

Minutes
Meeting of the Planning Board
Regular Session
Village/Town of Mount Kisco
Tuesday, April 14, 2009

Meeting called to order at 7:50 P.M. at the Municipal Building Mount Kisco, New York.

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

Staff Present: **Nanette Bourne**
 Whitney Singleton
 Anthony Oliveri

Conceptual Application:

The Park at Mount Kisco
Mount Kisco Athletic Club
333 North Bedford Road
PB2009-05

Present: **Michael Gallin, Principal, Gallin Design Studio,**
 Architect representing Diamond Properties
 Jim Diamond, Diamond Properties, Property Owner
 Rick Beusman, Owner, President, Mount Kisco
 Athletic Club

Michael Gallin: We are glad to be here to present one of the last pieces in the development of the site at 333 North Bedford Road. It is something we have eluded to in the past, and we have now developed it significantly. Obviously, this is a conceptual, the first formal time to discuss it, but we really tried to put our best foot forward. Obviously, we have been through this process several times with this building. We know the type of information you are looking for, and we tried to give you as comprehensive a package as possible for conceptual so we can dive in and complete the application. We have also learned from our past mistakes on some of our other projects and want to try to present things to you in a manner as efficient as possible. We are in the last submission for the indoor sports arena. There was some uncertainty from the tenant in terms of the operations of the business, and I think that was frustrating for the board as it was for us. In this particular case, a lot of effort has been put into this initial submission to make sure the plan and the operation is exactly what we propose. We have developed plans including the equipment, projections of the personnel, etc. This is the last remaining 30,000 square foot lot on the space. In addition, as part of this application we would like to discuss the conversion of the 6,500 square foot old truck maintenance garage to a physical training studio.

Chairman Cosentino: You are doing two projects under one application?

Michael Gallin: Correct.

Chairman Cosentino: Is this going to be part of the Saw Mill?

Michael Gallin: Two separate operators. Jim is the applicant for the special permit as the building owner. It would be under Diamond Properties.

Chairman Cosentino: Can we entertain two separate entities with one application?

Lester Steinman: They are proposing a single special permit holder.

Michael Gallin: As I understand, a special permit is only required for the Athletic Club. The sports training facility is a permitted use.

Chairman Cosentino: You will have the Saw Mill and a "to be determined" sports physical training studio. That is two separate entities under one application.

Lester Steinman: The problem is we do not know what that entity is or what specifically the uses will be, because it has not been identified, as opposed to the Mount Kisco Athletic Club application, where we know what is going to be done.

Jim Diamond: The original application three years ago was approved as office/warehouse space with a tenant unknown, generically without being a use. We are proposing now to change it from office warehouse to physical training studio because we think it is unlikely ending up being an office warehouse.

Michael Gallin: We are willing to be specific in terms of the parameters of that physical training studio. The last time this was brought up there was not a specific set of guidelines. I am bringing it up here on day one to make sure that does not happen.

Chairman Cosentino: Does that mean at the end we are going to have one or two resolutions?

Lester Steinman: I will look at it, but it seems to me to be two separate applications and two separate resolutions. One would be a special permit resolution and the other would be an amended site plan resolution.

David Stolman: You would have these two resolutions anyway.

Michael Gallin: It is up to your discretion whether you want me to present them together or split them up. They do tie in together in terms of traffic and parking.

Joseph Morreale: What is the relationship between the two? They both sound like some kind of sports facility. Are they going to act independently by two different owners?

Jim Diamond: Yes, two totally separate businesses. In fact, there is no particular business identified for the maintenance garage building yet. The idea is that it would be some sort of physical training studio as defined in the Mount Kisco zoning code. For example, a studio for dance or karate.

Michael Gallin: It would not be an athletic club.

Joseph Morreale: It is going to be something very different from the athletic club.

Vice Chairman Sturniolo: But operated by the same owner/applicant?

Jim Diamond: Totally separate.

Stanley Bernstein: Mr. Chairman, I have a problem with that. How can we entertain a resolution when we do not even know who the tenant or the owner is? That is not acceptable to me.

Jim Diamond: We did do that with the original application. The use was approved. If you recall, the entire building was approved for a mix of office/warehouse tenants.

Stanley Bernstein: It sounds good, but if the tenant finally surfaces, it may be a different operation.

Lester Steinman: I understand the concern. I think that two separate applications, although this is packaged as a single application, I think they have to be separated. On the other issue that Stan just brought up, if the board proceeds, you can establish what the parameters will be for that use, and then any deviation from those parameters will require the applicant to come back.

Chairman Cosentino: I do not have a problem with that.

David Stolman: If you fill out the application forms, an applicant for an amended site plan approval for the overall site including the studio, and an application for a special permit for the membership club.

Chairman Cosentino: This also expedites things in a way that you don't have to constantly come before us.

Michael Gallin: As part of your package, there is a detailed plan for the 30,000 feet. Here, there is a small member's only child minding area for parents to leave their young children while exercising at the facility. It is a conventional health club, very

similar to their existing operation but obviously expanded; cardio vascular, weight lifting, multi use for aerobics, etc. There is a small juice bar in front, and we outlined in the application the area of parameters for each of those. There is a section in the zoning ordinance that requires the accessory uses to be limited to a certain percentage of the overall operation. As part of generating this plan, we have done a detailed projection of the occupancy at a typical weekend day. This is shown on the left, and on the right is the worst-case scenario, the five percent threshold that happens five percent of the time. Based on this analysis, we ended up with peak occupancy within the health care facility between 10 and 11 A.M. on a weekday morning. That results in 220 participants plus employees within the facility, and on the plan we actually demonstrate in round numbers exactly where those 220 people will be. A metric here equates that number of cars in the parking lot and the number of trips, so that 220 people within the facility results in 169 trips during that hour and 187 cars in the parking lot. In theory, the sports arena during the week would be open, but there is not much going on at this 10 - 11 time slot. We then took that data and found quickly that there are offsetting peak hours for the different uses of the facility. The warehouse space is 9 to 5 week days; the athletic club, sports arena and Grand Prix New York are more late afternoons, weekends and in the evening. The athletic club also has a morning peak. We took that data and plugged cars into the parking lot rapidly and then also on the numbers here to assure ourselves that under every scenario we had enough parking spaces. We also looked at two cases which represented if Grand Prix had a 500 person event or the athletic club had a 300 person event, both of which has been discussed with the board under previous applications. We found that the maximum number of cars in the parking lot occurred on a weekday morning and that was at 759 cars. Currently the site has 806 parking spaces, so we have adequate parking under all scenarios.

Chairman Cosentino: Will there be babysitting?

Rick Beusman: Yes.

Michael Gallin: The nursery is 1,000 feet in the front corner.

Lester Steinman: One of the things you need to discuss with Austin is the number of accessory uses you have. You are limited to three, so you will need a determination as to whether your proposal complies or would require a variance.

Michael Gallin: One of these accessory uses that is permitted is personal services. We will put a formal letter together for Austin.

Joseph Morreale: You gave us data about members on site. The nursery column is 0-1 or 2. What does that refer to?

Rick Beusman: Adults who are working in the facility, not counting the children. The driving issue here is parking and trip counts and nursery school children are not part of that.

Joseph Morreale: What about the number of people in the facility?

Michael Gallin: All of these counts are adults only.

Joseph Morreale: What about the number of people in the facility at peak hour?

Michael Gallin: If our peak hour number is 220, there may be five children associated with that. The number accurately should be 220 plus five children.

Joseph Morreale: What is the maximum occupancy?

Michael Gallin: From the building code standpoint, this will be considered an athletic club, which will be 50 square feet per person. We are way above that in terms of permitted occupancy, in terms of how many bathrooms, ingress/egress doors, etc. The building code and zoning and actual use here are two separate things.

Lester Steinman: Can you explain again how you got the projections for the number of occupants?

Rick Beusman: I am the only principal of Mount Kisco Athletic Club. I am a partner at Saw Mill Club, so Saw Mill Club is not involved in this in any way. Between those two clubs, we have a lot of experience understanding how flows, etc., work. When I did the occupancies, I assumed if we were filled with spaces, i.e., the group spaces such as spinning, and using those capacities giving what the use is, you'll see the numbers in

these areas. We also know typically, what happens when you have circuit lines and cardio equipment at 10 A.M., what we look like in terms of capacity. It is strictly based on space and typical use.

Lester Steinman: If we compared your existing use, which is about half that space, would we be getting double the people that are in there?

Rick Beusman: No. That would not be the case. I am predicting here that we are having higher use than we have at the current space, given the fact that the layout of our existing building, which has inadequate space.

Lester Steinman: It is obvious to me that you would anticipate higher usage when you double the square footage. The question is if you took your current usage and doubled it, how does that compare to the numbers you are projecting.

Rick Beusman: These numbers would be higher than my current spaces. I am anticipating higher use with a better designed, better flowing facility.

Chairman Cosentino: 333 has become the "sports complex."

Jim Diamond: Interestingly, 48% of our space is office warehouse, which is Monday-Friday; 9 A.M. to 5 P.M. 15 percent of the building is actually self-storage, which has almost zero traffic associated with it. There is one employee and occasional trips, and then 31% is Grand Prix and Mount Kisco Sports Arena and 5% would be Mount Kisco Athletic Club. Approximately 37% of the building would be sports use. We've obviously aggregated them on the south side of the property.

Chairman Cosentino: There is something good about this because it cleans up Kisco Avenue. The storeowners will be happy that there is parking as well.

Michael Gallin: Which is a good segue to our last piece. We have retained John Collins as the traffic engineer, and he looked at our projections in terms of ITE (Institute of Transportation Engineers) guidelines and he came up with very similar numbers for the peak, although ITE showed the peak as being in the afternoon and early evening. Based on Rick's operation and understanding of the demographics, the peak will be in the morning, so there is a disconnect there. Either way, the low for the 30,000 square foot facility is comparable to maximum utilization to what Rick is proposing and what the national standards say. As part of that, we would be exceeding the cap set previously on the site under the original application. John Collins' recommendation is the appropriate cap for the entire site with the Mount Kisco Athletic Club would be 450 trips at peak hour as opposed to previously approved 300.

Chairman Cosentino: Now that all three are going to be there, what do we do not to have two or three large events at one time?

David Stolman: We had a meeting about it with Austin and Jim Palmer to talk about the special event situation, not only for GPNY but for the sports arena as well. We need to analyze it more and talk about it more, as there is a possibility for a number of special events that take place on the site at the same time, and we have to resolve that.

Chairman Cosentino: There are neighbors that live across the street and more than one heavy event would be a problem.

Jim Diamond: Since the special events need to be submitted to Austin, there is ability for him to be aware of a potential conflict so it can be eliminated. Mount Kisco Athletic on the other hand, would not be anticipating the same type.

Rick Beusman: I agree with you and Jim. Certainly any special event we would have the need to be submitted to the Building Inspector with proper traffic control and policing. The only special events that I can envision would be opening up the club to members and guests and having a big group exercise festival where people take classes and try the club. You might do that four or five times a year. We can be flexible as to when that occurs.

Lester Steinman: We will bring that issue back to you. While we are on the subject, the other issue is the relationship that is going to be required, if any, between the special event and the permitted use that is ongoing on the site.

Joseph Morreale: I have a growing concern. Since John Collins did the original traffic study with the synchronization of the traffic lights, I have been finding the traffic is

backing up on North Bedford Road with that new light. I am trying to envision many more car trips through Ice House Road. Is the synchronization set so that the light goes red on North Bedford when people are coming out of the facility? If we are now going to increase the flow of traffic coming out of the facility, it is going to slow/stop the traffic on North Bedford Road more frequently.

Jim Diamond: John Collins can come to a future meeting and address that better than we can. My understanding of the way it works is there is a certain sequence in place within the light now, the majority of the time is on North Bedford Road, and every four minutes or so there is a cycle where it goes to the Park Drive exit for Brookside and to Ice House Road. The segments for Park Drive and Ice House Road are skipped if there are no cars there because of the magnetic readers not sensing any cars. When it comes around to Ice House Road if no one is there it will not turn the Ice House Road light green, but if a car is there then that segment will be included in the light phase.

Joseph Morreale: Therefore, if there is an increase in the flow of traffic coming out, because you are going to substantially increase the number of cars, it is going to turn that light red more frequently on North Bedford Road.

Michael Gallin: The frequency is set that it is allowed to turn green every four minutes. That will not change, but it will not skip over that sequence if there is actually a car waiting there. My suspicion is it's tripping every four minutes because there is already someone leaving the site.

Joseph Morreale: No, because you said they come at different times. One of the points you made was these are not coterminous in terms of peak volume, which would mean the volume would be more peak over a longer period of time with that light tripping much more frequently.

Jim Diamond: John Collins is better equipped to address that than we are. I can only address it from the perspective of what I am seeing, and I believe the North Bedford Road light turns red anyway, strange as that may sound, whether or not there are cars on Ice House Road and Park Drive, but Ice House Road and Park Drive do not turn green. I have noticed that the traffic will stop there and the lights will turn red even if nobody is leaving.

Chairman Cosentino: My understanding was that the light will stay green on North Bedford Road unless someone is coming out of Brookside or Ice House Road.

Michael Gallin: That is how it is supposed to work, and the way it is programmed. John Collins submitted his computer analysis how they should be sequenced to the Department of Transportation, and they are actually responsible for doing the sequencing. It may be worthwhile to have him go out there and make sure that it's actually operating as it was originally conceived.

Joseph Morreale: I raised all of this when he came with that original study, so I thought I remembered it correctly. I've already noticed that the traffic is backing up to the earlier light at Burger King, which means now, if you increase the flow coming out of the facility, it is going to slow it down even more. It could back up all the way to the next light, which I think is going to cause a big problem for that whole area. I would be interested, Mr. Chairman, to see what John Collins has to say about this.

Chairman Cosentino: Dave, you need to follow that through.

David Stolman: On a preliminary basis, you will recall that as part of the Negative Declaration that was originally adopted for this project, we helped the Planning Board lay out the kind of traffic analysis, which would have to be done at various intervals. The different intersections were laid out at the various peak hours, etc. John did a sensitivity analysis, which means he would do a little bit of work and see how things look. This looks at the Ice House Road intersection but not every leg of that intersection. It does not look at the other intersections that were part of the original study. We are going to need more than what John has submitted so far, plus we will be recommending to the Planning Board that there be more analysis in general, especially if you're asking for a 50% increase in trips, going from 300 to 450. You have to go back to the original resolution.

Vice Chairman Sturniolo: Please walk us through the imperious surface section and the gaining of the greenery.

Michael Gallin: The wonderful thing about this overall development is that we have been able to remove two acres of impervious surface on the property and re-claim it as green space, which adds a huge positive impact in terms of storm water flows. As you all remember when we first started this project, there was a lake in front of this property and there were drainage issues that impacted downtown Mount Kisco and other areas. By decreasing the impervious surfaces, that also has a positive impact on those environmental concerns. The addition of Mount Kisco Athletic Club and the physical training studio are the last piece of that. By putting these two pieces in there that do not have any truck traffic, we are able to eliminate additional loading dock doors and additional impervious surfaces and create a park-like environment.

Ralph Vigliotti: You have two exits and entrances into the site. It appears that the Ice House Road entrance is going to take on a greater volume of traffic, while the north entrance probably can handle the traffic better. There is a light right in front of CVS, the entrance is wider, it appears to be certainly longer to get in but it's probably the same distance. How do you go ahead and direct most of your clients to that north entrance rather than the south entrance, which is Ice House Road. How do you design your signage and entrances to kind of force your clients to use that north exit?

Chairman Cosentino: If you go out the north entrance, you're not in front of the light. If you have a dozen cars trying to get out, it's going to take a long time getting out. By going up Ice House Road, you get out a lot faster because of the light.

Michael Gallin: You are not allowed to turn left. It is a right turn out, right turn in only. If you are going north on Bedford Road, you are not allowed to make that left into that entrance, and if you are leaving from the property you cannot turn left to go north on Bedford Road.

Ralph Vigliotti: That is because of the traffic light configurations. If there were a second traffic light, which I certainly am not recommending, but I think it merits some additional studies.

Michael Gallin: If these two intersections were offset the other way, if our exit was south of the CVS entrance, then you could offset the traffic lights similar to what we were able to do here. From a traffic planning standpoint, the DOT will not let you do that.

Ralph Vigliotti: When Target is at capacity with the A & P and Burger King, and now when you are at capacity, that Ice House Road entrance/exit is going to be exacerbated. Please take a closer look at what we can do at the north entrance. I am not recommending a second traffic light there, but you have a wonderful entrance/exit that has become very limited in use, and it is able to take a lot more traffic. Ice House Road is not a wide road, and I am concerned about that. Is there a holding lane going north for Ice House Road?

Michael Gallin: You can make that left in there legally, and there is a left turn lane from Bedford Road.

Ralph Vigliotti: How many cars will that holding lane hold for making a left-hand turn heading north?

Michael Gallin: Two or three, then there is a space and then it will hold more. There is an entrance across the street, which is down by Patio.com.

Ralph Vigliotti: As we're looking at this in a preliminary form, my concern is getting into the site safely, which is already horrific as far as traffic on North Bedford Road, and not causing a situation that is worse, when now we might have a way of looking at that north entrance differently.

Jim Diamond: There will be some benefits. If Mount Kisco Athletic Club moves to this site, it will be taking traffic off Kisco, which is not only good for Kisco, but obviously the people coming down North Bedford Road to get to Mount Kisco Athletic will be able to turn into this property before they go all the way down to Preston. We are redistributing some traffic that is already limited.

Stanley Bernstein: You have done a really good job environmentally on your property. You mentioned a lake that was there because of poor drainage. We did allow something for you to do in the very beginning to relieve the flooding but there is a problem that is there. It may not technically be your problem, but it is a problem that exists on the edge of your property. It is the five-acre wetland, which has now been

dried. We all knew that would happen and we all know that Mount Kisco was the one who built the berm. The fact is that there is no sheet flow because you got rid of your lake. I would not go so far as to say it's incumbent upon you to do something, I know it's not, but as a matter of good faith I'd like you to try to think about maybe restoring a little bit of the sheet flow. I know Mount Kisco is culpable, and we should have our engineer look at that and maybe take down the berm. It's very disappointing for me, personally that that 5 acre wetland is now dry.

Chairman Cosentino: Since there is nothing else, you have to file now and we will put you on the next agenda.

Minutes - January 22, 2009:

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

Minutes - February 19, 2009

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

Minutes - March 10, 2009

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

SEQR Review:

Westchester Residence and Club
Kisco Avenue
PB2006-19

Present: Mark P. Miller, Attorney-at-Law, Veneziano & Associates

Nanette Bourne: The revised final draft is intended to reflect the discussion that you had at your last meeting. It has been substantially revised and I highlighted those issues that were particularly sensitive to the board. They concerned how the existing Swiss Benevolent Society property and Mountain Avenue was dealt with. Members of the board felt one way and the majority of the board another way. What is not shaded is wording that you have already seen. The changes are as follows:

Page 3: It brings in the relationship of the proposed site to the Swiss Benevolent site and ties it together.

Page 7: Even though the applicant as proposed the emergency access driveway, your board find this emergency access driveway as proposed is unacceptable in terms of the disturbance that it would cause to the site. You feel that an emergency access and emergency management plan is necessary to protect the health and safety of the

residents, but that needs to be done in some other way besides what was proposed; relocating the access drive, creating some redundancy in the infrastructure systems to make sure that the residents are protected. When you take that access drive away, there is a reduced disturbance from 12.1 acres that the applicant proposes to 11.1 acres. Having to do with the height, even though the building exceeds the height, there are visual advantages to have a more interesting building instead of flat roof.

Page 8: This is the first time the differences in board opinion are brought up. Although some members of the Planning Board express concern over the length of the building, the majority of the Planning Board concluded that the length was adequately mitigated. Although some members of the Planning Board expressed concern that the cumulative impacts with the exception of the emergency driveway, adequately balances the benefits and disadvantages. The concept is introduced with approving the location with the proposed Westchester Residence and Club would mean that the building on the top of the hill would be removed, and that would be an advantage.

Doug Hertz: In that paragraph, we need to remove the to in the sentence, "The Planning Board recommends that the Village Board to adopt..."

Page 9: This concerns a visual impact and I tried to tie the benefit of eliminating the building on top of Mountain Avenue in favor of the construction of the Westchester Residence and Club as proposed. Next, even though you are concerned with the retaining walls and you may not love the retaining walls, you recognize that some retaining walls are necessary but that the retaining walls that would be required for the emergency access driveway are unacceptable. Natural resources tries to capture a discussion you had last time with creating a more detailed preservation and protection plan. I suspect that the applicant feels that they did produce a pretty detailed one, but I do not think it was met with the satisfaction that the board wanted. During site plan review you would like to see more detail on the trees that are going to be eliminated, how the site will be reforested, and how reforestation will take place on the top of the hill. Lastly, if you recall, they had not done an adequate seasonal survey of the wildlife on the site, and it was not something that could have been done appropriately during the winter. You agreed it should be postponed to the spring or some more appropriate time.

Page 11: This concerns the lack of detail that the applicant has provided concerning the stormwater pollution prevention plan and site-specific soils and geologic information. If you recall from the DEP letter that was sent, throughout the process, DEP as well as staff have commented on the lack of specificity. A stormwater pollution prevention plan was prepared and provided to you with the original plan. That plan has changed, and with it will have to come a substantial change in the stormwater pollution prevention plan. They will not be able to get a permit from DEP and they will not be able to get site plan approval from the Planning Board without that having been done, but they have made some qualitative statements as to what they hope to achieve. Assuming they achieve what they say they want to achieve, then they have addressed their environmental impacts.

Page 12: A similar issue concerning water resources and wetlands. They need to do additional site-specific work reflecting the revised site plan and the need to revise their stormwater pollution prevention plan. I think it was the Chairman at the last meeting who questioned the water demand. If I understand what was in the DEIS correctly, the total domestic water demand is 22,250 GPD. In addition to that is an irrigation demand of 22,260, so its additive. They are hoping to reduce the irrigation demand by using re-circulated water.

Doug Hertz: Also by building wells. None of that will be from the village water supply.

Nanette Bourne: I think that would be an issue you will need to deal with in site plan.

Doug Hertz: That has been stated in the FDIS.

Nanette Bourne: They will have to follow through to make sure a condition of site plan approval carries all that forward. Storm water management again goes back to the information that DEP has requested, and the language relates to what they hope to achieve. Their original SWPP does not do the work to show that that can be achieved. They will have to provide that as part of site plan approval.

Page 14: Also, talks about the storm water stalls. There was a question by the board having to do with an ambulance on the site versus an ambulette. The applicant is not proposing to have an ambulance or ambulette on site. They are only proposing to have a jitney.

Page 18: Item F is the Certification of Findings to Approve.

Joseph Morreale: Now that we have this letter from the Fire Department is there anything additional that needs to be put in?

Nanette Bourne: It is entered into the record. The Fire Department makes some site plan suggestions that will have to be dealt with in the site plan review, which has to do with identifying alternate locations for emergency access, creating an emergency access evacuation plan. I think that is the primary thrust of the Fire Department memo.

Joseph Morreale: They mention their concerns about adequate water pressure level and the water tank. We said it would be addressed. I don't think we "addressed" it.

Nanette Bourne: It has to be addressed in site plan review.

Stanley Bernstein: There are an awful lot of words here describing how environmentally destructive the secondary access road would be but not one word in here about the primary access road and how environmentally destructive that would be. It happens to probably be the most environmentally destructive piece of work I have ever seen, in not only this village, but anywhere. I cannot accept that. Also, the final statement is absolutely wrong, where it says, "the proposed project after all the mitigation measures discussed here are implemented is one that avoids or minimizes adverse environmental effects to the maximum extent practicable..." there is very little mitigation. Also, we have not avoided or minimized a thing. I do not agree with "maximum extent practicable," and I think this whole thing is a sham and a lie.

Nanette Bourne: Not to be argumentative, but I did try to put something in on Page 11 in the middle. I'm not sure it's going to satisfy your issue.

Stanley Bernstein: You talk about the blasting of the rock, which is an understandable condition given the condition of the land. On Page 11, the proposed access road is talked about, and I am assuming it is the emergency access road. It should be delineated, because we speak a lot about the emergency access road and then we drop the modifier and I understood it to mean the same access road. The modifier should be in there, either the primary or the emergency.

Nanette Bourne: If you go right to the very beginning of that paragraph, "the proposed access road to reach the plateau..." Do you want that changed to be "proposed primary?"

Stanley Bernstein: Yes. I did not understand that to be primary because we spoke for many pages about the emergency access road and how bad that would be. All of a sudden, we have access road, and it seems to be a continuation of what preceded it.

Vice Chairman Sturniolo: Changing it to primary is fine.

Ralph Vigliotti: On Page 18, Stan you put it very nicely regarding the last paragraph. Although very carefully crafted, it really sets a tone that the project is okay. We can read it again into the record, but I think it is very carefully crafted with the words that have been used with the text and everything else, and I think it needs to be re-worded.

Whitney Singleton: That is nothing more than tracking the statutory language.

Nanette Bourne: I have only heard those two changes.

Motion to Accept the Statement of Findings as Lead Agency Entitled Revised Final Draft as Modified Tonight

Motion: Vice Chairman Sturniolo

Second: Chairman Cosentino

Aye: Sol Gibbons

Aye: Joseph Morreale

Aye: Doug Hertz

Nay: Ralph Vigliotti

Nay: Stanley Bernstein

Aye: Vice Chairman Sturniolo

Aye: Chairman Cosentino

Continuing Review:

**Frank Georgiou
Mount Kisco Diner
252 Main Street
PB2008-10**

**Present: Clifford Munz, AIA, Architect, Munz Associates
Lucille Munz, AIA, Architect, Munz Associates
The Georgiou Family- Frank, Christina Harry**

Clifford Munz: We are here to listen to the findings and continue the dialogue. The goal of everything we are trying to do is to be able to proceed to the next step, which is obviously to go before the Village Board.

Nanette Bourne: As requested by the board, we did a parking demand study on Friday and Sunday to examine the peak parking utilization of the site. This memo concerns our findings, and gives details on how the parking has accumulated on site, the time someone was there observing, how the lot filled up and what the peak hour was. It concludes that on these two sample days, for their existing use on site, they exceeded the parking that was required. It has nothing to do with what the zoning requires, so there is no dispute that they may meet the zoning requirement. In terms of the popularity and the turnover in the restaurant, then it is a highly desirable, highly popular restaurant in town, and it fills up not only on a Sunday, but also on a typical weekday, Monday through Friday. There is a need for more parking. The parking that could be made available at the site next door would be advantageous for this use. Increasing the size of the building and adding space for more customers would only exacerbate the parking demand. It certainly is a desirable proposal to improve the site, to improve the visual attractiveness of the building, but in terms of parking demand, it exceeds what the site currently holds and would greatly exceed the number of parking spaces if it were to be expanded.

Vice Chairman Sturniolo: The existing demand paragraph and the future demand paragraph on the last page summarizes it.

Lucille Munz: I see it a little differently. Part of this is perspective. We all want to see them more successful; however, there are different ways we can look at this. We are changing some of the seating in the restaurant from tables to booths and the reason for that is because that is what people go to the diner for primarily. By doing that, people wait up to 25 minutes for a booth when there are tables there. Part of this is also making the restaurant more efficient. We put many more booths in as opposed to the dining tables with our hope being you don't have as many people queuing up in the restaurant because you're serving them. Also, they are not going there for two hour meals. They are going there for much shorter meals. Again, trying to increase the efficiency of the restaurant thereby hoping to eliminate some of the parking problems you do have.

Clifford Munz: By working out the seat counts, which is the bigger generator that is about two hours per person to sit and eat there. A trip end is a 24 hour per unit per 24 hours, according to the ITT.

Nanette Bourne: You have to be careful. That is not true. That is not how ITT uses its data. I am not disputing what you are saying but that is an incorrect application of ITE data.

Lucille Munz: The other aspect of all of this is that it is based all on square footage and not actual seating, so it is disproportionate in the sense of part of that square footage being the waiting area and some of the other spaces. It would be nice to look at it in terms of actual seat counts in the restaurant versus gross square footage. I do not think we are that far afield in terms of where we are with the parking spaces. The reality is that some people do like to park on the street. That is good in terms of generating more people to shop in downtown. The reality is that some people do use their lot and park elsewhere, so in some ways they are being penalized by folks that are going into their lot and going elsewhere. One of their busiest times is Sunday when there are not a lot of shops open. Even if people took all of the spaces in the downtown in front of that area on a Sunday, that would not be the worst thing that happened. In the end, do you want to pave over the world to have parking for those really peak, peak times when people could maybe drive a little bit further and park elsewhere along the street?

Vice Chairman Sturniolo: Whitney, am I correct that regardless of the times the site has to substantiate its own parking demand and you cannot rely on street, village wide parking.

Whitney Singleton: I do not know if I agree with your statement. The parking requirements for the CB2 are only a percentage of those already required. Most places require 100 percent parking. The CB2 already recognizes the on-street and municipal lots and only requires a partial percentage. The parking that we are talking about for the diner is already calculated to be a partial percentage.

Doug Hertz: We are assuming that people are using street parking as well.

Whitney Singleton: That is already worked into the numbers in the analysis.

Clifford Munz: There is also a designated snow area. That frees up a couple of spaces because it is designated snow in the green area in the corner. It puts the parking space back into the mix. Secondly, once in awhile I see 39, 33 spaces, one car out in the street or one car parked off-site. If you have 49 spaces, why is he off-site? People are making conscious choices to have certain activities, which is not directly proportional to the amount of spots that are there. Keeping that in mind, out of the three choices of site plans, they all can work. If Number 2 is preferred of the two, regardless of parking, I am all for it. It works. It is still a good site plan. It does not affect the building. Now, if I need a few more spaces perhaps a little leniency in the green for me, I will get you two more spots. A little leniency on the 20-foot buffer between us and the residential zone behind me, I get another spot. We are looking to say: is this plan feasible and can we make some of this work somehow. We are trying to get to the Village Board because without the zoning change we cannot do a thing. Putting that aside, I think number two is a feasible plan, worthy of a zoning change. When it is based on seats, not square footage, and seats is what makes Frank money. We have the seats, although he is tight and he is busy. The point is if he cannot get the seats, he is not doing the job. We have to make this work.

Lucille Munz: There is a comfort level with the parking that we are all trying to get to. How far apart are we from what is considered a recommendation versus what we are proposing and is there a way to get to the middle that we are all comfortable with?

Chairman Cosentino: How many more parking spaces would you say he would need?

Lucille Munz: It is saying here that 64-73 is the projected demand. In Scheme 2, we have 61.

Nanette Bourne: You have to keep in mind, Lucille is correct. We did not do an evaluation of seats or table occupancy. All we did was cars that came in to park. We did not look at the occupancy of those cars. It had to do with cars coming off the street, on site to find parking.

Joseph Morreale: If we did it by seats, what would you be looking for?

Nanette Bourne: It is a huge enforcement issue.

Clifford Munz: The numbers work by seats, though. The charts there identify trip ends with a multiplier and seats. When the two come together, you end up with two numbers. Be that as it may, use those numbers in a 24 period allowed almost two hours per person to sit there, but that does not happen. The rotations are pretty quick.

Lucille Munz: Scheme Two has 61 seats. Nanette's group is recommending, based on their projection and what they say there, you are looking from 64-73 parking spaces. Can we get to that 64 or is there some comfort level that we get to? Even with the booths, that was a revelation in our meeting with our clients that they have a space where the people sit and wait. Perhaps you would not need as many seats if people were coming in and out and not waiting for 20 minutes. If there was some consideration of giving up some of the green spaces, perhaps we can get close to that 64, or maybe we would end up needing less because it is based on seat counts v. gross square footage.

Doug Hertz: Maybe you need less waiting room space because people will not be waiting and therefore you get less square footage.

Lucille Munz: It is a consideration. The whole point of this is we are collectively trying to make this work.

Chairman Cosentino: I see 61 seats and then I hear 63. Are we just saying they only need two more parking spaces?

Nanette Bourne: They are proposing 61 to 63, depending on how it gets configured.

Chairman Cosentino: How many more parking spaces are you predicting they are going to need?

Nanette Bourne: Somewhere between 64 and 73 total. 12 cars.

Chairman Cosentino: My understanding was they needed a lot more.

Nanette Bourne: They would be short 12.

Lucille Munz: Based on square footage as opposed to seat counts.

Nanette Bourne: It has nothing to do with square footage.

Stanley Bernstein: This is not based on square footage. It has to do with actual cars coming in and out. If you had 100 tables or 3 tables, the count is the cars coming in and coming out. It is not adequate parking now. How could it be adequate parking if you add an addition whether you count it with tables or with square feet?

Lucille Munz: You made a very valid point. That is generating, so why is it going to generate more cars using more square footage?

Stanley Bernstein: Are you trying to say that putting on an addition you are going to have fewer parking spaces?

Lucille Munz: No. I am saying how would I know that the Mount Kisco Diner has more space?

Stanley Bernstein: There is not enough space now.

Lucille Munz: But we are adding more spaces. We are adding 14 more spaces.

Chairman Cosentino: I am going to end this. We need to talk about this, and I do not think we could talk about this right here. We are getting no place right now, and we won't be getting any place until we straighten this out with Nanette. I will put you back on the agenda. I want to do the right thing. Everything is too confusing for me as I am sure it is for the rest of the board. I do not want to see Frank get hurt. Whatever decision we make, I want it to be the right decision. Nanette, we need to set up a meeting. Thank you.

Conceptual Application:

**100 South Bedford Road
PB2009-06**

**Present: Michael Gallin, Principal, Gallin Design Studio,
Architect representing Diamond Properties
Jim Diamond, Diamond Properties, Property Owner**

Chairman Cosentino: I thought in talking to the medical group, that we were only going to do sidewalks. Then I heard there was going to be work in the back of the building. That is why you are brought back here.

Michael Gallin: The property in question is 100 South Bedford Road, which is actually a conglomeration of three buildings, 90, 100 and 110. Diamond Properties owns 100, and Mount Kisco Medical Group owns 90 and 110. It is all a single lot, which could complicate things.

Chairman Cosentino: They have a right of way road into there?

Jim Diamond: Yes. The property owners share the access, and we share the parking lots as well. There are separate tax lots, but it is all treated as a shared condominium. An operating agreement states that our tenants are supposed to park from here back

and they are supposed to park from here forward, but in practice, it operates as one large lot. Their tenants tend to park in the parking spaces, which are closest to their buildings, of course, but there is no formal demarcation.

Chairman Cosentino: I was talking to Mr. Sclafani on this and we set up the valet parking on that side, and now it seems the other side is going to need it as they are renting out to more doctors.

Jim Diamond: I know the parking lot, compared to most buildings, is relatively crowded. We have never gotten complaints that it is so crowded that our tenants cannot park. It seems to function adequately.

Michael Gallin: The root of this application is this. You enter the front of the building, and then there is a few emergency exits. The one off the back sometimes is used by people who enter through that as a back entrance. The proposal to remove the patio and build a narrower concrete wall to get from this door to the property over here. It's basically level along the entire path, and it would be a concrete sidewalk on grade. This is adjacent to a wetlands area, and for that reason, we would be putting in a silt fence prior to doing the work. The disturbance would be very minor. There is really no excavation except for the removal of the existing pavers here, the existing stone walk here, and the preparation for the concrete, which is digging down four inches or so, putting the gravel in, and then pouring the concrete sidewalk in. In a nutshell, that is the application. The net impact on the impervious surface is a reduction, which is shown in the calculation here. It is basically a trade off. What we are removing is this patio and this walk here is equal to what we are adding, a 60 square foot difference. A slight improvement in terms of the amount of the impervious surface.

Chairman Cosentino: It is really not a big deal. Just make application and come back.

Anthony Oliveri: You will have to get a letter from DEP because it is in a main street area, and the last couple of these, at least one of them, it did request a stormwater pollution prevention plan, even with the net reduction.

Michael Gallin: If that is the path the DEP wants us to take, then we are going to end up with a hazardous condition we are going to have to maintain.

Chairman Cosentino: We do not make the hazardous condition. DEP might want to make a hazardous condition.

Stanley Bernstein: There is more than meets the eye. You are a couple of feet from the Kisco River, which is one of the main tributaries to the Croton Reservoir, as you well know. That river should never be where it is right now anyway. Someone came along - it was Mr. Icahn, and he took that river and he made a square out of it. The riverbed is probably completely changed. Now you are putting a concrete walk three or four feet from the edge of the riverbed. I think DEP is going to look at this very, very closely. My humble suggestion is that you should kind of rake over well the little path that you are talking about that is unsafe and put some gravel down there. I think that would probably be the best for everybody.

Michael Gallin: If it is going to require a full DEP review, then there is nothing else that is going to make economic sense. I don't think it's the right solution.

Anthony Oliveri: You need to contact DEP and get a letter from them. Either they are going to require a SWPP anyway, even though you are decreasing pervious areas, it is out of our control.

Ralph Vigliotti: Just for the record, how many feet are you from the stream? It looks like more than a couple of feet.

Michael Gallin: It is about 12 feet. This is not the main river. It's all wetlands.

Stanley Bernstein: It is wetlands, but it's the riverbed.

Chairman Cosentino: On the other side where the sidewalk is, is all grass again. So anything that runs off the sidewalk is going to run into the grass.

Jim Diamond: We currently have a path there. We are trying to create a better path.

Stanley Bernstein: What are you going to do with the picnic tables?

Michael Gallin: They are going to go away. There is a patio here and they use this one over here.

Stanley Bernstein: There was a nice park there. It had to do with stormwater run off. They built a detention basin and turned it into a park.

Jim Diamond: That was right before we acquired the property, right as we were negotiating them they were demolishing it, and we were upset because it really looked nice.

Chairman Cosentino: Check with DEP, let Nancy know and get back to us.

Whitney Singleton: If you are going to come back, the ownership of the property needs to sign off on the application. Is there a condominium plan with this?

Michael Gallin: There is.

Whitney Singleton: Is the work still going on?

Jim Diamond: It's been a long time since I looked at it, but I think that since this is a sidewalk for our building, I don't know what it will fall under, but I will check it out. I think the only thing that would fall under the condominium would be the drive isles and parking lot. There are separate tax lots for each of these.

Whitney Singleton: Yes, but as Michael pointed out it is one parcel for development coverage and one parcel for building coverage.

Michael Gallin: We will cover that. Thank you very much.

Continuing Review:

**Omnipoint Personal Wireless
One Mountain Avenue
PB2007-12**

**Douglas Warden, Attorney at Law, Snyder and Snyder
David Weinpahl, Managing Partner, On Air Engineering on behalf of the
Applicant.
Ananbd Rapolu, Radio Frequency Operator, Omnipoint Communications,
Parsippany, New Jersey**

Doug Hertz: Mr. Chairman, I have a question about this application that purely has nothing to do with the applicant. How is it possible that the village number's this location One Mountain Avenue when the numbers go entirely in the other direction?

Chairman Cosentino: I do not know. I just thought it was One Mountain Avenue.

Whitney Singleton: I would not be surprised if someone was making an application and needed an address and picked a number.

Doug Hertz: Mountain Avenue goes in the other direction, so that would be the highest number, not the lowest.

Douglas Warden: We are here for site plan approval this evening for permission to co-locate a wireless cell communications facility on an existing wireless telecommunications monopole that is located on town owned property. This application was previously before this board, as you may recall, for site plan and special use permit approval. It was determined that the monopole that we are proposing to co-locate on is about 120 feet outside of the personal wireless services overlay district. As luck would have it, the code states very specifically, almost only to this application that when you're locating on town-owned property and when you're even 100 feet outside of the overlay district, that it is the Village Board rather than the Planning Board who has authority to issue the Special Use Permit portion of the pending approval. We came here for a conceptual review, we submitted our application and then we were referred over to the Village Board. We went to the Village Board and after several months, I am pleased to report that we have received Special Use Permit Approval for the application. So now, it is permitted use on the property and we are referred back here for the site plan portion of the application. We have an existing tower. It is 85 feet tall and there are nine antennas from the incumbent provider there, which is Cingular on top of the tower. We are proposing

three antennas at a height of 75 feet above ground level, 11 feet below the existing antennas, which, unlike the existing antennas will actually be snug up against the pole itself, flush mounted to the shaft of the pole, so they do not stick out. This will minimize the visual impact of the application, unlike the incumbent provider who has this nine-foot triangular on the side array and nine antennas. Our antennas are 53 inches tall, 13 inches wide and three inches deep. The application also involves the location of three small equipment cabinets at the base of the tower, which will be located in the existing fence compound that is already there. We do not have to expand the compound at all. That is the essence of the application. Because it is on town-owned property, the town gets some portion of rent from this, which is a good thing particularly in these difficult economic times.

Vice Chairman Sturniolo: I went through your documents that the applicant prepared. I need to see what the consulting RF engineer, who works for the village, has to say about this.

Douglas Warden: I have copies of the consulting RF engineer's reports, if it would help.

Vice Chairman Sturniolo: Since we do not accept documentation at a Planning Board meeting, please give the secretary a copy, and she can incorporate it in our next agenda packet.

Douglas Warden: I absolutely would have submitted these if I had known that was something that was required. I was requested to re-submit additional copies of the application. The essence of them is that they reviewed all our radio frequency materials and propagation maps, and asked for supplemental materials. They agree with our conclusions that we have a significant gap in coverage in the vicinity of the site, and that the proposed facility will fill that significant gap in coverage and that there aren't really any alternatives for us to go on and recommended that the application be granted.

Vice Chairman Sturniolo: I would love to read that from the consulting engineer.

Whitney Singleton: As it has been pointed out, the applicant has already been before the Village Board for a special use permit, they were referred back to your board for this limited purpose. The application before you is not quite complete in regard to completing the record with regard to what happened before the Village Board, but the application itself is simply for site plan and they do not require a public hearing for any review of things that have already been decided by the Village Board. Anything that the Village Board would like to see or that the code requires for site plan elements should be submitted by the applicant prior to the next meeting.

Nanette Bourne: Do you have a landscape plan? I would recommend you look at 110.27.1. It talks about the site plan elements, the environmental assessment form, which I believe you received from the Village Board already.

Douglas Warden: Yes. Have you had the opportunity to look at our memorandum in support of the application, which I think goes through each of the site plan elements?

Nanette Bourne: Yes, but I do not think you included the landscape plan.

Douglas Warden: I think we might have even requested a waiver from that in light of the fact that there is no substantial change to the base of the facility as we are going within an existing compound.

Nanette Bourne: It is still something the Planning Board needs to consider.

Douglas Warden: I would definitely request that if you have an opportunity, you take a look at our memorandum. There is a special section, which begins on Page 8 of our memorandum, which walks through each element and gives an explanation to our position with respect to each of the site plan elements.

Nanette Bourne: Not to belabor the landscape plan, you don't show what the current landscaping is. Because for the board to decided to make a decision that your proposal not to add to or change the landscaping because they would find the existing landscaping fine.

Douglas Warden: Okay, we will agree to disagree on that one, but if that is what the board request, we will certainly submit whatever the board requires.

Nanette Bourne: Maybe you are not prepared tonight to determine whether the landscape plan is an issue or not.

Joseph Morreale: On page five of the document, they specifically say that no landscaping is proposed and it is respectfully submitted that a landscape plan is unnecessary. Now, what you are saying is that perhaps it is necessary. It is not for them to decide.

Nanette Bourne: That is your determination.

Chairman Cosentino: They presently have a cage. Inside the cage is concrete or heavy gravel, I believe.

David Weinpahl: It once was perhaps gravel. It has to all be cut back, it's gotten out of control.

Chairman Cosentino: Somebody has to do that then, so you need a landscape plan.

Nanette Bourne: Or a site maintenance.

David Weinpahl: That would be something that would be covered under the contractor that would perform the work. If there are trees outside the compound that were put there for a purpose previously, we would normally show that on our plan. It has been about three years since the start of this application and I have to look back in my notes. If there are plantings outside of the norm, I will make sure the board is aware of that. There are two sides that are all wooded, and it's tucked right into the wooded area.

Doug Hertz: This is one of those few places where landscaping is really not going to help. There is access to the perimeter, not just their facility but the water enclosure, so some of that is just cleared so there can be clear access for maintenance.

Chairman Cosentino: I think inside the fence area has to be cleaned up.

Doug Hertz: Cleaned up, yes, but it's such a small space I don't know how they can plant anything.

Chairman Cosentino: Not planting, but maintenance. The people who are putting the equipment in will clean the area up.

Doug Hertz: For future landscaping, there is no place where there isn't hundreds of feet of forest in any direction, so unless anyone plans to clear cut a good section of that and put something close to it, I can't see that requiring them to plant is going to really advantage anyone.

Joseph Morreale: On Exhibit 2, where are you going to put this pole? If you are going to put a pole in to improve the cell phone service, why not cover the whole town?

Douglas Warden: This is an existing pole, so we are not doing a new pole. We are trying to minimize the proliferation of unnecessary towers by looking for tall existing structures that will allow the signal to propagate. We found this existing tower that already has another provider on it, and we are just going ten feet below. It is not a question of constructing new; we are using something that is already there.

Vice Chairman Sturniolo: You are also encouraged to co-locate by the Telecommunications Act of 1996 to eliminate the proliferation of pole after pole.

Joseph Morreale: That plays into my question. If you're still leaving part of the town uncovered, why don't you go ahead and cover the whole town in the same location, or can't you?

Douglas Warden: We would have to build an extraordinarily tall tower there. We are not looking to build new towers. We are looking to use existing structures.

Joseph Morreale: It does not seem like that long a distance.

Douglas Warden: The reaches of that emissions pattern are from a height of 75 feet above ground level. In order to cover the southeastern portion, I could not even guess - we would have to double or triple that. We are not looking to increase the height; we are looking to maintain the character of the community by using existing structures.

Joseph Morreale: Therefore, at any time in the future, if the town wants the entire town to be covered better, we are going to have to have another tower?

Whitney Singleton: I do not know the science like Tony does, but that was a topic of discussion and why Tony is requesting to see what the reports are from the village. That was a discussion topic with the Village Board at the public hearing, and I believe the statements made by our consulting engineer which is confirmed by the applicants is that a natural location for the next tower would be somewhere back in the McLain Street area.

Joseph Morreale: So there would have to be a fourth tower?

Whitney Singleton: I do not recall the specifics of the discussion, but that topic did come up.

Joseph Morreale: My point is that this is going to be limited and then eventually there will probably have to be a fourth tower, whereas if this wasn't limited I wonder if this could not be made into one that would cover the whole town, but you're telling me it would have to be so large, we couldn't do that.

Vice Chairman Sturniolo: Are there other poles in other municipalities that are handling part of the missing coverage in Mount Kisco? Maybe you don't need another pole over and above this one. Are you getting a signal from other poles that you already have in place that cover parts of Mount Kisco and this fills in the gap? Is that the plan?

Douglas Warden: We have submitted coverage maps, which show the coverage that we have from adjoining municipalities. This is all speculative as to future towers and other parts of the village. We are here today for this application. We do not even know when they will be able to fill that gap in coverage. We are looking to fill this gap in coverage right now. My understanding is that the special permit process really is where the code talks about all this. The code goes into exhaustive detail about the kind of materials you have to submit. They have to be from a licensed engineer and signed off by a P.E. when you go before the Village Board in terms of radio frequency emissions. In our mind, that portion of the discussion has been gone through and now we are onto the site plan portion of the discussion. I think that is where the code leads us now.

Vice Chairman Sturniolo: Are these antennas going to be tilted downward?

Douglas Warden: I am not sure exactly what the tilt is. All the radio frequency emissions have been gone over. The code is exhaustive in terms of the requirements for radio frequency emissions for a special permit. That has been played out, and the special permit has been granted. Now we are at the site plan stage, and there are very specific site plan considerations, which are very different from the radio frequency emissions.

Vice Chairman Sturniolo: As one voting member on the site plan consideration, I still want to be able to read what the village's consulting engineer said from a technical point of view.

Douglas Warden: Of course.

Doug Hertz: Looking at your photo simulations, what is the color of these going to be relative to the color of the pole?

Douglas Warden: We are going to try to paint them to match as much as possible, and if the board prefers some other color besides matching the pole, we will be glad to consider that. I think the visual shows the impact is pretty small.

Doug Hertz: I was not sure based on all the sketches and diagrams that you presented, if they appeared to be darker than the pole for purposes of illustration or whether that was in actuality. They will be painted to match the existing structure?

Douglas Warden: I think that is what we suggested here. If that has not been suggested, then that is what we will do.

Doug Hertz: The pole is already there, so to match the pole would be least intrusive.

Vice Chairman Sturniolo: May I ask the radio frequency operator a question? I am assuming everything conforms to ANSI, FCC and IEEE Standards. The radiation emitted by the antennas when they are all operating, do you still fall under that overall parameter of less than 550 milliwatts per centimeter squared?

Douglas Warden: We have a separate radio frequency health and safety engineer who was employed to submit a report that I believe is in your packet that concludes yes, and establishes yes. In fact, it shows that it's .482% of the maximum permitted exposure, which is more than 200 times below the FCC limit, or less than one-half of one percent of what the FCC limit is. When you review the conclusions of the village's telecommunications consultant, this was confirmed, verified and approved by the village's telecommunications consultant.

Vice Chairman Sturniolo: Thank you. I'll look forward to reading it.

Whitney Singleton: At the next meeting, I will make sure the information that the applicant brought tonight will be forwarded and included in your packet.

Chairman Cosentino: Thank you for coming, and we will put you on another agenda.

Special Discussion:

Zoning change List:

Nanette Bourne: Staff has been collecting various changes that we want investigated or changed to the code; trying to move some of these forward. This is a status of the majority of them but not all of them. The first one concerns a conversation that we have been having concerning change of use permits. For example, La Camelia v. Appleby's. They both require the same amount of restaurant parking but one really generates a considerably greater amount of parking than the other does. Appleby's has a higher turnover, the demand is greater but the code only requires the same parking. If La Camelia were to be re-occupied with an Appleby's, it is a change of use that will be generating a lot more parking but it does not allow the Planning Board to make any changes or address that particular parking issue. It would be an "as of right" change. It is not the same as a change of use. Qualitatively it is different, and we know it. We have generated sample change to local law, and it is not perfect; I can argue for it or opposing it but it is a really tough thing to try and grapple with. You want to be able to make the qualitative improvements in the site to have the adequate parking. What's been happening is Austin gets put in these positions where he has no choice but to issue a building permit, and we all know that it is the wrong thing to do because it's going to create a site that does not have enough parking, there are going to be traffic conflicts on the road. We are trying to figure out some vehicle for bringing it to the Planning Board so that you can make whatever improvements are possible to the site. A good example is the diner. Attachment A is an example of something that could be done that brings it back to the Planning Board. That is the most difficult one. Public hearing requirements - we have different public hearing requirements and all we need to do is just make them consistent so we do not create these technical challenges. Assuming you don't have any objection and it is okay with Whitney I recommend that as soon as we can, we refer this to the Village Board so they can make the necessary changes.

Whitney Singleton: On that topic, we have a 15-day public hearing requirement for wetland permits. I presume that when that was done it was done intentionally, to make sure that they could not be put on an agenda two weeks hence. If we want to reconcile these, I agree, because you do not want to be put in a position where you are having your board entertain a multitude of permits as part of one application. You could have a subdivision with steep slopes and wetland permits and a site plan, yet you cannot schedule all those public hearings on the same night unless you put it off a significant distance, because of the different permit requirements. I agree with Nanette that it should be reconciled, but we should give some thought as to what that timeframe needs to be.

Nanette Bourne: I would like to say that there was intent to it, but I do not think there was. Item three; fees are all over the place. What applicants are charged are the typical fees, we have them written out, and it does not coincide with what is in the village code. I strongly urge you to refer this to the Village Board to recommend they update their fees.

Vice Chairman Sturniolo: We got burnt on that issue in the A & P and Target fees.

Whitney Singleton: There are provisions in place to address that. I am less concerned with that and more concerned with internal consistencies. There was an adoption by the Village Board of changes in fees. Several years ago, there was a meeting of the Village Board and Planning Board and we adopted the local law, everything was accurate within the resolution. When everything was sent to general code publishers for being submitted into the code, it came out all backwards. That does not involve a significant action on your board's part, but one of the things that perhaps does need some attention, particularly as the economy gets weak and people are trying to coast to the finish line in applications. We should probably have some language recommended for the Village Board on the issue of escrow accounts that your board is authorized not to entertain applications.

Nanette Bourne: Attachment C summarizes the changes in fees that need to be made. Number 4 is zoning map fixes. These are not substantive map changes. There are three very small changes, probably just drafting errors, and they concern the CL district. There are lines missing. RM 29 is not closed.

Chairman Cosentino: What about West Street and West Street extension?

Nanette Bourne: There are a few other zoning map changes that are substantive. These are non-substantive. The substantive ones we will get to another time. Items 5-11 are items that still need attention. They are on the list that we've been keeping and require some direction from the Village Board. Going back to the zoning map fixes, does anyone have an issue sending that back to the Village Board?

Chairman Cosentino: No.

Nanette Bourne: Fees?

Chairman Cosentino: No objections.

Nanette Bourne: Public hearing requirements?

Chairman Cosentino: No objections.

Whitney Singleton: A change was made to the code. You used to have in the code ability to modify parking requirements downward or upward. Now as it appears in your code you have the ability to modify the parking requirements upward. I presume that is because you didn't want people being able to pressure you and put you in an awkward situation, so it was modified. Do you want a longer period of 15 days?

Nanette Bourne: This only has to do with the public hearing. It doesn't matter if you increase the requirement for the subdivision. The public hearing requirements increase it to conform with the wetland law. You can decide not to entertain it for a meeting or two. The only thing that is important is that they are the same.

Joseph Morreale: We do not want to be pressured to have to make a quick decision. The logic here is that if we were to keep everything here to 15 days, nothing could be by-passed.

Whitney Singleton: Do you want that?

Stanley Bernstein: Yes.

Vice Chairman Sturniolo: I would like to see it at 15 as well.

Whitney Singleton: This is a statutory requirement. If it is 15 days, you cannot put somebody on in two weeks hence.

Doug Hertz: It hampers us to move quickly on something we want to move quickly on. As someone who has come before this board as an applicant, there are things we want and think will be beneficial, and there are some applications, which we view as very negative. I am concerned that we make restrictions so tight that we give ourselves no room to do what we want to do. We always have the ability to say no. It is our policy for you to wait one full month. If we do this we won't have the ability to move things forward.

Stanley Bernstein: If you are not consistent, you are arbitrary and capricious because you did it for one and not the other. This does not stop it if you are flexible. It stops it if it is codified.

Doug Hertz: Do you know how long it takes to do something everyone thinks is a good idea? That is only one part of it.

Whitney Singleton: We are not talking about how frequently an applicant can appear before your board. Maybe you want to have a policy on that. We are talking about how quickly a public hearing may be scheduled. People are going to come to you for an application and they are going to ask to put this on a public hearing two weeks from tonight. You can say yes or no, but like those parking regulations, somebody has the ability to ask you to act on such an expedited basis. Would you prefer the protection of something in the code that must send it over for a month? It is a double-edged sword. This is a minimum.

Doug Hertz: You can't Notice in five days, so having a five-day thing is irrelevant.

Joseph Morreale: Suppose we said a minimum of ten days. That would allow us to go onto the next meeting without locking us into anything.

Doug Hertz: 14 days would allow us to go to the next meeting except in very rare cases.

Joseph Morreale: I am trying to make it so that we do not do it too quickly, we set a minimum but we allow possibly taking it up at the next meeting two weeks later.

Vice Chairman Sturniolo: In that case, what Doug is advocating is what you're saying - leave it at 14 and you always have the option if you need to extend it.

Joseph Morreale: I was saying the "14" would probably cut you out of getting to the next meeting if it is from the date of notification.

Nanette Bourne: It is theoretically possible that you can need a public hearing for a special permit natural resource disturbance permit and a subdivision. You would want to do them together. Right now, they're all different.

Whitney Singleton: They are all different minimums.

Joseph Morreale: I am trying to set a minimum that keeps within the window of all three, but increases it so it is not five. You have to give the public a chance to respond.

Doug Hertz: That is just notice for a public hearing to happen. We almost always leave the public hearing open for the public to respond afterwards. It is very rare they respond prior to public hearing because they have not necessarily heard the information. It is really just a notice that a public hearing is going to happen.

Nanette Bourne: It seems like you all think five days is too short, you're talking about 10, 14 or 15 days.

Ralph Vigliotti: What are the other towns using?

Whitney Singleton: Two weeks is pretty standard. One of the other things that is being utilized by other towns is that they are requiring a posting of signs on the property with stakes, "this property is subject of an application before the ZBA or the Planning Board."

Ralph Vigliotti: I like that. The public needs to know what is going on.

Whitney Singleton: I will see if I can get some signs so you can look at them.

Chairman Cosentino: You still have to send out notices.

Nanette Bourne: Yes. Shall we go with 15?

Doug Hertz: If we say its 15 days, they are out a month before the hearing can happen. Then we have to close the hearing, and this may be something that has no impact. We will have no discretion for everything. Then we have the hearing and keep it open for 10 days and then we close it. We are talking about something that we thought we can conclude and it is now two months until we can conclude that. I am thinking if you make it ten days you have the option of possibly making it in the next meeting.

Chairman Cosentino: I'm not too concerned about making it the next meeting.

Doug Hertz: If you are not, then it does not matter.

Ralph Vigliotti: You are talking the exception to the rule. I am not in a rush to move on anything. We are getting passed some big projects, it is time we start to look at things more carefully, and we need time to do that.

Chairman Cosentino: 15 days for special permits, subdivisions and sensitive wetlands.

Nanette Bourne: The Change of Use is next.

Whitney Singleton: The operative language for two sections of our code (110.45A) reads as follows: "Site plan approval shall be required for all uses other than one and two-family residences in various districts. Site plan shall be required for all uses." Then we have Change of Use Permit (110.38A): "No existing use shall be changed to a different land use where such change would require a greater number of parking spaces than the pre-existing use in accordance with the minimum parking requirements set forth in 110.28K hereof without a change of use permit." Basically, we have a situation if a property is sitting out there and it goes from one use or one tenant to another use or tenant with a lower or the same parking requirement, there is no need to come back before your board.

Chairman Cosentino: Who is to make that judgment?

Whitney Singleton: If I go from a Pacific Asian restaurant with eight customers a day and I propose to re-occupy that space with a Panera, it's going from one use to the same exact use.

Chairman Cosentino: That is the part that is wrong.

Whitney Singleton: The problem is you are not allowed to look at the user. You are only allowed to look at the use.

Chairman Cosentino: That is what we have to change.

Whitney Singleton: Change it without looking at the user. You either have to really define what your uses are going to be or install some sort of other criteria in there.

Chairman Cosentino: I think the criteria should be left up to the Planning Board as far as parking.

Nanette Bourne: Remember it goes to the building inspector first. We are trying to move it from the Building Inspector to the Planning Board.

Chairman Cosentino: How do you do that?

Whitney Singleton: I looked at other communities and it is not that easy. I have a major problem with spaces or existing sites coming to town and being sliced and diced and re-demised in such a fashion that one building that used to have one tenant now has seven tenants and using every square foot of their space.

Nanette Bourne: That is an important issue, but it's different.

Whitney Singleton: One of the things that should trigger a Change of use review by this board is whether it's re-demising spaces in such a fashion where if there are either more tenants or any change to the ingress/egress of any of those tenants. People used to have two exits. Now all of a sudden the space is cut in half and they only have one. Ingress/egress and safety routes are all Planning Board issues that should be before your board. Right now, the only thing that triggers a change of use is increase in parking requirements.

Joseph Morreale: Couldn't you put in material changes and then give examples of material change?

Whitney Singleton: Yes, but I am trying to figure out what is it you want? Define material.

Joseph Morreale: You could do that in the next sentence, say material changes such as, but leave it open.

Whitney Singleton: Who is going to make that determination?

Joseph Morreale: We are.

Whitney Singleton: It has to be some objective criterion whereby it gets referred to your board.

Stanley Bernstein: Right now parking is driving Planning Board review. Why can't it be that every new tenant must have Planning Board review?

Whitney Singleton: A Certificate of Occupancy is a certification from the Building Inspector that the use to which the building committed is consistent with the laws and the approvals for that site.

Stanley Bernstein: Every change in tenancy should come before the Planning Board.

Doug Hertz: We would be a fulltime board.

Whitney Singleton: I do not think you could legally do that. You are looking at the persona and not at the use. If you are able to articulate in your code, something that is reasonably related to a legitimate planning objective, fine, but just to say anytime there is a new person on the building is not appropriate.

Doug Hertz: Can we also then say "or a use that in the opinion of the Building Inspector may generate more traffic than the current use."

Nanette Bourne: This does not talk about the demising, but it talks about the change of intensity in the opinion of the Building Inspector requiring additional infrastructure, general additional traffic, parking spaces, etc.

Whitney Singleton: I have a problem with what Nanette proposed. Is it all of a sudden give an administrative official whose job is very much supposed to be ministerial in nature? We need to better identify what those things are.

Joseph Morreale: As soon as you specify it so narrowly, you may have a situation where it does not quite fit but you would really like to review it. But you will find yourself in a corner then.

Stanley Bernstein: Nanette covered this very well in her first few words, "existing use or a new use or change in the nature of the existing use." This is not necessarily a new use altogether.

Whitney Singleton: If we were to go with this wording, I do not have a problem with the first part. "A change in the nature of the existing use that would substantially increase the intensity of use." That is exactly what we are looking for. Are you now going to use that language to say 711 come on in? Dunkin Donuts come on in.

Stanley Bernstein: 711 cannot go in there without our review.

Whitney Singleton: I understand. Let's take CVS for an example. It was a retail use that converted to another retail use.

Stanley Bernstein: But there was substantial difference in infrastructure.

Whitney Singleton: How would you define that on an objective basis?

Stanley Bernstein: Count the number of counters, the number of isles. See the ingress/egress. All these factors add up.

Whitney Singleton: But if you were to take CVS, CVS I presume less check out counters, product inventory.

Stanley Bernstein: Not true.

Whitney Singleton: I agree this is what we're looking to capture. The question is is it too loosely connected?

Stanley Bernstein: The language is up to you.

Ralph Vigliotti: You have to carefully craft this to protect the interest of the village.

Whitney Singleton: I will say there are some shortcomings in this code. La Camelia is a restaurant. If another restaurant wanted to go in there like an Appleby's and they did not change any of the footprint or anything else, they can go in there. That would be substantially different.

Chairman Cosentino: That is what we want to change.

Whitney Singleton: I am grappling with how to get it objective and not subjective. For it to be defensible, it cannot be because the Building Inspector said so.

Ralph Vigliotti: Are there codes from other towns?

Vice Chairman Sturniolo: We have a problem, which is unique to this village that other villages and municipalities may not necessarily have, and that may be the reason why the language does not exist for them.

Nanette Bourne: Boston is the only city I know of that deals with this problem, and they under zone everything. It requires everything to go back for urban renewal amendments, variances, etc.

Whitney Singleton: If you look at Mount Kisco with regard to our variance application, we have a variance applicant on average once every month, or once every two months, so we may have six to ten a year. If you go to other communities where they substantially up zoned, it would not be unusual to go to one of our surrounding communities and see 27 applications on each month. They box you out. There is nowhere to go because their setbacks are so large. Their development coverage is so low; they have made everything you do on your property discretionary by requiring a variance.

Stanley Bernstein: What is wrong with that?

Whitney Singleton: Fundamentally, I think that is violative of people's property rights.

Nanette Bourne: Also, there is no real discretion or authority of a variance if you meet the criteria.

Whitney Singleton: But the criteria are a balancing act, which is a term in the sole discretion of the Zoning Board of Appeals. The first language you see in every Zoning Board of Appeals review in Article 78 mentions the volunteer nature of the Zoning Board of Appeals and the familiarity with the characteristics and flavor of the community and this court is not going to disturb the findings of a local volunteer board unless they were arbitrarily capricious or reached an illegal determination. The criteria to get over the hurdle on a ZBA is almost impossible.

Joseph Morreale: Could you make it that the Building Inspector has to consult with the board chair on these kinds of issues, and then he comes back to us for review?

Whitney Singleton: You have to very clearly identify what applications go to your board, what applications don't go to your board and if there is something which is going to trigger you need to identify that as clearly as possible.

Joseph Morreale: I am worried that you are going to make it so tight that you're going to miss things.

Whitney Singleton: Basically, you are going back to what Nanette said. You will know it when you see it. Austin is supposed to say, "This looks like one that should be before the Planning Board."

Joseph Morreale: I do not necessarily want one person making that determination. Can you have it be a consultation with the board chair for that decision whether to bring it to the Board or not rather than leaving it in Austin's hands?

Whitney Singleton: I would prefer to say that if you were to adopt some language like this, a change in the nature of an existing use would substantially increase the intensity of the use, I would require additional infrastructure, generate additional traffic, and continue on that list with "such as including but not limited to the following items," and give the longest laundry list that you can.

Chairman Cosentino: That will protect us.

Whitney Singleton: But the question is what goes in that list? For one property owner we are going to say, "put any retail you want in there for 8,000 square feet", but with another property owner we're going to say, "we want to come see all of your proposed development plans."

Nanette Bourne: The reason to have this on the agenda tonight was to accelerate the board's ability to get this to the Village Board. Once this gets to the Village Board, we can try to move it to a point of moratorium.

Ralph Vigliotti: Do we send them off pieces of this or the entire package?

Vice Chairman Sturniolo: I am of the belief that we send them pieces.

Whitney Singleton: Let us not be so myopic in our approach that we lose site of the big picture. This is something we need to think about at every site in the village. You do not want to solve today's problem to find out that it is a bigger problem for the future on other sites because of the way you drafted it.

Doug Hertz: You also do not want to make it so onerous to run a village in the business that you run all the businesses out of the village. The cost and speed at which these things happen is significant.

Chairman Cosentino: Whitney will add items to it, Nanette will see what you can do at your end, and then we will get it to the Village Board.

Doug Hertz: If we write something such that Austin kicks more items to us, can we have a process where we do not think it is going to be an issue, we can kick it back to him. If we want to play it safe by seeing more rather than less, can we say in our opinion that this does not require a review by the Planning Board?

Whitney Singleton: I want to make sure we are not getting on a track where different people are getting different levels of scrutiny.

Joseph Morreale: I think we are going to see more and more of this in the village as less and less building goes on.

As there is no further business, on a motion by Dr. Morreale, seconded by Mr. Vigliotti, the meeting was adjourned at 11:00 P.M.

Respectfully submitted,

Stanley Bernstein
Recording Secretary

dm