actually contribute that \$100,000. So we could have won the litigation and ended up with less money and Birdoff wouldn't have kept his word. There are a lot of different things that could have happened. There was some rationale for it (inaudible) Some people are a bit more principle based than I am. I am more of a realist. Let the record reflect the Vice Chairman raising his hand.

Vice Chairman Sturniolo: What's right is right and what's wrong is wrong.

Whitney Singleton: But the reality is we obtained in one form or another that \$100,000.

Motion to Adjourn: Doug Hertz

All: Aye

Meeting adjourned at 9:30.

Respectfully submitted,

Stanley Bernstein
Recording Secretary

dm