

Minutes
Work Session of the Planning Board
Village/Town of Mount Kisco
Tuesday, April 27, 2010

The meeting was called to order at 7:45 P.M. at the Municipal Building Mount Kisco, New York by Chairman Cosentino.

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

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

Acceptance of Minutes:

December 8, 2009:

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

February 9, 2010:

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

March 23, 2010:

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

Aye: Chairman Cosentino

Formal Application:

**Gallin Design Studio
333 North Bedford Road
PB2010-5**

Present:

**Jim Diamond, Diamond Properties, Property Owner
Michael Gallin, Principal, Gallin Design Studio
Rick Buseman, Mount Kisco Athletic Club**

Of Counsel:

**Lester Steinman
David Stolman**

Recused: Doug Hertz

Chairman Cosentino: This is an amendment to the Mount Kisco Health Club of approximately 11,000 square feet. They want to add a pool, squash court and expansion of the gym area. This is taking part of the sports club that was originally going to go there.

Michael Gallin: That is correct. This diagram shows what was previously approved and this with the sports arena. It is all sports, but we are shifting it from one tenant to the other. In essence, the two diagrams you are seeing here are still the essence of the application. On the south end of the building it is still Mount Kisco Athletic Club. In the original iteration the club was 29,380 square feet. The proposal now is to increase that to 40,571 square feet by reducing the scope of the Mount Kisco Sports Arena and shifting some of those similar related functions to the athletic club. Specifically, we are showing on here the elimination of all of the training tunnels and batting cages from the sports arena. Rick Buseman thinks it is a real asset to the facility to have swimming lanes. The goal is to be able to provide the swimming lanes in the athletic club along with the three squash courts and to remove that space from the adjacent tenant areas.

David Stolman: The EAF (Page 10 of 21) shows submission of analysis and new traffic counts to address the proposal. Is that forthcoming? Regardless of what the EAF says, I think there needs to be some sort of analysis - it does not have to be extensive - of the traffic impact of what you are proposing.

Michael Gallin: We have showed on the application the equivalency in terms of both areas and number of occupants to basically reflect that the shift is similar in terms of occupants. In our mind, that would equal a similar impact in terms of parking and in terms of traffic. Are you asking for something in addition to that?

David Stolman: Yes. I'm asking that you actually show that. I don't know that the use of the sports arena versus the use of the membership club was one-to-one per square foot in terms of traffic generation. You need to provide something that indicates. The same thing with parking. At a minimum we are going to need an updated

parking table on your map. You've updated the square footage showing a new space with the new floor areas but you don't have a parking table that is updated.

Michael Gallin: That is correct, because essentially we saw it as an equal wash. We can certainly update the parking table.

David Stolman: At a minimum, that needs to be done. I don't want to take credit for this, but along the same lines, on the Building Inspector's April 19, 2010 memo it states: "the applicant needs to submit a revised maximum utilization study based on the new interior use configuration for this club so that your board may make an updated determination of the minimum parking requirements needed for this use." I agree with Austin, I believe that needs to be done as well. After I look at this data I will see if there is any difference in terms of traffic or parking.

Lester Steinman: What is the status of the sports arena site? Is that being developed or not?

James Diamond: As of now it is on hold. The principals who were behind the original applicant lost their financing. We are talking to other potential individuals who discussed a desire to "pick up the ball" and bring the project to completion. We are still hoping that it ends up materializing in it's proposed configuration albeit reduced in size.

Lester Steinman: Am I correct that there is no property in Bedford that is being configured by this application?

James Diamond: Correct.

Lester Steinman: Was a parking variance obtained?

James Diamond: Yes.

Lester Steinman: What is the status of the traffic mitigation that was in the 2009 special permit resolution? Has that all been completed?

James Diamond: I will have to go back and check on that. I am not sure.

Lester Steinman: Are you proposing anything that would have impacts on other conditions and special permits like occupancy, hours of operation, etc.?

James Diamond: Only occupancy. It's hours of operation would remain the same as previously approved. As part of shifting some of the use from the sports arena to the Mount Kisco Athletic space, we would propose that the maximum occupancy number be increased as well. We were showing 18 additional occupants in the new spaces-the squash courts and the pool, so we propose that the maximum peak be increased by 25 occupants.

Lester Steinman: Just for technical observation, the EAF will be corrected on page 8 of 21 indicating that both site plan approval and special permit approval are required.

David Stolman: The occupancy is fixed at 250 to 275.

James Diamond: The peak occupancy, correct.

Joseph Morreale: I am curious about the volume of business. You said the previous use was no longer going to be financed. Then you said the occupancy has to increase to 25 which suggests to me that the area you're going to use is going to be used more intensely than it would have if it had been the sports arena. Is that right?

James Diamond: No, we don't believe so. The space that we're shifting over, as we are conceptualizing it, is these batting cages and half of the basketball court would be shifting over. Those are the same type of, we think, relatively similar occupancy utilization as the squash court and the six lanes of swimming. We are showing these numbers as the counts from the original sports arena submission, I believe; saying that we are shifting from one tenant to the other tenant, and the utilization is very similar.

Chairman Cosentino: The times of the sports arena and batting are when the kids get out of school. Now we're shifting to mornings, where there will be more swimming and squash playing.

Rick Beusman: We had some experience with a squash facility Stamford, where there is a very strong squash market. We have three courts in Stamford. Typically squash is a lunch, afternoon and evening participation. The squash courts are unused typically in the morning.

Chairman Cosentino: What about the pool?

Rick Beusman: It depends. You'll have lap swimming early in the morning. We tend not to see it again until lunchtime. It picks up again late afternoon. Usually the pool is not busy between 8:00 and 11:00. It is a function of people's free time.

Joseph Morreale: I was specifically talking about the area you are going to fill. You're moving the used area over further and you're reducing the empty space. You are putting the pool and the squash courts in an area right now that is not heavily used. This would lead me to think you are going to have a higher volume of people flowing in and out using those facilities because they are not open and vacant like they are in the original. Do you think that is true or not?

Michael Gallin: If I understand correctly, we are trying to represent in this diagram the equivalent function list that we are displacing. It's less about the fact that the pool is going here, and more about the fact that we are going to get rid of the training tunnels and cages. In lieu of those, we will have the pool.

Joseph Morreale: You said you were moving those, not eliminating them.

Michael Gallin: No, we are eliminating the training tunnels and batting cages. They are all coming out. We were assuming a training tunnel would be occupied by two people, a squash court is also occupied by two people. It's sort of an even swap and that is what the numbers are representing in each.

Ralph Vigliotti: But it does increase the number of people using your facility, because you're giving more to your membership.

Michael Gallin: Clearly there is a potential that there would be more people in the athletic club than there were previously, which we are attesting to.

Ralph Vigliotti: Please review the added number of parking spaces and then the total number that you're allocating.

Michael Gallin: We will do that as a supplement to this application.

David Stolman: We are asking for enough information to verify their answers to the questions you're posing.

Joseph Morreale: I was curious to know why you were making the statement that it is a wash. It didn't seem to me to be a wash. That's why we are asking for the parking study. I think you are going to see an increase in the demand for parking.

Michael Gallin: Understood.

Austin Cassidy: On that note, may I add on in your additional utilization information provided, please identify for the purpose of the record whether there are any special or seasonal programs, i.e., children's programs, etc., be part of the business plan.

Michael Gallin: We will, absolutely. The sports arena, which is getting smaller, had more of the special programs than the athletic club. We will represent that.

Austin Cassidy: Actually, I think it's more important for the Board to compare the old MKAC proposal versus the MKAC proposal in terms of incremental impact.

Michael Gallin: Absolutely. We, of course, want to take into consideration that there is a proportional reduction in the associate tenant.

Ralph Vigliotti: I'm trying to get an idea of the size of this compared to the facilities similar to this in Briarcliff, New York Athletic Club and New York Athletic Club in Elmsford. Is this larger or smaller? Similar in size? These facilities have lots of parking spaces available for their clubs. Those are realistic comparisons. This is almost an acre and the place in Briarcliff is almost two acres. Obviously they would have twice as much parking or close to that. I'm trying to get a sense.

Chairman Cosentino: I think the one in Briarcliff is much larger.

Rick Beusman: I can tell you that in this marketplace there is Club Fit, which is a big facility and has many more activities than a standard athletic club. A standard athletic club today – and this is one of the reasons why we were pleased – originally we planned hoping to have a pool. You could not do it with 30,000 square feet. It would not do it justice, which is why we took it out. When the sports arena was downsized, there was an opportunity to now have the pool. Typically an athletic club of this size in a market like ours runs about 40-50,000 square feet. We are actually underserved in terms of basketball. We

have a half-court. They also include a full size basketball court, which we are not including. There are some clubs in this market in Stamford and Danbury but the New York Sports Clubs you are talking about typically are more of a gym. They may not have a pool, they don't have a basketball court. The question is what would be a standard?

James Diamond: Club Fit in Briarcliff is more analogous to the Saw Mill Club?

Rick Beusman: That is a huge club, probably 150,000 square feet.

Joseph Morreale: What would you anticipate coming into the rest of the facility? What are you going to do with the rest of the space?

James Diamond: For the 60,000 feet that is left, we are still hoping that it ends up being a reincarnation of the sports arena. We would like to see that materialize. We think it is a good use for the property and Mount Kisco. We are talking to two or three potential interested parties, and we're hoping that one of them ends up materializing and coming back in to pick up the ball and move along with that project.

Chairman Cosentino: Keep in mind whatever they put there, they have to come back to us anyway.

Joseph Morreale: I was wondering what was happening down the road. If you're saying it's virtually going to be the same, that is one thing. That will not increase the intensity of use that much.

Chairman Cosentino: If they are going to have a Yankees training camp there, naturally we are going to say, "no." If they have something on a smaller scale of what they proposed from the beginning, that is a different story because they are going to have half of what they had.

James Diamond: Early on in the project, when the majority of the building was vacant, it was, of course much more difficult to look forward to the future and try to fill in the puzzle pieces. At this point, out of the 575,000 feet, this is the last 100,000 feet. Plus we have the 5,000 square foot separate building. I am including Mount Kisco Athletic as that as well with 100,000 feet. Essentially, what we are saying is instead of it being 70,000 for a sports arena and 30,000 for MKAC, we are proposing 60/40; but we believe the overall intensity is very similar because squash courts are similar to batting cages and the pool. With Mount Kisco Athletic this represents ten percent of the building. Most of the puzzle is filled in at this point?

Chairman Cosentino: What about the old repair shop?

James Diamond: We are still talking to potential tenants there. We do not have anything definitive on that. That represents 6,591 square feet. We are still working on that.

Vice Chairman Sturniolo: The last 10 percent is obviously what we are discussing. We know what has taken place in the other 90 percent, and the Village of Mount Kisco, from my understanding, is happy with that other 90 percent. There is a certain track record that 333 has had, and I do not personally believe that track record for 10 percent more is going to change as far as the viability, the candor and

the honesty with what we've already seen and experienced in the other 90 percent. In this case, you are swapping one sports use for another. Michael is going to generate some numbers to support the presentation that you did this evening, and you should take a look at it and go forward with it.

Chairman Cosentino: I like the idea of the swap than have something larger in the space. I think it's more practical.

James Diamond: As I think everyone recalls, once we had the end pieces of the municipal soccer field at one end and Grand Prix on the other end, we really decided to try to focus on the strategy of bringing more sports uses in to fill in the middle because we thought it would be a logical, cohesive total. We are really adding to the Mount Kisco Athletic Sports use and subtracting from the sports arena sports use, but it is still in keeping with the same theme.

Chairman Cosentino: Let's get those numbers together, start the scenario on this and get it done.

Michael Gallin: Thank you.

Lester Steinman: Before we leave this application we need to refer it to the Westchester County Planning Board.

Vice Chairman Sturniolo: Also, I believe we need to schedule a public hearing on this application.

David Stolman: I will work with Nancy to make sure that happens.

A public hearing was scheduled for May 25, 2010.

Lester Steinman: Do we have a date that we can anticipate the submission and allow submission time for the analysis so the Board can look at it?

Michael Gallin: We certainly meet the deadline requirements, if that is adequate.

Austin Cassidy: The 25th is the target date for the public hearing. What is being asked is: The data that you have been requested to provide tonight, how soon can you get that so there is ample time for analysis?

Michael Gallin: A week from today would be good. What would be the typical requirement for submission? We can certainly meet in two weeks.

David Stolman: Two weeks would be fine.

Lester Steinman: Since we set a public hearing, a referral has to be made to the Town of Bedford as well.

Re-zoning Referral

**Diamond Properties
333 North Bedford Road
PB2005-21**

Present:

David Steinmetz, Attorney at Law, Zarin & Steinmetz
Jim Diamond, Diamond Properties, Property Owner

Of counsel:

David Stolman

David Steinmetz: We are here tonight in connection with a preliminary, informal discussion on some proposed text amendments to the ML zoning district in connection with Jim's property.

Vice Chairman Sturniolo: Is this predicated on the March 17 letter where you identify what you just spoke about?

David Steinmetz: Yes. I would like to take a couple of steps back to put all of this in perspective and some context. As I think you are all obviously aware, a special permit and site plan approval was granted in connection with Diamond Property back in 2006. Originally the resolutions all addressed the multi-tenant re-occupancy of the 568,000 square foot facility, 37 approximate acre site in the ML zoning district. The essence of your special permit resolution and a lot of what your board dealt with in 2006 and the documents that I have reviewed – as you know I was not involved in Jim's original application – really related to the Grand Prix facility. Currently the property is comprised of a number of different tenants, The Wine Enthusiast, AirMack, Ideal Electric, Photofile, RDI Office, RDI Warehouse, Self-Storage, Grand Prix New York, Mount Kisco Athletic Club. Grand Prix, as you know, was permitted under the ML zone as a membership club and has operated as a valuable leisure time and recreation facility here in Mount Kisco. The reason that we are here is it is my understanding there were a number of discussions between your board and the applicant, the town's professional staff and outside consultants and the applicant about the fact that different uses of the property under the ML zone require repeated return to the Planning Board for review as a special permit. There is some concern that I think had been expressed on the record in front of your board about whether the membership club makes sense for all leisure time and recreation activities. In fact, Jim got the sense that an explanation was required for your board. You may remember on September 8, 2009, he wrote a letter to your board and explained the facility and more or less what I would call his goals and objectives to run the entire property in a profitable, clean and appropriate fashion. Jim actually called me at the beginning of December and told me where things stood, some of the comments he had had from your board and staff, and actually called me initially to tell me he was interested in putting a bowling alley into the property and potentially into the Grand Prix space. We talked about the fact that if were to do that, would he have to come back to the Planning Board, would he have to come back for special permit modification, would he have to deem the bowling alley to be a membership club/bowling alley to be a leisure time and recreation use? He explained to me and gave me his letter written to you in September and said, "I kind of already opened the door with the Planning Board on this issue. Maybe now is the time to sit down and look at modifying, doing a text amendment to the ML zoning district to allow different types of uses to occur at this property." I should state, and I

think you all know, this is the only property zoned ML in the Village of Mount Kisco. The first thing I did was write a letter to the Board of Trustees. I want to start with that because I think there may have been some misunderstanding or miscommunication, and I hope it has been clarified before I got here. I wrote a letter to the Board of Trustees on December 17, 2009, asking for an informal discussion about beginning the process. I copied that letter to the Planning Board. There was no intent in any way of going around or not including the Planning Board in this process. In fact, early discussions were that I would go right to the village, get on the village board agenda, have an initial informal, no application discussion and then ultimately make the rounds and discuss this with village counsel, the village professional staff and your board. I do not want anyone on the Planning Board to not be aware that the letter we wrote to the Board of Trustees on December 17 was copied to you. We appeared before the Board of Trustees on December 28. Jim was actually out of town on vacation, but we got invited in very quickly. We started a discussion about, should we modify the ML zoning text? Does it make sense? What are the kinds of uses that we could look at or at least discuss on this property? I prepared something that you should have all received in your packets called potential new land uses, ML (light manufacturing) zoning. This was presented to the Board of Trustees as a discussion document. There are a lot of things on this document that are either; A, he's either already doing; B, he's allowed to do; or C, he doesn't really have an interest in doing but for an appropriate discussion at a kick-off meeting with the Board of Trustees we listed it on this document. We put that in front of the Board of Trustees where we had about a half-hour discussion with the Board. There was a real willingness to look at the ML zoning district. We heard a number of comments from the trustees, not the least of which you all know because you regulated it, making sure that anything that happens on this property is traffic neutral, safe and no adverse impact to the surrounding area. I learned a little bit about the concerns of water in that area that I had not heard previously, which the mayor mentioned. We talked a bit about whether uses on this property should all fall into the special permit category, or some should be as of right. After that first meeting with the Board of Trustees and Mr. Singleton was there, I spoke with Whitney and began working with Jim on drafting some recommended text changes. I actually suggested to Jim that we take some uses and pull them out of the special permit category and put them into a permitted as-of-right category so that not everything he was doing – for example, at Grand Prix or that he might want to add – was a special permit use. Maybe some of them should be principal permitted uses. As you probably can figure out from the version that you now have in front of you, Jim actually said, "don't do that – not necessary. Leave them as special permit uses. The Planning Board spent a lot of time and energy on Grand Prix's permits, and it was a special permit. Leave it as a special permit but let's separate out the membership club from leisure time and recreation activities. That is really why we are here. We are here because there are a bunch of leisure time and recreation activities, like bowling, that we would like to be able to make permissible on the site, but they don't have to be as-right. In fact, Jim wanted me to work with him, Whitney and David in simplifying some changes that we could make. We wanted to do as little to your ML zoning district as is possible. We did not want to re-write the code. We tried to take the ML zoning district, Section 110-24 and eliminated one use that seemed to be somewhat noxious and unnecessary. I'm referring to laundry and dry cleaning plants.

Vice Chairman Sturniolo: Are you referring to the attachment of the March 17, 2010 letter?

David Steinmetz: I am. We recommend elimination laundry and dry cleaning plants. There is no intention of having a laundry or a dry cleaning plant, which obviously has a number of environmental impacts, significant water demand, etc., which can easily come out. The most significant change we made on the second page was separating out leisure time and recreation activities from membership clubs. Membership clubs would still be permitted, and as you probably know and Whitney and I have discussed, membership clubs is actually a defined term under your code, which in essence brings the concept of leisure time and recreation back into it. Those would be certain types of clubs which would be special permit uses, but then other leisure time and recreation activities would be special permit uses but would not require they be membership clubs. When we looked at this, again I'm being totally candid, I suggested to Jim that we put this in as a permitted use. Let's at least look at some of this as a permitted use. We chose not to because in your code you had three criteria for these special permits. We actually added a fourth. I want to make sure you all see what we did and why we did it. I tried to study what you did in your special permit resolution and what you did in your site plan resolution and the types of things you are regulating at Grand Prix. Things like hours of operation, parking, vehicular and pedestrian circulation, occupancy limits, operating conditions all in furtherance of public health, safety and general welfare. We wanted to make it totally clear to you that if we decide to try and bring in any other use in the future to Grand Prix, for example a bowling alley into Grand Prix, we would have to come back in front of you, we would have to get a special permit to do that, and you would have the opportunity to examine all of the precise issues that you looked at with Grand Prix including – I felt like what we were doing was expanding your statutory authority to make it totally clear that you can look at occupancy, hours of operation, circulation, parking, etc. Our goal was to make the code a little clearer, because right now you have leisure time and recreation activities, which is not a defined term but it is linked together with a membership club. I think you all know, as a result of your efforts and Jim's efforts, you very cleverly figured out a way to make Grand Prix work as a membership club. There are a number of things we could make as a membership club. We can make a bowling alley a membership club, and we could join to go bowling. Is that – from a land use standpoint – really the best way to bring a bowling alley to this particular property? I at least question that. I think from a public health, safety and general welfare standpoint and from a traffic standpoint, you don't need to call it a membership club to properly regulate a bowling alley. With the help of your Board, The Board of Trustees and obviously your professionals, I think you could modify your ML zoning district, allow certain things to take place and not compromise safety here in the village in any way. I want to make a few things clear that I may have allowed people to trip over. By preparing this potential list of uses, you may have the impression that Diamond Properties wants to bring in multiplex theatre to its property. There is absolutely no desire to do that. There is no interest in doing that. There are no plans to do that. It was put on this list as an item for discussion purposes. We don't believe our zoning text proposal opens the door for movie theatres. It doesn't say movie theatres; it says leisure time and recreation activities. That is exactly what you

have in your code right now, so I don't think this is an invitation for multiplex theatres and I want to allay any fears that you may have had. Similarly, Whitney and David and I in our conversation had an honest question about a catering facility. Are we looking to have a catering facility? I think your board knows better than I that over the life of Grand Prix Jim and the facility has successfully had functions that have occurred at Grand Prix where there is food and some amount of entertainment. One could say that was a catered event. There is no question that has happened. This is not a catering facility, and there is no desire to turn this into a catering facility. I don't believe how "catering facility" is defined. I went through several other definitions of "catering facilities," and they all talk about regularly inviting private parties into a facility where a particular function where music or entertainment would be ongoing. Catering would be the primary use.

David Stolman: It says, "any premises used for the purpose of furnishing for hire therein, one or more ballrooms, reception rooms, dining rooms, banquet halls, dancing halls or similar places of assemblage for a particular function occasion or event in providing food and beverages for consumption at such function, occasion or event."

David Steinmetz: It sounds like, unlike most municipalities that actually define catering facilities where that is the primary use, your definition is more of a casual. Under your definition, it is a catering facility right now.

Chairman Cosentino: The key is "occasional."

David Steinmetz: I agree with you. There was a question about there being a desire to turn this into a primary catering facility, that is not the case. If that needed to be tightened up for your own purposes, that is something we can obviously look at. In terms of traffic, Jim explained to me, and I looked at some of your prior resolutions, you may remember in your special permit resolution or site plan resolution for Grand Prix, you actually fixed a number of vehicle trips that were permitted at this site based upon the traffic study that was performed for your board and verified by your consultants in 2006. Nothing that we are proposing would exceed those vehicle trips. We understand we have to operate within those parameters. It's a long way of essentially saying what we are trying to do is clean up the code, avoid having to come back here with a lack of clarity about whether certain uses are permitted, whether they fall into the special permit category and most importantly, to realistically call a membership club a membership club, but not make everything that is leisure time and recreation oriented part of a membership club in the ML zone. In order to embark on this, we obviously need your board's ultimate recommendation to the Board of Trustees, and we need to file a formal petition in front of the Board of Trustees. We did not want to do any of that until we first spoke with them and next came here and spoke with all of you and got your input. I have had some preliminary conversations with Whitney and David. The one thing I should mention that there was an earlier draft of our text which Whitney commented on. I know you received a copy of that letter. We completely revised what we were proposing after we got those comments and then gave you what we think is a more simplified version of the text amendment. We are here to get your feedback – whether you think we are doing something that is

consistent with what you had talked to Jim about six months ago, and we really cannot go anywhere without knowing your board is comfortable and would make a positive recommendation to the Trustees. We don't want to start processing in front of the Trustees, have them kick it back to your Board under the code, and then find out that we are wasting time, energy, etc.

Chairman Cosentino: We have to define which changes – entertainment, athletic, retail, possible other uses - you really want and don't want so we can eliminate certain ones. As you said, theatres are not going to go there. I would like to now give it to the Board and staff.

Whitney Singleton: If that is the prerogative of your board that is perfectly fine. I just think that one of the purposes of them being here tonight as David pointed out is that they have not submitted a formal application for a text amendment yet. They were encouraged to come here, and they are not here under the context of the official referral by the Village Board. It might be helpful for us to explain the scope of our conversations.

David Stolman: The ML zone refers back to the first permitted use in the RD zone, which is physical training studios, in either classes or individual instruction format or individual instruction formal including studios for dance, karate, fitness and organized athletic activities for children. There are a number of things that can already be done in the ML zone by special permit or by right. It could have been a bit simpler in terms of listing the additional uses. For the Planning Board not to be confused, a number of these things are already prohibited. We have to focus on the things that are not permitted.

Austin Cassidy: We are starting with a grocery list and have to take one step back and look at the district. It's a Light Manufacturing district and then as you read it's purpose of intent, manufacturing uses are not even permitted in this zone. I think we should start with re-examining the zone itself and what is it's purpose and intent, and then formulate a grocery list from there.

David Stolman: That would certainly be a good way of doing things. In the zoning amendment that David is proposing, there is some modification of that initial paragraph about what the zone is about. I do not think the village is looking for manufacturing anymore. We might have to end up changing the name of the district conceivably, and it's purpose and intent, which I don't think we can necessarily resolve that tonight.

David Steinmetz: I want you all to know that we were aware of this but by no means is Jim Diamond looking to re-do your zoning to clear up issues that may have nothing to do with his facility. I absolutely agree with what Austin has said, but I want you to understand that we are not looking to try to assist staff or the village in re-writing something. Because it's overstepping our bounds. We are trying to deal with our uses.

David Stolman: We need some basis from which to analyze whether certain uses are appropriate or not. If we don't sketch out what the zone should be about, we have very little criteria. It would then be sort of "gut feelings" as to whether X should be permitted or Y should

be permitted. One comment I did make is that since the very beginning we have been trying to work toward a combination of uses that would not have significant adverse environmental impact relative to traffic. There have been mitigation studies, traffic analyses and mitigation measures. David, you said before that anything that is proposed would have to be within the traffic limits that have been established, but I don't think that is sort of the be all or end all. In order to come back to you and say that certain of these uses might be appropriate, it would be important to have traffic and parking information regarding these uses in advance, as opposed to giving "gut feelings." We need some data upon which to make determinations. I think traffic generation by these various kinds of uses, and parking demand by these various kinds of uses is important for the Planning Board to have.

David Steinmetz: We understand and anticipated that question. Certainly, should we file an application or a petition with the Board of Trustees we would come in with some form of a professional traffic opinion on that. I will say that we actually think that the detail empirical analysis would come upon an actual application for the use when we knew where it was going, how large it was going to be, whether it was going to be in Grand Prix or in another structure. I envision a more generic discussion of traffic. I am aware your Board of Trustees cannot vote on a text amendment without going through some form of a SEQRA review. I would suggest, however, that we would not do a comprehensive empirical traffic analysis of every single conceivable use and give it to the Board of Trustees in connection with what I consider to be a simple text amendment. I consider it to be a simple text amendment because, quite frankly, I don't think we are asking for anything that we probably cannot already do under the very broad language of "leisure time and recreation activity." We are trying to take it out of membership club, leaving in as special permit. I think we have made it abundantly clear that Diamond Properties has no compunction about having to come forward with – go through Section D, 1-4; 1, Submission of interior layout plans, 2, demonstration by the applicant that potential traffic generation will be within reasonable capacity of existing plan of road or street providing access; 3, demonstration that the use will be appropriate and will have no material adverse effect on existing or perspective conforming development; 4, that the Planning Board has authority to look at hours of operation, occupancy, parking and traffic circulation, etc. If you are looking for a full traffic study of every single one of these uses, you are going to defeat the purpose.

David Stolman: I wasn't looking for that, but as an example, for a multiplex - to exaggerate to make a point – that would generate a tremendous amount of traffic. You're not proposing that?

David Steinmetz: We are not proposing that.

David Stolman: If you were, and you gave us the traffic data, we would probably say, "no, that can't be." I would be interested in seeing at least some data, some comparative analysis, to give the Planning Board some information regarding these uses so they have some criteria by which to go in giving you input relative to whether they think they are appropriate or not. Same thing with parking. It may be that a lot of these would be relatively the same; no great material difference between one versus the other, but I think it would

be interesting to go down this list for the benefit of the Planning Board and talk about which and which are not already permitted, narrow it down to the ones that you are looking for that are not permitted as opposed to the ones that already are. For example, for a martial arts studio, you would only be approving one of those for the free-standing building.

Vice Chairman Sturniolo: This list is getting away from the letter, and it is only a discussion list. Maybe we should stick to what is in the March 17 letter, which is the actual proposals.

David Steinmetz: Which is really limited to whatever falls within the parameters.

Chairman Cosentino: Why is this list here then?

James Diamond: David was asked, when he went to talk to the Trustees to start a discussion with a very broad list of talking points. Theatres on this list, but we don't believe that with the language we proposed, theatres would be allowed in the zone.

Chairman Cosentino: Let's eliminate what you really don't want here so we know what we're talking about. That will correspond to the letter as well.

David Stolman: With all due respect to the Planning Board, I don't know that the best use of our time is to craft the zoning right now. If we had an idea as to the uses that you are thinking about, we could craft the zoning exactly right.

James Diamond: This is a concept that we have at this point; the type of thing we have in mind. (*at this point, Mr. Diamond held up a diagram*) this is the Grand Prix space right now; entry way, conference rooms, two tracks. As everyone remembers, F 1 Boston was a facility that we compared Grand Prix against in the application process. The tracks there are 7-800 lineal feet in length, and Grand Prix opened with two tracks approximately 1,100 feet in length. The tracks were extremely large. In retrospect, we could have probably better utilized the space. One idea here is to shrink the tracks, so we still have two tracks but they are comparable in length such as in F 1 Boston. Here are 24 lanes of bowling dropped in the south side of what we refer to as the "downtown" tracks. We are also showing additional arcade games in this area. Right now there is a limited number of arcade games in this area and we are proposing to expand the number of games. We have researched other entertainment facilities around the country – bowling, other go-cart facilities – and arcade games are really a key part of the business model and an important way to generate revenue and income, because they are relatively low initial cost and low labor to operate, whereas Grand Prix is a very high labor, intensive business. This is something that is still conceptual at this point, but this is the impetus for our discussion about bowling and separating out membership clubs from recreation activities in the zone.

Chairman Cosentino: Do you anticipate having leagues or just plain open bowling? If so, most of your leagues will be happening at night and most of your open bowling will be happening during the day.

James Diamond: We've learned over the past couple of years with Grand Prix and the entertainment business in general is that the business is centered around nights and weekends. Daytime Monday through Friday, business is tough. An important part of Grand Prix is corporate events which happen during the day and the economy the last couple of years has been tough. Hopefully that will grow stronger over time. A lot of Grand Prix business at this point is really centered nights and weekends. They don't even open the facility until 3 P.M. in the afternoon. Leagues have declined in importance for bowling.

Chairman Cosentino: Leagues have declined because of lack of bowling alleys.

James Diamond: That is definitely part of it. There are not that many bowling alleys left in Westchester.

Chairman Cosentino: I think by putting something like that here, it will be a big draw for other municipalities.

James Diamond: Bowling has really changed in the last five or ten years. The old model of a bowling facility is really no longer being built. All of the facilities that are being built today look a lot like Grand Prix. Using some bowling models, like Lucky Strike and Shenanigans, which I visited in Dallas. They are very high end facilities, very similar in style to what Grand Prix is today. We think this is a perfect fit. In this drawing you can see the overall property and what it looks like with the bowling set within the Grand Prix space.

Chairman Cosentino: I honestly believe the racing will phase out because it is not a family type organization.

James Diamond: We certainly hope not. Racing attracts a lot of people, but we need to expand and improve the mix of uses so there is more things for more people. Racing has fused more men, bowling feels to men and women of all ages.

Whitney Singleton: What the applicant is seeking from your board is to change the way of permitted uses. Of equal importance, the applicant is changing the vehicle by which they would be permitted. There was a recognition by the Planning Board and by the consultants that some of the uses here were being shoe-horn uses as opposed to ----- and the qualifications under the existing zoning. Perhaps it was a better thing to look at what the existing zoning permits and how it permits it to shoe horn these things in. In that regard, before we look at detailed plans, before we look at proposed legislation it is important to look at the list of increased uses and the impacts of those uses in a generic sense as to what impacts they may have. One of the primary reasons that David and Jim are here tonight is to get a degree of candid feedback from your board to ascertain whether this is something they want to move forward with a formal application on. The reason I suggested changing the procedure by which you have entertained the application given, was to make sure you had some feedback from staff in addition to some input from the applicant, and then your board can give some rather candid comments. Jim can then consult with David and decide whether they want to move forward with this.

Chairman Cosentino: Are we going by the letter of the 17th or the memo?

David Stolman: It's better to go with the list of specific uses rather than looking at the zoning.

Chairman Cosentino: When we go back to the zoning, many of these will be eliminated.

David Stolman: Some could be, some are already permitted. It is easier to focus on the uses. We can craft the zoning or give feedback on the zoning based upon what the Planning Board is comfortable with.

Chairman Cosentino: I would like to get the feelings of the Planning Board now.

Stanley Bernstein: I have some bad feelings, but I have some strong feelings about the zoning. This is a situation, and I have mentioned this many times, that cries out that we need a new comprehensive plan. I am fully aware that the village trustees are not going to do it. We are working in the blind without a comprehensive plan. Lacking that, I do believe this entire ML district should be re-written, re-titled with permitted uses put in. There are very many uses that are permitted right now that should not be there based on what is being built; not so much on what it would have been as an ML district but what has been built now by Diamond Properties and what will come in the future. We should have a certain amount of control. David mentioned very rightly that we are charged with the health, welfare and well-being of the population. We are also charged with community character which is equally important. The only way we are going to really get a handle on this and know what we are doing and speak intelligently to it is to re-write the entire ML district, lacking the fact that we probably will not make a new comprehensive plan for quite a few years. So far, in all our dealings Jim has been honest, straightforward and pretty much did most of the things we wanted. From our angle, we pushed back very, very little. This is not Scarsdale or Chappaqua. We want things clarified and mainly considering community character. There are some other uses, such as laundry, that should not be in the district based on what has already been built and what we anticipate being built. One last thing, if someone could come up with an offer for this property that you can't refuse, we will be dealing with another set of people that we might not be able to work with as well as Jim and David. We must have something down that we can hang our hats on for the future.

Vice Chairman Sturniolo: To pick up on Stan's closing point about something that we need to hang our hats on for the future, I strongly believe that that hook for the hat is what we are seeing here in the March 17 proposal. Regardless of who owns the property, the changes to the ML district are still in place. While I agree with Stan, Mr. Diamond has been forthcoming and open and candid from day one with us. It does not frighten me that if the property changes ownership that anything we or the village board is going to do is going to be thrown out the window because it's going to be part of the village code. I also believe that the membership club versus the special permit definition needs clarification and separation. Separation is the key to this whole thing and once you separate it, everything can

work in place, everything can be designed and structured in a proper manner that is both more than acceptable to this Board and the village board as well as the property owner. We are talking about a simple text amendment. As I look at this page two on the attachment, it doesn't seem overly complicated nor burdensome that the village has to swallow real hard to make these things work, as so many of them are already in place. I am 100 percent in favor to urge the applicant to go the village board with their proposal for text amendment changes.

Ralph Vigliotti: I will pass.

Joseph Morreale: I guess I'm going to come at this quite differently, with all due respect to my Planning Board members. Jim, I think very highly with what you've done here. The way I was trained with planning is an area decides on a district because it wants certain things to be in that district, so it calls it light manufacturing, and that is what it expects to be there. We seem to be saying the district is changed because we've let people come in and do services, recreation and leisure time, so now we have to re-define the zone, which strikes me as not being the way you plan. It becomes very ad hoc. It depends upon who comes in and what they put there, and what we as a Board allows to be put there. If we really want to do this, should we find a district that talks about recreation and leisure time and admit, or at least establish that this zone will no longer be light manufacturing? I'm finding this a little bit strange. I'm also finding it strange because it is usually governments that do the planning. Here we have a case in point where a private interest is coming, discussing it with the village, but basically trying to change a planned district for its use. That gets me back to the Supreme Court decision about the property in South Carolina when all of a sudden eminent domain changed so it could be now for private interest. I'm worried about being on a slippery slope here. I also would like to look at the bigger picture, so the question is should this remain a light manufacturing district? If it should not, then we should change that and call it something else. If you turn around and say, light manufacturing is now recreation and leisure time, I don't know what we're talking about because that is not light manufacturing. It's not logical. It's not planned. It's whatever exists. Think about the precedent that sets. What happens in another district that has another designation? Somebody says, "I'm going to come in and do something different," and we approve it as a special agreement, special privilege. Then they come back and want to change the zoning. Who is in charge? I think you can see where I'm coming from. I am not opposed to what you want to do. It's just the way it's coming about that is not making any sense here. I'm not sure it's a good thing to do.

Austin Cassidy: A historical footnote that might assist here is that this went through the planning process, and if you recall there was a period in part of that planning process, and if you recall there was a period in part of that planning process that this was being nicknamed The Muppet District, mixed use plan development district. Then it was ultimately decided to leave it as an artifact from the old zoning instead and let the market sort of identify the direction that this physical area should go in. That is why we are left with these contradictions in the zoning that it's called a light manufacturing zone and yet manufacturing is a prohibited use. The old language that this is an artifact from picked up manufacturing on a cascade effect from what

used to be called the MRD (manufacturing, research and development). In the rezoning we did a number of years ago, manufacturing was taken out of the MRD, so now you have RD uses cascading forward in this language that don't bring any manufacturing uses to the zone and yet it carries the name of a manufacturing district. That might answer a couple of your questions.

David Stolman: This zone, as near as I can tell, has evolved considerably since 1987. It has been amended eight times since 1987. It already does permit limited personal services, including photography studios, beauty shops, barber shops, nail salons, tanning salons, weight loss clinics – it permits that already. It already permits membership clubs as a special permit use conducting leisure time and recreation activities. So, it is not as though leisure time and recreation activities is new to the district. It is not as though personal service is new to the district. Their proposal would basically not shoehorn all these leisure time activities which are already permitted into the membership club format. It is not as though we are taking a zone that permits industry and manufacturing because that is the name of the district. It does permit a lot of these uses that we are currently talking about. We are talking about re-formatting things so that everything doesn't have to get shoe horned into a membership club format.

Sol Gibbons: Based on what was just said, it seems to me like the light manufacturing district zoning is not right. It should be changed. It's absolutely misnamed.

Chairman Cosentino: I'd like to get back to one thing, to answer Dr. Morreale. When Diamond Properties purchased this property, the Grand Union warehouse was there. 10 to 20 18-wheelers were coming through the village each day. When Jim Diamond bought this property didn't want trailer trucks coming through the village. He has eliminated all of that and presently has mostly vehicles now. The village has gotten something that is less dangerous. This is the largest piece of property that Diamond Properties is working with. As counsel said, it is the only ML zone in the village. He had the acreage to do what he wanted to do but to better what was there.

James Diamond: I think the key point is that it was actually the village who requested that we begin this process. It was Mr. Steinman who said that maybe rather than the membership club concept, we should go back to the village board and seek to improve upon that, which is why we did. It really was the village consultants who started us on this path.

Vice Chairman Sturniolo: As a follow-up, since the village asked you to go down this path that addresses the question that David raised a few moments ago about shoehorning. That is what is happening now. You are proposing to eliminate that shoehorning. If it makes it any easier, the name should not be so important as to what you are trying to achieve in the zoning change. Let's follow with what I believe to be a sensible proposal and a sensible guideline and not waste our time over an archaic term called "light manufacturing."

David Steinmetz: In response to what Dr. Morreale said, if you add everyone's comments together, the fact that we are coming forward as a private property owner with a text amendment, and you're troubled by a private party coming and doing this, you should not be troubled

at all for the following reasons. One, we were asked to; two, you don't have a comprehensive plan that has really been updated that guides us. When that happened and you want to do the right thing, we are allowed to as a property owner. In fact, we're obligated to step forward to come to the Board and say here is a suggested change that you should make. This goes on every night in every community because it is part of the process. Zoning is in derogation of common law property rights, so it is incumbent upon private property owners occasionally to come to the government and say you need to change something. We are not doing anything underhanded or improper. We were asked to do it and I would hope your professionals would make you comfortable. Text amendments go on all the time. Unfortunately, sometimes you end up with text amendments where eight times over the last ten years your village has changed it's own law. Sometimes for the better, sometimes things go through ironically with the cascading in the wash. Shoehorning every use in the ML zoning district into a membership club to me is foolish. In my opinion, it is not something you should be endorsing. In many ways Jim Diamond is coming to you trying to help solve at least some of the issues in your code. I do not want to try to re-do your entire code and all your ML issues. I do not want to get caught up in that.

Whitney Singleton: There are valid points that David and Jim make. That is why I recommended they come to your board before going to the village Board so your board can give them the feedback they were given. The issue of the labeling of the zone, for all intents and purposes; all of that can change. One of the things I wanted the applicant to have your feedback on was whether you were comfortable with the scope of uses they are proposing. Are you comfortable with the restaurants, bowling alley, climbing wall? If you are or are cautiously optimistic, then encourage those uses. If you are concerned about the cumulative impact, then I was hoping that you would give that feedback tonight. We really have not discussed the actual uses they are proposing. We are talking about how things evolve. Their next step is to go directly to the village board.

Chairman Cosentino: We don't want to hold up the application, but they are not going to the village board unless we give the village board our blessing. I think most of the members agree what should be done, and it should probably go ahead back to the village board. But there are issues here like you just mentioned that should be questioned as to whether we should leave it or take it out.

Whitney Singleton: All I'm asking is that you give the applicant f Building Department on those particular uses, so they don't come back to you with a list of uses that you find objective.

Chairman Cosentino: One question I had was the theatres, and you said that is out.

David Steinmetz: Yes.

Chairman Cosentino: How many restaurants? What kinds?

James Diamond: These were conceptual ideas. The actual language that we've submitted, restaurants would not be allowed as a stand-alone use. The only way we see restaurants being there is as they are

currently within an existing building as an accessory use as part of something else.

Chairman Cosentino: Are you saying more than one restaurant?

David Steinmetz: Currently under your code, customary accessory use incidental to a principal use are permitted. To the extent that you have permitted restaurants to be an accessory to Grand Prix for example, we are not changing that.

Chairman Cosentino: You are asking for facilities for children. Are you going to get a MacDonald's or Burger King franchise?

James Diamond: We are not requesting that the zone allow a stand-alone restaurant, a restaurant is a principal use. Within the Mount Kisco Athletic Club the Board has already approved a snack bar and there was a food service concession within the sports arena space. There is a restaurant within Grand Prix. There are no proposed changes to the code that would make restaurants a principal use.

David Stolman: Same thing with retail?

David Steinmetz: Yes. Retail would come in under customary accessory uses. There is incidental accessory retail in Grand Prix right now for souvenirs.

David Stolman: Just to clarify that right now there is retail as a principal use which you are not planning on changing?

David Steinmetz: Under the permitted uses for household items. We are not going to change that.

David Stolman: Retail shops on Page 2 of your list of uses is as an accessory use?

David Steinmetz: Correct. That was put on there for discussion with the Board of Trustees.

Whitney Singleton: My understanding is that the retail shops and the restaurant are permitted accessory uses for the membership club, not in any other context but a membership club.

David Steinmetz: Or they would be accessory to anything else that is principal. Technically they could be accessory to the other permitted uses currently allowed in the zone.

Chairman Cosentino: Cabarets. Is that more than one.

David Steinmetz: This is a change that we have proposed, and it should be shown as pronounced in our redlining, limited cabarets. We are suggesting simply a limited cabaret, which allows for two instruments and no dancing.

Chairman Cosentino: A billiard parlor?

Austin Cassidy: It is relative to the conjunction and service of alcohol under ABC. There is also a stand-alone definition of billiard parlor under the code.

Chairman Cosentino: The same with amusement device, arcade?

David Steinmetz: Correct. We would like to have that.

David Stolman: One of the uses that we talked about sounded to me to be fairly close to sort of nightclub type thing. A DJ, and you may have put the premises to that use at one point in time.

James Diamond: The Board made clear that they were extremely concerned about dancing and that is why we did not propose that cabaret be part of the zone. There has been concerned raised previously about making sure that there is not a nightclub. If you distill that, it probably comes down to dancing.

David Stolman: It seems as though there is some sort of limitation on the infrequent catering? What does that mean? Would that be conceivably in your mind every weekend? On one hand you are saying this would not be a catering facility and then you're saying that there would be some element; there would be some infrequent catering.

James Diamond: When I think of a catering hall I think of a facility that is all ballroom type catering hall. Grand Prix is race tracks that have conference space, meeting space and party space.

Chairman Cosentino: If there is a bar mitzvah, they will have caterers come in, correct? You don't have a caterer on staff.

James Diamond: Correct.

David Stolman: I am just trying to air this out so there is no surprises later on. At one point there was talk of taking up both tracks so you can have a larger event like a bar mitzvah with racing the following day.

David Steinmetz: You are correct. That occurred one time.

James Diamond: Yes. The tracks don't come up, the tables went down on top of the tracks. We do not think that should be something that is actually prohibited. There is restriction on Grand Prix in terms of occupancy counts, trip counts, the number of events they can have per year, etc. Last time we got into difficulty was that the restrictions were parsed in so many different ways it became difficult for the business to actually operate. We need to ask ourselves what matters in terms of protecting the village.

Chairman Cosentino: There was a bar mitzvah there. The following morning, all the kids came back and raced.

David Stolman: I am not advocating what was going on, I'm questioning it because we can't craft the zoning unless we know what is actually being proposed.

David Steinmetz: Understood. I heard your comment that you are not necessarily trying to restrict what he was just talking about. We can certainly flush that out. His best answer is that we are not changing anything in that regard. We are not proposing any change

that would address catering or bar mitzvahs. Whatever is currently either allowed or ongoing is still allowed.

David Stolman: I am kind of looking out for you in a sense. You do not mention that anywhere in the drafting of the proposed wording of the zone. Somebody could come back and say that is not permitted in the zone unless it is put there. Even though that is something that you're doing now, if you can't reference it somewhere it is going to make it harder for you later on.

David Steinmetz: I appreciate your comment. Certainly if we go forward with the trustees and your board, and if you decide that some clarification on that would help, I agree with David.

James Diamond: That would be my only hesitancy in proposing that we add that. I do not want there to be a perception that we actually want a stand-alone catering hall. There is a way we can clarify it better. Our perception is that if there are events within Grand Prix, it doesn't make Grand Prix a catering hall. This is not a great example, but if you look at a restaurant where they have an event on a weekend, it does not turn the restaurant into a catering hall, it's just a restaurant with a group party.

David Steinmetz: Which is why I was surprised your code has the language that it does. I appreciate David clarifying it. The other codes that I actually pulled all talk about catering being the primary use in a catering establishment.

Ralph Vigliotti: Retail shops? Is it stand alone or accessory to what is there?

James Diamond: We are not proposing; these are just conceptual ideas that we presented to the trustees. We are not proposing it as part of the zoning language. No changes. The only retail shops that are permitted are the same ones that are currently permitted which are retail sales of bulk household items, mattresses, carpets.

Ralph Vigliotti: Please explain rides for adults and children.

David Steinmetz: This list was compiled in a number of different ways, one of which Jim and I discussing in advance of the trustees meeting, the other was a sampling of about 15 different zoning ordinances that had leisure time and recreation type uses in them. I tried to borrow from those codes different phrases of uses. It may have come from the definition of New Roc City, which might have rides for adults and children.

Ralph Vigliotti: Is this potentially an indoor carnival situation?

David Steinmetz: We are actually not suggesting that language. In fact, we're not suggesting language any different from what is in your code already. Right now, leisure time and recreation activities is in your code. The same phrase stays in there.

Ralph Vigliotti: We are specifically talking about this site and the use of the site.

Whitney Singleton: I do owe a little bit of explanation on this. With this coming before your board I wanted to make sure you had the complete historical context in which it got here. When you see that list, it is something which was preliminarily presented to the village Board. It did get some feedback and it did get some modifications as far as the zoning. Having a list of uses is certainly helpful, but it has been vetted out a little bit already. In that regard I owe you a word of caution; that list is not the current list. You have to extract from the proposed zoning list.

David Steinmetz: I appreciate you saying that. We actually didn't send this to your board for just that reason. We wrote you a letter and submitted simply the zoning text because this is three and a half months down the road.

David Stolman: With all due respect, if you read what you proposed, "leisure time and recreation activities," that would permit indoor bumper cars, etc. So, the response to "what does that mean?" That means that indoor bumper cars or a Ferris wheel could be permitted under your proposed language.

David Steinmetz: Under your code right now.

David Stolman: When Ralph says, "what does that mean and would that be permitted," the answer is yes it would be permitted. I am not being judgmental. The correct answer is it means that it could be bumper cars and that would be permitted.

David Steinmetz: To the extent that anything on this list is deemed by Austin in the first instances code enforcement officer to be a leisure time and recreation activity?

Ralph Vigliotti: It is the irony of all of this. Two or three years ago we weren't going near any of this stuff. It wasn't going to be a theatre, rides for adults and children, billiard parlor, etc. Very slowly it's unwinding to become exactly what we didn't want it to become. I offer some caution here as we proceed forward that this could become the nightmare we thought it could become. We need to proceed very cautiously. I want to know whether rides for adults and children belongs there. Bumper cars, a small railroad, an indoor carnival situation. We're flushing this out. We thought it was going to be light recreation and light warehouse. I want to make sure this does not become - as it evolves - Toyland.

Whitney Singleton: To that point, one of the things David and I discussed and one of the reasons he is coming to your board now is to discuss the possibility of putting controls in place that would make your board feel comfortable that it does not become something you don't want it to become. I'm not telling the applicant how to present a petition to the village board, but perhaps like in the membership club, there will be a limitation on the number of accessories. There might be a limitation on the overall square footage associated with the property. There might be things like that, that would afford the property owner to run a viable business but at the same time make sure that your board has the adequate protections in place so that it does not become something with an unattended consequence at the site. That being said, you do have one tremendous luxury that just happens to occur relative to the site. It's the only property in the ML

district. You do not have to worry about falling (sic) elsewhere in the village. You can customize the site any way you want.

James Diamond: I would like to emphasize that we are not asking for approval to put carnival rides or whatever here. We are talking about a zoning text amendment; the primary thing is to separate membership clubs from leisure time and recreation activities. The same review that you went through with Grand Prix where we spent six to nine months reviewing that application, you would do the same thing if we came back and wanted to do bumper cars or trains or whatever. As part of this, you are not approving that actual use within the building. You are just separating membership clubs from leisure time.

Ralph Vigliotti: You could come in with 50 bumper cars and end up with ten as a negotiating piece. I want to make sure that some things aren't even on the table that is going to create a situation on your property that the village is not interested in.

Joseph Morreale: Does everything we're talking about refer to only the interior, or is it also the exterior?

James Diamond: Only the interior. I believe that the Special Use Permits by definition require only interior usage.

Whitney Singleton: A Special Use Permit for health and athletic clubs requires it to be indoor except for tennis courts.

Joseph Morreale: I'm reading here "submission at the time of application of a detailed exterior and interior layout plan." If we put in amusements and arcades does that mean they can be exterior?

David Steinmetz: I guess only if you permitted them to be because one could only come in with an amusement arcade by special permit, and by special permit you would have the authority to review every aspect of it. I cannot envision an arcade that would be outside here, but reading the code, if Jim or anyone else wanted to come in with an amusement arcade for this property, they would have to come to your board – it's not a permitted use, it's a special permit use, and they would have to present all of the items in D 1-4. You would have absolute control over location, occupancy, flow, parking hours of operation, etc. You'd be able to prohibit it outside if you wanted to prohibit it with a reason.

Chairman Cosentino: Under the code, is he allowed to have a tent for something outside?

Austin Cassidy: For a very limited period - once a quarter.

Vice Chairman Sturniolo: In reading the proposed language changes in the text amendment, I get the sense that the Planning Board is not giving up any oversight, review, or any decision making process that we already had, inasmuch as we just said under D 1-4, we are not losing any control on what is going to happen within the property.

Whitney Singleton: I guess the short answer to that is no.

Chairman Cosentino: We have work to do on this. We need information back here.

David Steinmetz: Do you want to see us before we go to the trustees with a formal petition?

Chairman Cosentino: Yes.

Whitney Singleton: The village board is mandated by your code to refer any proposed language to you. You're going to be seeing the language. The question is are you proposing to provide the applicant with any more guidance before they submit their rendition to the village board? There is going to be a process by which this goes through. You are going to see everything and there is going to be public hearings. The question is, is there added benefit by them coming back to you with something in the form of revised proposal before they go to the village board?

Chairman Cosentino: I think we need to know what we are sending to the village board. Right now we do not know. I'm satisfied with what I heard. We have not lost control, the items that are going to go in there are solely the items of the March 17 letter.

David Steinmetz: Unless anyone on the Board has an objection, we would like to submit a petition to the Board of Trustees. They will probably receive it and maybe we'll get some preliminary comments. They will send it right to you. That allows us to get into the process formally so that we have a hope and prayer of maybe getting bowling in this site sometime while we are all still bowling.

Ralph Vigliotti: You still have to get back to us with the number of parking spaces, with the added bowling, the added square footage on. I think you're trying to move a little too quick. There is nothing wrong with coming back with the information we asked. There are items here that could go into that zone that I don't want to see there. I don't want to see them going before the village board. If we're making a recommendation and it's leaving our Board for the village board, I want to make sure that we have a thorough review.

James Diamond: I don't think you'd be making recommendation at this point.

Ralph Vigliotti: You are certainly ready to move it to the village board.

David Steinmetz: Ordinarily in most communities, we don't come before the Planning Board before we make a text amendment proposal. We go to the trustees first.

Chairman Cosentino: I don't have a problem sending it before the village board right now, because it's only going to come back to us.

Vice Chairman Sturniolo: Let's do it.

Stanley Bernstein: I think it will work >

Whitney Singleton: Once you have the position that you're going to be sending to the village board can you forward to David and myself --
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Joseph Morreale: I would also appreciate if we could clarify what this extra list is against what you have put in your original proposal.

David Steinmetz: We'll take care of that off-line and make sure that when we come back next time we can tell you. I don't want to overstep my boundaries, but if I were in your shoes and you were asking that question, I'd ask my Building Inspector what is allowed under Leisure Time and Recreation. Because it's not for us to tell you what is in that phrase. This is the fourth time I'm saying this and I hope everybody hears it. We didn't change the language. The language is in your code. We left it alone. We didn't make it "as of right." We left it special permit. The only thing we did was take it out of membership club and separated it. So, whatever is in your code today it's still there. If you adopted this tomorrow, it's still there.

Conceptual Application

**Paul Krause Architects
(Michael Tierney, Architect Representative)
130-132 Main Street
PB2010-6**

The applicant for Paul Krause Architects was not present at the meeting, therefore it was not entertained.

Draft Resolution Review & Comment Only

**MetroPCS New York LLC
304 Lexington Avenue
PB2010-3**

Present:

Present: Neil J. Alexander, Esq., Cuddy & Feder, Attorneys at Law, on behalf of the MetroPCS

Vice Chairman Sturniolo: I'd like to see a copy in the draft resolution of Item #8 and #9.

Neil Alexander: As an aside, your radio frequency consultant that you had retained looked at this study as well. There are two different things here. In our original package of February 8, it was Exhibit C. There was an Affidavit from Christopher Olson. Here are the municipal borders.

Vice Chairman Sturniolo: I'm more concerned with the RF energy level and dissipation of the signal.

Neil Alexander: That is Exhibit D which was prepared by Pinnacle Telcom Group. It was a cumulative analysis for all the carriers that are on there. This was reviewed by your radio frequency consultant who issued a report to your board dated April 5.

Vice Chairman Sturniolo: Whitney, the village hired this consultant?

Whitney Singleton: Yes.

Neil Alexander: I can read from their conclusions but also our report showed that worst case scenario was less than one percent of the maximum permissible emission standard set by the FCC. The report was prepared in accordance with the FCC's OET65, which is their bulletin for the standard methodology. The chart was done by analyzing per carrier and then they gave you a cumulative. They showed you where the worst case cumulative was. .095.

Vice Chairman Sturniolo: Thank you.

Nanette Bourne: For the record, I gave Neil a copy of the resolution. On Page 3 there are whereas' that refer PierCon Solutions, that they reviewed Metro PCS's application and what their conclusion was.

Neil Alexander: Thank you.

Motion of the Approval of the Resolution for Special Permit Site Plan Modification from MetroPCS New York, LLC, 304 Lexington Avenue, PB2010-3

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

Continuing Review

BMW of Mount Kisco
250 Kisco Avenue
PB2009-16

Present: John Slaker
Rich Stavridis, Owner

John Slaker: Since the last time we were before you, we went back and listened to you again and modified what we thought we could live with to get our display area and re-landscape the front of this property. Basically we've provided four cars. We moved the access way further up so it's limited in length. In the letter I sent you I gave you a chart from when this was 12 cars in October. We went to six, and now we're down to the four. The total length of that display area is only 120 feet now, where originally it was well over 300. We are 7,000 square feet of disturbance of the grading of the steep slope. All the walls are outside of the 10 foot setback. There is no wall that is longer than 60 feet in length and nothing that is over six feet in height. I think we tried to listen to what you told us. The property is a little bit lost, and no one realizes it's a BMW dealership; they think it's an office building. We have no presence on the street.

Chairman Cosentino: You really have come a long way from 12 cars.

Joseph Morreale: We really appreciate the give and take on this, because you really have come a long way. You've listened to us and it's going to look great and not going to be too much. It will get done what you wanted to do.

Doug Hertz: I agree that it was hard to find the dealership.

Stanley Bernstein: I'd like to ask the members of the Board what would happen if the three automobile dealers across the street came before us and asked for a platform that was well designed, made out of fieldstone, well landscaped, beautiful to only display two cars. What would we say?

Chairman Cosentino: If it would look something like this, why not?

Stanley Bernstein: In other words we have no objection to allowing a very tasteful, decent display for all the auto dealerships on Kisco Avenue.

Doug Hertz: We did it with Volvo. If they'll put that much greenery around it, I would actually be happy.

Chairman Cosentino: We just approved a Lexus dealership, and when you go down Kisco Avenue, you see a row of metal. Wouldn't it have been nice if they had the foresight and brought something in like this to beautify that?

Stanley Bernstein: My understanding was that we did not want them to do that at the time they made their application. As long as we agree that all the other dealerships have the right to do the same thing, and we won't be arbitrary and capricious in denying them.

Ralph Vigliotti: Your point is well-taken. What precludes them is probably they don't have the property to do what they would want to do. While I was not a proponent of your original plan and even the eight-car plan – we're getting down to four and I'm getting closer to feeling comfortable – but, the other dealerships don't have the property or green space to accomplish this.

Stanley Bernstein: If that is true, they are at a disadvantage before BMW as far as selling cars.

Chairman Cosentino: I predict they will get a beautification award for this.

Joseph Morreale: This may provide an impetus for them to do something.

Stanley Bernstein: If we feel that we would allow something like this for the other dealerships, I would not object to it. But if we say this is the way it is, and the other dealerships can't get it, then it's arbitrary and capricious.

Rich Stavridis: They are all in the same situation we are. With Volvo, we had to engage it down to one and it looked very nice. They can do the same thing. We are not looking to line cars. We said this from the very beginning. The idea here was to make it very nice. It wasn't

going to be a used car lot, nothing like that. We wanted something tasteful.

Nanette Bourne: As you are looking up from Kisco Avenue, do you have a cross section that you've done?

John Slaker: We have not done it again, but we will for this submission. We spent a lot of time on this, and the last time I think we went too far before we received a judgment from the Board. We are here tonight to get a consensus that we can continue to proceed, provide all the details that you asked for, give you the cross-sections, have the steep slopes hearing, etc.

Chairman Cosentino: I think you have a consensus that the Board likes it.

Nanette Bourne: My question though is, Kisco Avenue is about 308?

John Slaker: The sidewalk level is about 308, yes.

Nanette Bourne: So you're looking up, and the cars will be at 318.

John Slaker: Yes. The picture is as you come up from the sidewalk – the existing slope is about a 2 to 2.5 on 1. We are going to continue that and landscape that through the base of a wall, which is 10 feet back from the property line. That lower wall is only going to be about four feet high. So the grade change is going to come up from 408, and then the base of that wall is at 312. The display area goes from 316 to 318 at the back, and then there is a six-foot wall at the back of that.

Nanette Bourne: Will you see the tires from the street?

Rich Stavridis: Yes because the front wall is not that high there. You will see some of the tires.

Anthony Oliveri: We had a memo back in January asking the details of the drainage, etc. We'll need to look it over.

John Slaker: Yes.

Doug Hertz: As part of the submission, what are you going to submit to help us understand what it will look like from street level and things like that?

John Slaker: We will give you "to scale" cross sections through here, there will be a complete landscape plan and new plant material that we are proposing to re-plant on the slope.

Doug Hertz: And a rendering?

Rich Stavridis: We were not planning on a rendering.

Doug Hertz: I'm saying something that we can visualize it from car level or up.

Anthony Oliveri: Maybe an elevation view to show the height.

John Slaker: Maybe we can give you is a profile or an elevation along the curb line so you would see the sidewalk, the bottom and top of the wall, the car in scale with the trees and the planting. A computer generated rendering.

Doug Hertz: That would help understand it.

Nanette Bourne: This is another wall?

John Slaker: Yes.

Nanette Bourne: There is no signage on it?

Rich Stavridis: We did talk about signage, because one of the things you had proposed was to delete this area up here and do something on the back wall. I want to have that as a possibility.

Nanette Bourne: The trees that you are taking out here. They have to be taken out because?

John Slaker: Those particular maples are in big trouble. We can get an arborist to give you his recommendation on it, but they are really in bad shape.

Ralph Vigliotti: If these have to come down are you going to put in new trees?

John Slaker: We are going to do shrubs and plantings.

Ralph Vigliotti: I know as you go down the road, you do see trees sort of lining Kisco Avenue. It would be a great idea if there were four or six.

John Slaker: One of the things we were trying to do was open up the view of the cherry trees.

Stanley Bernstein: Are you anticipating replacing any of those trees in any way? As compensation for the removal of trees, Mount Kisco always asks for additional tree plantings. It does not necessarily have to be on that property.

Rich Stavridis: We are not looking to do that.

Stanley Bernstein: There is a tree law, and there is a precedent. You have to bear that in mind before you proceed.

Nanette Bourne: I think the placement of trees will be required. It will have to go through with the public hearing required and your steep slopes permit.

Rich Stavridis: I understand.

Whitney Singleton: Have all the trees been sighted?

John Slaker: We will give you the complete certified survey.

Whitney Singleton: Some of these trees are not on your client's property, correct?

John Slaker: These maples are right on the edge of the right-of-way.

Nanette Bourne: For those trees that need to be removed, you have to go to the village board to get permission to remove them.

Rich Stavridis: That's if they are on village property, right?

Nanette Bourne: Yes. It looks that if the Planning Board approves it, it will be subject to the village board's approval, and then you will come back to the Planning Board. Final approval will be withheld subject to the village trustee's approving going on to village land and putting in trees.

Rich Stavridis: Thank you very much.

Special Discussion

**Nikolas and Stuart Pinnetti
38-40 Oakridge Road
ZBA09-05**

Chairman Cosentino: We have asked for different memos from The Highway Department, Ambulance Corp., etc. You have read the memos. The Building Inspector wrote a letter as well, which is in your packet. If it was read and approved by all Board members, we'd like to send it out as soon as possible.

Vice Chairman Sturniolo: It's a very good letter, Mr. Chairman.

Stanley Bernstein: I like the letter very much. "Oak Ridge" on some maps are spelled with two words, the official name might be Oakridge.

Austin Cassidy: There is no official name. It is anonymous on the official map.

At this point, the Board instructed Mr. Cassidy to remit the above mentioned letter.

There being no further business by the Planning Board, on a motion by Mr. Vigliotti seconded by Dr. Morreale, the meeting was adjourned at 10:18 P.M.

Respectfully submitted,

Stanley Bernstein
Recording Secretary

dm