

Mount Kisco Planning Board
Minutes
Tuesday, August 27, 2013

Chairman Cosentino called the meeting to order at 7:55 P.M. at the Municipal Building Mount Kisco, New York.

Members Present: **Chairman Joseph Cosentino**
 Vice Chairman Sturniolo
 Stanley Bernstein
 Enrico Mareschi
 Ralph Vigliotti
 Doug Hertz

Members Absent: **Sol Gibbons**

Staff Present: **Whitney Singleton**
 Anthony Oliveri
 Rob Melillo
 Jan K. Johannessen, AICP

Minutes:

Mr. Bernstein recommended postponing the approval of the minutes because of the abundance of paperwork received by the Planning Board that had to be reviewed.

On motion by Vice Chairman Sturniolo seconded by Mr. Hertz, approval the minutes of the meetings of May 29, 2013, June 11, 2013, June 25, 2013 were postponed.

The Hearth at Mount Kisco
270 Kisco Avenue
PB2012-15, 69.49-4-1 (SBL)

Present: **Mark P. Miller, Attorney at Law, Veneziano & Associates, representing the applicant**
 W. Charles Utschig, Jr., P.E./Associate, Langan Engineering
 Christian Sexton, Vice President, Development, The Fortus Group
 Carl Guy, Partner, The Fortus Group

Chairman Cosentino: Right now the Planning Board has no comment, as we just received the site plan and is too premature. I welcome comments from the staff.

Whitney Singleton: As you pointed out, the submission was very late. While staff is in the process of reviewing it, they are not in a position to generate memos in response to the submission. There will be upcoming meetings taking place to address the technical memo to provide some preliminary comments/feedback from the staff. Until the next meeting on this it is premature for the staff to comment.

Chairman Cosentino: As we just explained, Mr. Miller, I'm sure you understand. The public hearing will be kept open indefinitely.

Mark Miller: If we could have it set for the next meeting so it is dates certain?

Chairman Cosentino: Tentatively I will set it for the 10th, if you're ready.

Whitney Singleton: You should set it for the 10th and if they are not ready it could be adjourned to the 24th.

Mark Miller: I would note for the record that we had discussed with this Board back in July submitting the 100% full set of site plans by August 13, 2013, which we did.

Whitney Singleton: Certainly you want to make a motion to open the public hearing and keep it open. If there is no one here to submit comment, do you want them to make presentation as to the parameters to the application?

Chairman Cosentino: Yes.

Mark Miller: Procedurally you will recall at your July 9th meeting you reaffirmed your initial SEQRA findings and established tonight as the night to open the public hearings with respect to the special permit, steep slopes and the wetland permits that we need. We have also applied for site plan approval, but according to your zoning code that does not technically require a public hearing. The project is a 129 unit senior enriched facility located at 270 Kisco Avenue right across from Holiday Inn Drive. It is approximately a 17.7-acre parcel of land, which is currently owned by the village and has been leased to The Hearth at Mount Kisco with the right to purchase it on the issuance of improvements. (*Of the 129 units*) 89 units will be essentially assisted and enriched living. The other 40 units will be memory care. We have a new driveway, which we discussed with you at the last couple of meetings coming in off Kisco Avenue. We have gotten rid of the switchbacks and have one turn coming up to the main part of the building. We also have since the original submission flipped the building to put the memory care units based on the north side of the site and the assisted on the southerly side of the site. That was largely enabled by virtue of our coming to an agreement to principal with Curtis Instruments to provide secondary emergency access from the upper campus. The building consists of approximately 140,000 square feet, and under the parking requirements established for this use it is 1.4 parking spaces per unit, which works out to 181 parking spaces. We are proposing 91 parking spaces under the building, another 40 spaces at grade with the remaining 50 spaces also at grade, but we are requesting that this Board utilize the authority vested in them through the zoning ordinance to land bank that parking. You will have the absolute right assuming the conditions in the zoning ordinance are met at any time to require that we construct that parking. We are showing you the visual impacts with the landscaping. This is what we are here seeking the approval for.

Whitney Singleton: Is there any change in the ownership of this project? I believe the EIS proposed approximately one-half million dollars in tax revenue, and I understand that an application was submitted for tax exemption through the Industrial Development Agency (IDA).

Mark Miller: They will be seeking IDA financing, but we will have to negotiate any agreement, obviously, with the village. The ownership is the same.

Chairman Cosentino: Do I understand this is going to be tax exempt?

Whitney Singleton: As of tonight, since I've sat down here, we received a notice from the County that they will be conducting a public hearing with the IDA for this property seeking tax exemptions.

Chairman Cosentino: We did not know this.

Mark Miller: If the IDA induces this project, we will be entitled to a sales tax exemption on materials that we purchase, a mortgage tax exemption on anything that we finance and technically, and I super emphasize the word "technically," since the IDA is a governmental entity, the property becomes tax exempt, but we are required to negotiate a pilot agreement with the village to establish taxes.

Chairman Cosentino: I don't know about this "pilot" agreement.

Whitney Singleton: He is not incorrect. It's just something that was not represented as part of the application.

Chairman Cosentino: Please look into this and get back to the Board. This is very important to this Board, the village and the people of the Mount Kisco. We are now concerned.

Ralph Vigliotti: It's more than a concern. If our attorney did not bring this forward this evening, it would not have been placed in a public forum for us even to hear, never mind the public.

Mark Miller: I understand.

Ralph Vigliotti: I feel like we've been deceived, and thank you, Whitney, for doing your due diligence in finding out this information, because we would not have gotten it this evening. I'm upset because, we didn't fast track this, but we tried to move along quickly knowing that this could be good for the village tax-wise as well as possibly a facility that may be good.

Mark Miller: I understand. I am confident that the Village Board, with counsel from Whitney, will address the pilot agreement appropriately to protect the village's interest.

Ralph Vigliotti: How far back were you in contact with IDA, or was IDA in contact with your organization?

Mark Miller: We first started thinking about the IDA probably when The Hearth took over from Westchester Residence and Club. Candidly, our office is not handling the IDA application. Whitney telling me about the public hearing frankly is the first I've heard about it as well.

Chairman Cosentino: I speak for the entire Board. We have one of the best attorneys I've ever seen. Whitney, I leave it up to you. I am upset and I need this in my mind that is this going to be straightened out to benefit the village.

Vice Chairman Sturniolo: (to Mr. Sexton and Mr. Guy) You just heard a lot of talk about IDA. Does any of this come as a shock to both of you?

Christian Sexton: The IDA from our perspective has been a financing opportunity, which has been out there for months. The route we are currently looking to explore is not IDA financing, other than the benefits for sales tax relief and the mortgage exemption. As part of that, we are being told there is a mandatory pilot agreement for the IDA sale-leaseback provision.

Vice Chairman Sturniolo: Was that information ever released in any of the documents that were sent to the Planning Board?

Christian Sexton: The Planning Board, in my opinion, is planning, entitlement, land use. Financing is, from an owner perspective, our proprietary information on how we finance this property. Whether this is an all cash deal or a 100 percent finance deal, we have to have the planning in place.

Vice Chairman Sturniolo: Obviously. What do you think brought this to the current level of concern, right now, tonight?

Mark Miller: As part of the IDA process, as Whitney indicated, the IDA is required to hold a public hearing on this. Apparently, the IDA just issued the notice of that hearing. I did not know that they scheduled the hearing, but that is their process to hold a public hearing before they can take any action on inducing this project.

Vice Chairman Sturniolo: I share the Board's sentiments finding this out now.

Chairman Cosentino: I agree, but I agree with Chris. Financing is their business and planning is our business.

Stanley Bernstein: I disagree with that. Financing is our business as well. This entire project was sold on the fact that the village can make some money on it. It's an abomination, and now it's even worse. The original concept, when it was "The Club," was like Mount Kisco had a train wreck and both arms and both legs would be missing. Now, it's so much better, but only one arm and one leg would be missing. On top of that, the village is not going to make any money on it. We have not even discussed the steep slopes issue, which is an abomination. You are building 500-600 feet long walls, when the steep slopes (*regulations*) call for no more than 50-foot walls.

Whitney Singleton: The economics of the sales of this property are independent of the Planning Board's review. The fiscal impacts of the project are an appropriate scope of your Board's purview. In that regard, the impacts on the school district and the community are relevant, and they were not disclosed. The Environmental Impact Statement does speak to revenues, but at the same time the IDA entitles them to certain benefits, and that is why there is a public hearing associated with this. I am sure Mr. Miller and company will address what pilot to the payment of taxes is appropriate if in fact they go through the IDA and become a tax exempt organization. They will be making payments to the village and to the ----- in lieu of what would normally be tax payments. It comes as a shock to me to

find this out tonight. It does not mean that the terms of this transaction are any different.

Doug Hertz: What is our process going forward with this continuing past the public hearing?

Whitney Singleton: Staff is in the process of generating a significant number of comments that they want the applicant to address. Jan, Anthony and Rob have been working on that. There is also feedback coming from the fire department and other entities evaluating the substance of their proposal. Those comments are going to start to flow back to the applicant starting tomorrow, and they are going to have to address those and come back before your Board. Each and every one of those needs to be addressed. We did have a prior staff meeting to address the fact that the substantive issues need to be evaluated and determined by your Board. Some of the more technical issues can be resolved before your Board makes any substantive decisions. Once the public hearing is closed and all the information is before your Board and you relay any public comment or comment from other Board members or staff, etc., you make a determination on the site plan, the sensitive natural resource permit and the special use permit. Any variances that need to be obtained from the Zoning Board of Appeals will be sought from that Board as well as anything that needs to be obtained from the Architectural Review Board. Once everything is in place, including from other agencies outside of the village and DEP and DEC, they can move forward with their project if they get all their approvals. One of the things Mr. Miller pointed out, it is pre-arranged that they were going to be submitting the middle of the month. The problem is that it is a very comprehensive plan and they have made significant alterations to what was previously there. I think it's widely accepted that they are positive changes to the plans, but they are significantly different. There is a lot less impervious surface, there are changes in the emergency access, changes in the road systems, fire protection, and they need to be evaluated. It is a different plan.

Doug Hertz: Do we have authority with regard to steep slopes and the way the steep slopes (*ordinance*) is written? Some of these things are very large deviations from what the ordinance intends. Do we have jurisdiction, and to what extent do they have to receive? Is any of that within a variance in zoning or is that purely in the Planning Board's discretion?

Whitney Singleton: When you say "purely" in your discretion, it is within your reasonable discretion, yes. You cannot be arbitrarily capricious in any of your determinations, but it is within your discretion, just as is site plan approval, special use permits, steep slope subdivisions, etc.

Vice Chairman Sturniolo: I think tonight, Mr. Miller, you are hearing a slightly different tone from the Planning Board than in the previous meetings, and a more open eye for what is going on, if you have not already deduced it.

Chairman Cosentino: Duly noted, thank you. We will keep the public hearing open and we will see you on the 10th.

Public Hearing:

**Charles Morgan
Morgan Subdivision
21-27 Ward Avenue
PB2010-13 (SBL) 80.26-1-5**

**Present: David S. Steinmetz, Attorney at Law, Zarin & Steinmetz – Attorney for the Applicant
Peter J. Gregory, P.E., President, Keane Coppelman Gregory, Engineers, P.C. – Engineers for the Project
Charles Morgan, Property Owner**

From the Public:

**Donald Ford
4 Brook Street**

**Maria Cascioli
49 Ward Avenue**

Anthony Oliveri: We have been working with the applicant's engineer. The building inspector had a few comments mainly to do with building coverage development calculations, which actually are on the plan, so those have been addressed. There was a question about frontage on a town-improved road, as the road itself needs to be improved. I do not believe it does.

Whitney Singleton: As the building inspector pointed out in his memo the issue of frontage and suitability has been raised by the Building Department. He previously asked the applicant to address that, not only from a perspective of ownership of the road, status of the road and the right to traverse beyond the centerline. This lot and the other lot not only for ingress and egress, but water and sewer as well. That is an outstanding item that the applicant has not addressed yet. It certainly needs to be addressed and Brad indicated that it would be done.

Peter Gregory: I think we've been able to represent that we've been able to keep those improvements in terms of the utility connections for both properties on that side of the Morgan side of the Ward Avenue right of way. We were asked to take a look at that.

Whitney Singleton: Right, but what ownership do you have of that drive?

David Steinmetz: When you are referring to the drive, are you referring to the portion of Ward Avenue in front of Mr. Morgan's property?

Whitney Singleton: Yes.

David Steinmetz: I thought Brad had supplied you with copies of all the Deeds as well as the indication that we own to the centerline of that area.

Whitney Singleton: If he did I'd have to go back. This is clearly the

public hearing, but that was an issue that needed to be addressed. I will go back to see if Brad has addressed it.

David Steinmetz: Unfortunately, I am here pinch-hitting for Brad. He had supplied all of that literally two years ago, so nobody would remember. The deeds reveal that the adjacent properties all own to the centerline. I thought he provided you not only the information from the title company, but also the case law that indicates that if you own adjacent to a paper road of this nature, you are able to suitably improve it for purposes of bringing in utilities.

Whitney Singleton: For public access. I don't know anything about a different filed map having rights across this. It's something that we specifically discussed, and he said he would provide.

David Steinmetz: We will go back and look into that. Let's talk about the 280-A for a second. We very briefly saw Ralph's memo. My understanding is, and Ralph does not address it in his memo, there is a section of the village code, 94-14, which appears to give your Board authority to grant waivers on various aspects of road and other associated improvements. This is an issue that I don't believe has ever come up previously in this application, and this lot line change application has been before the village in one form or another for quite some time. The good news is I think the drainage issues have been substantially if not almost completely resolved. I think we have a pretty good idea, now that the village is doing it's work on Brook Street, that work in conjunction with what we are proposing hopefully is going to not only benefit Mr. Morgan and his property, I think it benefits the neighbors in that area that have a fair amount of uncontrolled runoff that will be addressed by a 36" pipe that is being put in. We believe the road improvements and the drainage issues have been addressed and are about to be resolved. I think your Board, with Whitney's guidance, needs to decide how we deal with: Do we improve Ward to a larger extent or do you determine that a driveway going in there will provide access to Mr. Morgan's property, still safe access to fire engines and emergency vehicles? We avoid putting in an unnecessary amount of impermeable surface area. That is your decision.

Anthony Oliveri: On the sewer service to the rear property, are you not going to have an easement? Mr. Morgan owns to the centerline of Ward Avenue. There needs to be an easement.

David Steinmetz: Either Jan or Ralph put that in one of their memos.

Anthony Oliveri: I believe the drawing still shows the storm connection on the other side of the centerline. Is that something you are going to revise?

Peter Gregory: We will look to see if we can bring it back on to that side.

Whitney Singleton: While this is supposed to be a public hearing, I will address what David said about the access road. Under 7-736, we brought this up at the very first meeting with the applicant, and it was discussed with this Board that the suitability of the road improvements for particular circumstances of this lot are within your Board's discretion under state law and village code. The question is this:

given the fact that there is no further lot beyond this that can be developed, is their proposed improvement sufficient for emergency access for all purposes including fire fighting and other emergency services? This is something your Board is very familiar with on other recent applications.

Chairman Cosentino: I'm sure the Board needs to talk about this more. This has nothing to do with the public hearing at all.

Donald Ford: All the work that they are doing on Brook Street is not going to take care of the water that comes down in the back. It runs through his property. The water comes right across his property into my yard. He is going to have to do something. I don't know what his plans are, and I don't want to know right now. His driveway is coming in on the paper road. Is he getting half of that road?

Anthony Oliveri: Part of the driveway is in the paper road. Are you the next house down?

Donald Ford: Yes. I've been there since 1954.

Peter Gregory: Our intent was to provide a form of a bypass. We originally thought that if that pipe was impacted by debris, we would provide a means for that water to have a path to get back into the drainage system and alleviate some of the conditions you are experiencing. Capturing that overland flow and redirecting it back out to where it was intended to go out into the street. One of the concerns was taking that redirection and putting it into a system that was inadequate. I believe at that time when we were discussing that, the village authorized a study, and ultimately authorized the improvements to Brook Street, which then gave us a legitimate connection point at that intersection.

Donald Ford: So you are going to come up and then dump into the storm drain at the top?

Peter Gregory: That is the plan right now, yes. In addition, there will be swales that will direct the surface flow around the property and get it out to those drains that go out into the street. In the event there is significant, severe storm event, there would still then be the occurrence where you could experience over inflow coming across the property, but it may no longer be flowing in your driveway and up against your house. It would probably be directed more toward the rear of your property where it wants to go, ultimately down the rear of those properties to the brook. This is how we arrived at this design at this point in time.

Donald Ford: Thank you.

Maria Cascioli: I came here because this is all new to me. I have a question in reference to the lot size of the properties on Ward Avenue and Brook Street. What size are they? Is this lot size that they propose to build on the same as all of the other lots?

Peter Gregory: Generally they are consistent with the other lots. There may be some that are a little bit larger, but we do meet the minimum requirement on this particular vacant parcel.

David Steinmetz: For the record, we are in the RM-6.

Chairman Cosentino: That is 6,550 square feet.

Maria Cascioli: Will the level be built up? Will the soil be built up to meet the level of the property on the front part of Mr. Ford's and the home on the other side?

Peter Gregory: There will be portions of the property that will be elevated, and then it will blend in around. We have configured this in a way where the house itself will be in character with the other homes that are on both sides. We will do this in a way that we will not direct with the re-grading any runoff onto the other properties. It would be captured and introduced into the system before it leaves the site. It is being elevated mainly to provide for the utility connections out to the street.

Maria Cascioli: Coming down Ward Avenue to Brook Street is a very sharp dangerous corner. Since we have a lot no parking signs but a lot of parking, most sides of the road are taken up with cars parked in which, to be honest with you, it's almost impossible to get emergency vehicles such as a fire truck to get through there. But coming down around that corner is really quite dangerous and quite sharp. I have a concern of having three driveways right next to each other.

Chairman Cosentino: As far as the parking on both sides of the street, you have to take that up with the village manager.

Maria Cascioli: I know that has nothing to do with this, but I am just laying that out. It's a concern because you have three driveways with cars coming in and out. If you come in and out of that road you will see how severe that is.

Chairman Cosentino: We will look into it.

David Steinmetz: The applicant will join in Ms. Cascioli's issues. If, in fact, there are issues the village needs to enforce, that's fine. We are prepared to abide by that "no parking." We agree with you.

Donald Ford: Mr. Ward's driveway is coming out of Pietell's (sic) driveway, right?

Peter Gregory: Yes. It's aligned with the Pietell driveway. We are not going on top of yours.

Donald Ford: That is only a one-family house, right?

Chairman Cosentino: Yes, the zoning is one-family. We will close the public hearing and keep it open for 10 days for written comment.

Motion to Close Public Hearing:

Motion: Vice Chairman Sturniolo
Second: Enrico Mareschi
Aye: Ralph Vigliotti
Aye: Doug Hertz

Aye: Stanley Bernstein
Aye: Enrico Mareschi
Aye: Vice Chairman Sturniolo
Aye: Chairman Cosentino

Jan Johannessen: We have a few comments on the EAF and on the plan, we would like to applicant to address those comments and provide a re-submission prior to any resolution to be adopted by the Board.

David Steinmetz: Absolutely. We received both Mr. Johannessen's memo and Mr. Tarchine's memo tonight. We will address them in writing and would be most pleased if we can come back before the Board potentially to discuss a draft resolution. I know we have some legal issues that we have to resolve with Whitney, and we are prepared to do that.

Chairman Cosentino: I will tentatively put you on for the 10th. We have a large agenda for tonight. Nancy will call you.

David Steinmetz: Thank you.

Conceptual Review

Kisco Smith, LLC – 75 Smith Avenue
80.41-1-4
Site Plan and Change of Use

Present: Michael Macri, Structural Engineer, Grossfield Macri Consulting Engineers – Engineer for the Applicant

Chairman Cosentino: Are you the contract vendee?

Michael Macri: Actually, my wife is.

Michael Macri: We are in the process of looking into buying this small building at 75 Smith Avenue, and we would like to turn this into an office in the O.C. District. There is a typo on our drawing about the parking. I would like to go over Mr. Johannessen's memorandum. We expect to look into getting a variance for the side yards and for the parking. On there, it looks like we assumed that seven was correct, but it's seven plus five. We would need 12, but we were going to go for a variance for the five.

Doug Hertz: Please explain what your application is. This is conceptual, so give us a concept.

Michael Macri: The concept is to change this property into commercial property by doing some minor interior alterations and providing for parking in the back along with the proper drainage to take care of the extra impervious area. We would like to keep the property looking residential, which is in the interest of Mount Kisco village. We would maybe spruce it up with a little more plantings, etc., but pretty much leave it looking like a house. We are not looking for a sign. We are happy with our mailbox and our number. We are structured as we have very few visitors. The size of the house is as we say, 1,880 but in realities, in order to get that we would have to go for a special exception in the building code for the heights, etc. It is possible that

we might only get the first floor. We are looking to try to renovate the basement into habitable space and also the attic, which is just a little smaller than it needs to be, but we believe that we might be able to get relief from the building code on those items. That is why we put in the full 1,880 square feet and use that for our parking calculations and for the seven spaces, which again we know we are shy on. I believe you have in your packet the conceptual idea of our plans. We have plans and elevations of the existing building, which we have no intentions of changing the outside to make it look any more commercial than it does. If anything, maybe some more plantings in front and ornamental shrubbery. We realize that we have to provide for the site plan under 110-45-D of the zoning code and also 110-32, which is the lighting. We are not expecting to change any façade or exterior of the building. In Mr. Johannessen's memorandum there is also a note that there is some issue with the owner's application. We did provide the proper one afterwards that was signed by the existing owner's attorney. I believe that is in the file. Of course, we are willing to sit with the village at any time and go over our intentions.

Chairman Cosentino: Have you sat down with the Building Department yet?

Michael Macri: I sat with the Building Department in the beginning to try and get some idea of what needed to be done, but we are not doing anything but some minor changes.

Chairman Cosentino: You still need to sit down with the Building Department.

Michael Macri: Yes, we do because we are going to need some relief on those head heights.

Chairman Cosentino: I suggest you do that. Mr. Melillo is our building inspector. He will make comments. When you are ready to apply, see Nancy downstairs.

Stanley Bernstein: Are you anticipating fill in the back to build up that parking lot?

Michael Macri: We do slope, and we are expecting to bring in a minor amount of fill just to get.

Stanley Bernstein: Minor?

Michael Macri: No more than about three or four feet.

Stanley Bernstein: From my memory it looks like there is going to be quite a bit of fill going down to the swale. You have a very deep swale now behind your property.

Michael Macri: Yes, but we are staying from that very steep slope and we are only bringing in what we need for the parking lot.

Stanley Bernstein: Are there any trees there now?

Michael Macri: No. If anything, there is a big tree in the back that might need to be pruned a little bit.

Doug Hertz: is this the property next to 77?

Chairman Cosentino: Yes.

Michael Macri: We are not going to be very much higher than both neighbors. We will need a retaining wall in the back, but our property is actually lower at this location where we are filling than the adjacent properties on both sides, so it will actually be more level across the three properties when it's done. Of course, beyond that it does drop down and we don't want to touch that. We did not want to increase the impervious area. We feel very strongly about most professional offices not needing more than this amount of spaces. To go to 12 spaces, we would be almost at the end of the property, which, as you know, is probably a 15-foot wall. We did not feel that was warranted.

Stanley Bernstein: Would you consider pervious concrete?

Michael Macri: Quite honestly, when we do gravel calculations we tend to do that as impervious area. In fact, with the impervious area that we are proposing and the drainage system, we are actually in reality going to lessen the water that is traveling towards the back of the property a lot more than you can show by calculations. This swale is actually an overflow.

Chairman Cosentino: Get in contact with the Building Department so we can get their comments. You will also have to work with our engineer.

Anthony Oliveri: They need to go to zoning at this point for zoning variances. That is key for this application.

Chairman Cosentino: They need to get denied from the Building Department first.

Michael Macri: We need zoning variances, a variance for parking and a side yard variance. The building code modification that we will be looking for will be a separate thing and won't enter into this. If we get it, we get it. The variance for the side yard and for the parking – if we don't get that, we are not going to buy the property.

Robert Melillo: You'll need a State variance.

Michael Macri: To use the downstairs and upstairs. We are willing to buy the house, even if we can only use the first floor.

Doug Hertz: The termination of parking should be our determination. The determination of the amount of spots you need is ours, and if you have a shortfall, that will be your requirement from the Zoning Board to get relief from that.

Whitney Singleton: The parking is determined by the code. The code puts a provision for "X" amount of spaces per square footage. The applicant is assuming full utilization of the building including the basement, thereby enabling him, if he is able to get the variance for both the parking and the setbacks, so he can utilize the entirety of the building. That is why he is going to the Zoning Board for his requirement of 12 spaces. That requirement is two-fold. It is a function of the minimum threshold five spaces plus the rest being

calculated on the square footage of the building. Not the building that is currently being utilized, but the maximum potential use. He is going for a variance of five spaces but is proposing seven. With regard to it being discretionary with your Board, your Board does not have the discretion to reduce the spaces. Your Board has the discretion to increase the spaces.

Doug Hertz: So, it seems premature for the applicant to go before the Zoning Board before we even have a narrative that explains the use of the building, the density of the use, the number of people who are going to be in it, so that we can come up with a reasonable understanding of what we think the parking at this site should be.

Whitney Singleton: To bootstrap onto that, the applicant going to the Zoning Board of Appeals cold without any temperature of having a take on this Board does not do either the Zoning Board or the applicant a service. If you're looking at the plans in front of you, the applicant has tried to design the site to be code-compliant for the size of the spaces, for the travel lanes, etc. That is why he needs a variance from the buffer requirements. It may be that your Board, rather than have him get a variance for the buffer, would prefer to see the travel ----- less than 26 feet and less impervious surface.

Doug Hertz: It is my opinion that asking the applicant to go before the ZBA before we've had a chance to vet the project and fully understand it, and make suggestions to get it to a more complete point is premature and counterproductive. We should move this from conceptual to a formal application. He should meet with the building department to determine what on his current site plan would need variances and then come back here and we'll see if, through the planning process, those can be minimized in some way. Then, we can better identify that your site plan may get modified in some way, which may require more or less relief from the Zoning Board.

Michael Macri: You're telling me that if you send me to the Zoning Board and they tell me that it's okay for seven spaces, and I come back to you, you can turn around and say you want eight spaces or more?

Doug Hertz: We often do.

Stanley Bernstein: You don't go to the Zoning Board unless the Building Department denies your application.

Michael Macri: He has to deny it. The side yard doesn't work, so in turn the spaces don't work.

Whitney Singleton: I think they are saying that the Zoning Board will frequently send you back here looking for input from the Planning Board, particularly when it comes to navigating turn-arounds, the logistics of parking, drainage, etc. They don't want to substitute their judgment by the Planning Board and they look for input from the Planning Board.

Michael Macri: What information is lacking for you (*the Planning Board*) to give them input now? Everything is here.

Doug Hertz: A formal application would be a narrative.

Michael Macri: In another month?

Doug Hertz: Yes.

Chairman Cosentino: I will tell you again. You need to go to the Building Department for a building permit. He will deny you. You will come back before us with a formal application. Then we start talking about what you're going to need and what we would like to see.

Doug Hertz: If you go to zoning before, they will put off a decision until Planning Board is finished.

Anthony Oliveri: With that procedure, you will go to zoning with recommendations on the layout and the number of spaces from the Planning Board, which will probably give you a better chance of getting a variance.

Michael Macri: Except that will put me out two months and I can't buy the property.

Chairman Cosentino: There is a process here. You're an engineer, I'm sure you go through this a lot.

Michael Macri: I thought that it was a lot more clear that you guys would send me to zoning and zoning would do what they had to do about the spaces. It's in the zoning code.

Chairman Cosentino: I can't send you to zoning. The Building Department is going to deny you, and they are going to send you to zoning at the end of the day. But this is a process. First is the conceptual, and come back before us with the formal. We will tell you what you need, and then you will go for a variance on what we said.

Michael Macri: I understand.

Whitney Singleton: I also do not think, based upon the logistics of the schedule, one would necessarily cramp the other. It is very possible that you're back before this Board before the Zoning Board has their next meeting.

Chairman Cosentino: I will not hold this process up for you.

Michael Macri: Understood. Thank you.

Formal Application:

**Mount Kisco Country Club
10 Taylor Road
PB2010-17, 80.62-1-1 (SBL)
Site Plan and Wetland Permit**

**Present: John Kellard, P.E., Kellard Sessions Consulting, P.C.,
representing Mount Kisco Country Club**

Mr. Johannessen was Recused from this discussion.

John Kellard: This is a project we had prior to becoming planners for the village, and Jan has to recuse himself.

Vice Chairman Sturniolo: Thank you.

Chairman Cosentino: I don't know what is going on here, and I don't know if the Board knows what's going on.

Anthony Oliveri: Why don't we let Mr. Kellard give a brief description of what they are proposing?

John Kellard: As you know, a golf course requires quite a bit of water to function. The only source of water for irrigation for the golf course is an irrigation pond that has been on the site that we have used for decades to irrigate the course. Over the years that pond has silted in from normal flows to the brook. When the brook flows into the pond it silts down the velocity of the water and the sediments settle down. Last year the club experienced a very critical period when the water levels were so low that they may not have enough water to irrigate the course. We are looking to perform a maintenance dredge on the irrigation pond. The maintenance dredge would only remove the sediments within the pond. We prepared plans, we went out in the boat and measured the top and bottom of the sediment, and we've calculated the yardage that would have to be removed from the pond to restore it to its original average normal depth of six feet. That would require between 7,000 and 9,000 yards of material being removed from the pond. We are proposing to do it by hydro-dredge. It is floating a boat inside the pond, a vacuum pump system which would suck up the silt, pump it up to the hill to what we would build as a decamp basin adjacent to the club's maintenance area on top of the hill. The slurry, which is the sediments in the water from the pond, would be pumped up to the basin. The material would be allowed to settle out. The water would settle out at the mix. It would be filtered and piped back from another pipe system, returning back to the pond. During the process, we would lower the water elevation in the pond so that there is no discharge, and we would divert the water around the pond so there is no additional water going through the pond when we are doing the work. The process of dredging would be about one to two weeks worth of time, so it's not a long process; but prior to the actual dredging process we would have to construct a decamp basin, which would require re-grading. We are looking to do the work in the winter months when the flows are at their lowest. We try to avoid the spring and the fall periods when we have larger flows.

Chairman Cosentino: I would gather there are going to be permits?

John Kellard: We are required a New York State DEC (*Department of Environmental Conservation*) wetland permit. We actually brought this project to Anthony in the fall of 2012. Anthony suggested at that point that we go right to DEC and obtain the DEC wetland permit.

Anthony Oliveri: There are a number of permits that are required with this application. We generated a memo. As you mentioned, the Department of Environmental Protection wetlands permit is required, which they have gotten. I have some questions on that permit. You mentioned the beneficial use determination that they made. You are re-using sediments. I wasn't sure if the DEC permit covered the deposition of the dredge material as well.

John Kellard: That is outside of the wetland buffer. The decamp basin is not in the wetland area. The DEC permit was primarily to dredge

the pond itself, which is the DEC wetland.

Anthony Oliveri: It is directly adjacent from the buffer.

John Kellard: It is about 100 feet from the wetland.

Anthony Oliveri: I was not sure if you were going to end up going into that buffer.

John Kellard: We are not.

Anthony Oliveri: The base of the slope of the decamp basin is right at the buffer. There is no margin of error there.

John Kellard: We will survey that buffer and put up a construction fence.

Anthony Oliveri: Did the DEC pass the wetlands?

John Kellard: Yes. We provided a storm water pollution prevention plan with the application. The Department of Environmental Protection (*DEP*) was involved in the DEC process. They commented during the SEQRA process on it. They don't have a permit process because the disturbance is less than two acres.

Anthony Oliveri: You mention in the report an administrative wetlands permit. I believe it's actually a Planning Board approval because it is a site plan amendment to the major application.

John Kellard: We will modify the report to clarify that.

Anthony Oliveri: You may need a steep slope permit because you might be in some areas of steep slope at the decamp basin.

John Kellard: We will modify the wetland permit to include the steep slopes. It's a small area.

Anthony Oliveri: It's a small area, but it will have to be part of that application. I don't think you had any final grading for the decamp area.

John Kellard: We did. It was a red line in the legend, because it's going to be flat.

Anthony Oliveri: The next thing is plantings in that area. I don't know if you have anything proposed at this point.

John Kellard: DEP recommended a seed mix of grasses, which we included in the plans, and that's what we intend to do. We don't want to plant trees, because it's going to settle.

Anthony Oliveri: Please indicate that somewhere on the plan.

John Kellard: There is a whole section on the detailed sheet of the grasses. We had a tree survey, which showed all the trees that will be removed. It was a separate sheet in the package.

Anthony Oliveri: There were some comments here about stabilizations of the banks. You need some detail on that. It is also going to require

a flood plain development permit, which is issued by the building inspector. There is a whole host of permits here that you have to go through. There is a fill permit and a tree removal permit.

John Kellard: I think we provided all the applications and the application fees.

Anthony Oliveri: Check your short Environmental Assessment Form. I don't believe you are listing all the permits on here. I would suggest you go through this and address whatever is outstanding here.

John Kellard: We actually have everything drafted. I did not want to submit it before tonight's meeting. We will probably submit it in the next few days.

Doug Hertz: Is all the material that you're dredging out going to remain on-site?

John Kellard: Yes. We have approval from the DEC. It's called a Beneficial Use Permit. We actually took six samples of the material in the pond to send to a lab. We had a detailed analysis of the material. We send it to DEC; they reviewed it and made a determination that it can be left on site. In fact, the project isn't economical if we had to take it off site.

Ralph Vigliotti: Can you describe the decamp basin? Size, acres of land, how much, how many trees? The total disturbance? You sort of skipped past that.

Chairman Cosentino: Is the tree a different project altogether?

John Kellard: No. It's a separate tree plan that was prepared.

Chairman Cosentino: Does it have anything to do with the dredging on the application that we are talking about tonight?

John Kellard: Everything here is all associated with the dredging.

Anthony Oliveri: I think the Chairman was referring to the other application, which discussed trees throughout the golf course.

John Kellard: That is not part of this.

Chairman Cosentino: We need to hear what's on this application before us tonight. If the trees are a different application altogether, that is not before us tonight.

John Kellard: We will be removing trees, but only the trees required to build the decamp basin.

Ralph Vigliotti: How many? What size?

John Kellard: It is all included in the package. We provided a detailed grading plan. The decamp basin will disturb 1.3 acres an area. It is a re-grading of a slight slope in an area adjacent to the maintenance area of the club, out by the sixth hole. We will excavate and berm to create this basin. We would then pump the dredge material up to the top of the basin, let it come into the basin and have a return flow back

to the pond. The material would fill up this basin. This will fill up 9,000 yards of material. We expect over the three to six month period as that materials sits here and water is drained out, it will go down to about seven yards of material.

Ralph Vigliotti: How many years will you be able to gain doing this dredging?

John Kellard: We are recommending to the club a second project down the road of installing a sediment basin before the pond so that we can collect it in a sediment basin that is designed to go in and be removed every few months so the pond never gets back to this condition. It's a separate phase and will probably come some years down the road. It will cost money to do and obviously we will have to come before the Board for your approval. At this time they are very concerned that if they lose the supply they lose the golf course. They have no connection to the municipal system, and they rely only on this pond for irrigation.

Vice Chairman Sturniolo: What feeds the pond?

The Board members now referred to Drawing #1 in the packet.

John Kellard: This is (indicating) Route 117. The clubhouse is on the north side. This is New Castle, and this is Mount Kisco. There is a brook that runs through the club itself. The drainage area goes up to Whippoorwill Country Club in New Castle. That is a complete drainage area. It goes through Whippoorwill Lakes.

Stanley Bernstein: Isn't that North Castle?

John Kellard: The drainage divide is in North Castle.

Stanley Bernstein: Isn't that the Chappaqua Creek?

John Kellard: Yes, from the New Castle side. When you get on the North Castle side it goes back. The clubhouse is in New Castle; part of the course is in North Castle. It's a large drainage area coming down and part of the road of 117 comes in here also.

Enrico Mareschi: Will the course be open while they do the work?

John Kellard: Yes. There is a path that goes through the site now that is all paved. They won't have to do any access roads.

Stanley Bernstein: Are you telling us that this tree plan is not part of --
-----?

John Kellard: Yes, that tree plan is.

Stanley Bernstein: Why do almost 200 trees have to come down?

John Kellard: I think there are 160 trees in that plan. There is a list on the side.

Stanley Bernstein: 191 trees. Is this within the basin?

John Kellard: Yes.

Stanley Bernstein: These trees grew up in the basin?

John Kellard: No, not the irrigation basin, where the decamp basin is going to be.

Stanley Bernstein: In other words, you have to remove the trees to form that other basin?

John Kellard: Yes.

Stanley Bernstein: That's a lot of trees.

John Kellard: Yes. A lot of them are small, six to twelve inches in size.

Stanley Bernstein: Looking at this, on the first page, Item D, 99-7: "In addition to any special improvements as defined in this chapter, --- and spillage shall be replaced -----." Are you prepared to replace those trees?

John Kellard: No.

Stanley Bernstein: How can you do that? When you get a tree permit you have to do it.

John Kellard: We have 150 acres here, which has a lot of trees on it.

Stanley Bernstein: That has nothing to do with the tree permit. We have had other applicants going through the same process and we insisted that they replace the trees.

John Kellard: Do they have 150 acres of trees?

Chairman Cosentino: I think I'm getting his point. Anthony, you issue the permits for trees.

Stanley Bernstein: He's supposed to according to the tree plan, but they don't do it.

Anthony Oliveri: One of my comments was that there is no planting, just tree removal and planting of grass. Mr. Kellard made the statement about it settling - that they didn't want to put trees there. There might be some point when you can plant trees there and maybe replace the same number of trees around the property. That is something the Board should certainly discuss.

Chairman Cosentino: I have one Board member here bringing out the code and a client saying there are 150 acres of trees. At this point, it's very confusing.

Anthony Oliveri: I will look into the code and handle it.

Chairman Cosentino: Thank you. Right now I'm confused.

John Kellard: Our issue is that we have too many trees. The club has a problem with the trees over the years, growing in and not getting the air around the greens, etc.

Anthony Oliveri: I will look into the code and what it requires.

Stanley Bernstein: Let me point out something. You sat through that Ward Avenue discussion. That, at one time, was completely forested. There was no water problem. The only reason there is a water problem is because the trees are removed and impervious surface came down.

John Kellard: When this golf course was built, there were probably ten percent of the trees in this golf course that there is now. There is probably 10 times the amount of trees.

Chairman Cosentino: Anthony will clarify this, and we will talk about it when we meet again.

John Kellard: May we schedule a public hearing on this matter. I believe we can respond to the issues on Anthony's memo within the next few days. Our only concern, if we are going to do the dredging work in the winter is that I would like to build the decamp basin while I can still see the slopes and stabilize it.

Chairman Cosentino: We can schedule a public hearing, tentatively for the 10th.

Whitney Singleton: You are not going to be able to schedule it for the 10th. They can't make the notice requirements.

Chairman Cosentino: We will schedule it tentatively for the 24th.

John Kellard: I appreciate that.

Formal Application:

**New Cingular Wireless, PCS, LLC (A T & T)
304 Lexington Avenue
80.39-1-1 (SBL)
Amended Special Use Permit and Amended Site Plan**

**Present: Neil J. Alexander, Esq., LEED AP
Cuddy & Feder, Attorneys at Law**

Neil Alexander: I know you're very familiar with the Oakwood Cemetery site. I think Jan did an amazing job. If you read his memo already there is probably very little for me to say. If not, I can try and summarize what he summarized already. Basically, when AT&T was last here, it got 12 antennas approved. It put six up and it wants to put three more and some addition equipment both at grade and on the tower itself. As outlined in the plans, we're inside the existing fence compound. In fact, we are on the existing concrete pad, where one cabinet is getting stacked on top of another cabinet, and ultimately no taller than the tallest cabinet that is in there already. There is an additional little bit of ice bridging occurring. There is really not much of an installation. We gave you a lengthy letter. I will not bore you with what Whitney and I went back and forth with the building inspector as far as change of use permits and the latest enactment of the federal system into our land use of wireless with Section 6409. I would have hoped that we could walk away with our approval tonight. I have a feeling that is not possible and we need a public hearing, so the 24th would be a great day to come back.

Chairman Cosentino: I would be more than happy to accommodate you. On the memos, we are going to need everything that you need to do.

Neil Alexander: It's outlined on the drawings, and it's outlined on the narrative.

Chairman Cosentino: We need to hear from all of our consultants also.

Neil Alexander: I think you did.

Chairman Cosentino: Where? I don't see it.

Jan Johannessen: I provided a memo.

Anthony Oliveri: There is really no site work.

Chairman Cosentino: I agree.

Whitney Singleton: The only thing your Board traditionally requires is that RF (*Radio Frequency*) engineer, and I've discussed this with Neil previously. We realize that this type of application is not only contemplated but is encouraged under a zoning ordinance; however, it is a traditional practice of your Board to retain an RF engineer at the expense of the applicant to review their proposal. My recommendation to you would be to get that process started as soon as possible.

Chairman Cosentino: The application has to be complete.

Neil Alexander: It is a complete application. In fact, under federal law you cannot deny it. You must approve it.

Chairman Cosentino: We didn't say we were going to deny it.

Neil Alexander: I'm not saying that. We already gave our \$2,000 check. My client is not a big fan of the idea of having an additional review. I know it's yours. I have to do my job. I know you're going to say no, but I've got to do my job.

Chairman Cosentino: And we have to do our job.

Neil Alexander: We are doing a little bit of a dance, but I got you. We are pulling up the emissions report that we did submit. I made this comment to someone else on staff already. It's one percent cumulative. Could somebody have a fat thumb and enter the numbers in wrong? Yes, that can happen. As you know, it's a computer model at this point. The need to have someone reviews that emissions report – as long as they are done by the 24th we are not going to complain. I have to come back on the 24th for a public hearing. It's really for my client's protection. It's just about timing. It's just about trying to move this within the confines that you are comfortable with as fast as we can. As long as your consultant can be hemmed in that they have to have a report to you timely. I'm trying to express (*my client's*) thought process. I understand you have your own.

Chairman Cosentino: We will set up a public hearing for the 24th.

Whitney Singleton: Meet with the building department to make sure

our RF engineer is referred, if there are any reports by consultants, they will be in a timely fashion for your Board's meeting on the 24th, correct? If the Building Department or the village engineer or myself is going to submit a report in addition to Jan's, it will be in sufficient time for the Planning Board's packet for the 24th.

Neil Alexander: Thank you.

Vice Chairman Sturniolo: Jan, the Telecommunications Act of 1996 has been modified several times. Neil makes reference to that in, I believe, Exhibit C, which is the RF energy output. It goes into great detail. Have you gotten a chance to review the compliance of the current FCC requirements compared to Exhibit C in the report?

Jan Johannessen: It is really out of my realm of expertise. It is probably something that the telecommunications engineer would look into. I am not familiar with that law.

Vice Chairman Sturniolo: Neil, are the new antennas polarized antennas?

Neil Alexander: You asked a question that is out of my understanding. What do you mean by polarized?

Vice Chairman Sturniolo: If the frequency is adjusted every 180 degrees as it goes to a full cycle of 360, and coupled to that, are the antennas sloped downward?

Neil Alexander: I am not capable of answering your first question. I can look through the report to see if the answer is in there. I believe there is no down tilt proposed with the antennas when you look at the plans. They are at your standard horizon as far as a mounting standpoint. Whether they are controlling them internally, because there is the capability now with antennas to provide down tilt within the antenna itself...

Vice Chairman Sturniolo: Mechanically?

Neil Alexander: It's not actually mechanically. It is actually through the radio frequency is propagated. That is about the extent of my knowledge of how they do it, but it is capable of being done. Basically, this is the 4G upgrade, which you heard the marketing package on. It is basically taking us from the coaxial cable concept to a fiber cable. That is to increase the speed. The antennas that are changing that are going up there remotely make radio heads and the other timing devices, which is basically what they are, which has to do with switching from coaxial to a fiber in order to handle the fact that – colloquially put, we are handing these to our kids when we are waiting in the doctor's office to watch a movie, as opposed to that nine second phone call we used to make.

Enrico Mareschi: So it's to 4G?

Neil Alexander: Yes, it's to bring it from 3G to 4G.

Vice Chairman Sturniolo: Jan, who is going to review this RF from our side?

Jan Johannessen: The town has its own telecommunications expert. This information will be submitted to that consultant, and they will review from a technical standpoint.

Vice Chairman Sturniolo: They have not seen it yet?

Jan Johannessen: No. We will get the package up to (*the RF engineer*) and he will review it and make comments.

Vice Chairman Sturniolo: Please also include the questions I asked of the RF Engineer.

Jan Johannessen: Will do.

Neil Alexander: Thank you.

Final Action:

**Northern Westchester Hospital Center
400 Main Street
PB2003-02D, 80.49-3-14, 80.57-2-5, 80.49-3-10, 11 & 13
Amended Landscaping Plan**

**Present: Michael Caruso, Vice President, Facilities, Northern Westchester Hospital Center
Chris Shopinski, Director, Maintenance and Project Management, Northern Westchester Hospital Center**

Whitney Singleton: We have been through the resolution on both a Board level and a staff level, and I have proposed some additional language that we discussed last week. I just gave it Jan this evening. It has to do with the final conditions of approval. While they are asking for the extension and the extension will be granted by your Board, your Board did not want to put the landscaping or berm plan in north of the property conjecturally (sic) so that component is not being ----- so the commencement of the berm must take place on or before April 1. That is the only modification.

Chairman Cosentino: This means that the landscaping of the berm is what it is. It does not change with the extension of the Temporary Certificate of Occupancy.

Chris Shopinski: Yes, basically it reports back to the original resolution timing.

Michael Caruso: This extension allows us to put in the trees and additional fall plantings.

Doug Hertz: We talked about, and I see that you indicated on here that you lost those trees in this (indicating) area. What is the process that you're going through with that? Our hope is to try to shield the view of the tower to the best way possible, but we understand the limitations.

Michael Caruso: Mr. Vigliotti pointed out that he wanted to try a new shade tree that shields as best as possible, and I said, at that point, in order to put in that size caliber tree, is really impossible for us to afford. That, coupled by the fact that you have "rock-out" properties

over there – and that’s why we have to probe the area to put the trees in the best location that will provide the intent to shade there in the future at some point in time.

Doug Hertz: So you’re going to drill and dig?

Chris Shopinski: You will basically probe around with a piece of rebar and a hammer at first to make it simple. This also lends itself to planting a smaller tree to allow the root system to grab hold.

Ralph Vigliotti: How small is small?

Chris Shopinski: We have it spec’d on here, I believe.

Doug Hertz: It just says three proposed white spruces. You have nine listed at 8 to 10 foot height, and I imagine three of those nine are these?

Chris Shopinski: Yes.

Ralph Vigliotti: Just as long as you’re not putting in three foot spruce trees up there.

Michael Caruso: We know what your intent is, and we know it’s going to take time to grow. We will be consistent.

Chairman Cosentino: We have a resolution here including granting the 45-day extension and adding the wording of counsel into the resolution.

Jan Johannessen: Condition Number Nine will revise to read, “Work associated with Phase 3 (North Lot Landscaping and other streetscape improvements) shall not be deemed effected by this extension. Work shall commence on or before April 1, 2014.

Chairman Cosentino: That will be added to the resolution.

Jan Johannessen: For point of clarification, this is a recommendation to the building inspector to provide a 45-day extension on the Temporary Certificate of Occupancy. It is not the extension. You still need to follow-up with the Building Department.

Motion to Approve the Resolution for the Amended Landscaping Plan

Motion: Vice Chairman Sturniolo
Second: Enrico Mareschi
Aye: Ralph Vigliotti
Aye: Stanley Bernstein
Aye: Doug Hertz
Aye: Enrico Mareschi
Aye: Vice Chairman Sturniolo
Aye: Chairman Cosentino

Final Action:

Maya Restaurant
37 East Main Street

**PB2012-16, 69.81-2-4 (SBL)
Site Plan and Change of Use**

Present: Alex Gregrio, Owner of Restaurant

Chairman Cosentino: We have a resolution here and we have some questions on this.

Alex Gregrio: I hope you have a resolution here because it's too long a process.

Chairman Cosentino: Please understand there is a process here. We don't make the process. We abide by the process.

Alex Gregrio: I understand.

Chairman Cosentino: If you notice on the memo, the architect has changed the design inside.

Stanley Bernstein: I knew that. I also know originally you told us there was going to be one door, and then another door in between. Now there are three doors on Main Street.

Alex Gregrio: Which one are you talking about?

Stanley Bernstein: We had some issues with the original proposal. We went over to a site visit. One of the things you or your architect said was that there was going to be a lock on this door, and there will be another door through here (indicating). These doors are now open, and you have three doors and two separate restaurants. This is not what we understood when you first proposed this. You said this door (indicating) was going to be locked.

Alex Gregrio: No.

Robert Melillo: If I could just clarify something. The original scope, going way back, was one big restaurant. (The applicant) had an old architect, and he hired a new architect because it needed fire sprinklers. The owner did not want to spend the money on fire sprinklers. We have a whole re-design of the plan now actually with two separate occupancies with a pass-through door so he does not have to meet New York State code for fire sprinklers.

Stanley Bernstein: That is all very good, but it completely subverts the original plan that we decided on. We were out there at a site visit, and we discussed the whole thing. Unfortunately, the problem with the sprinklers came up, but this subverts the entire original design. You have two separate restaurants here.

Robert Melillo: I am just explaining how we got to this point.

Stanley Bernstein: I understand how you got to this point.

Chairman Cosentino: I think Stan is trying to say that we approved of the original one. For some reason, it changed and we had no knowledge of.

Stanley Bernstein: It was thrown right in our lap now. We had no

discussion as to what the change would be and why.

Robert Melillo: I'm not saying you have, I'm just telling you how we got to this point.

Stanley Bernstein: We understand how you got to that point. I don't understand how we had no input into getting to that point. That is not right. We originally agreed this was going to be one single restaurant.

Chairman Cosentino: (to Mr. Gregrio) You changed the plans and we had no knowledge of it. We now have to study the new plan. We were ready to approve the original plan that we knew; now there is a new plan. You changed the architect. We did not know about this plan.

Enrico Mareschi: On the other plan, everything was open.

Alex Gregrio: That is why we had to accommodate with you.

Chairman Cosentino: Rob, is it now one total restaurant?

Robert Melillo: No. It's two separate restaurants.

Stanley Bernstein: Two separate occupancies.

Robert Melillo: There is nothing to say that you can't review it and give your input. He's here for review.

Chairman Cosentino: We were prepared to vote on a final resolution. Now you have two separate restaurants.

Robert Melillo: He is here for a new plan.

Chairman Cosentino: Under the circumstances, where there are now two restaurants instead of one,

Alex Gregrio: There is going to be only one.

Chairman Cosentino: No, it's two.

Whitney Singleton: The reason they are here is because there is not an underlying site plan for this property. They have prepared a site plan for the property showing the totality of all the uses on the site. He came to you with an application that would have necessitated a sprinkler system. He is sidestepping that by saying, "I'm going to leave the existing restaurant alone. That is not part of my application. I'm just going to take the former space that was Kim's Bagel and I'm going to make a restaurant application for that space, and I'm not going to have access between the two restaurants." Stan is properly pointing out that was not was represented to us. This is a change in the circumstance and the applicant is saying, "Yes, I'm only going for this one restaurant space."

Chairman Cosentino: If it's now two separate restaurants, explain to me why there is a door from one to the other.

Robert Melillo: He is utilizing the kitchen from one restaurant to bring food over to the buffet restaurant.

Alex Gregrio: That is what I want to do there.

Chairman Cosentino: You know that door is going to be used. He is not going to go outside and bring food from one place to the other.

Alex Gregrio: No, from kitchen to kitchen.

Robert Melillo: Again, this is what the architect has re-submitted to get out of sprinklers. You can do what you want to do, but this is a re-submit.

Ralph Vigliotti: Are we using this service door also as an emergency exit in lieu of sprinklers?

Robert Melillo: No. We had an occupant load of over 100 when the architect combined them both, which requires fire sprinklers by State code. Now, the architect worked with the State and they came up with this idea of what you see now, which is reflected with a fire-rated door making it two separate occupancies. It was an exemption in the New York State fire code to get him out of not having to supply sprinklers.

Chairman Cosentino: Yet, it's not two separate occupancies because the kitchen is used for both of them.

Alex Gregrio: Yes. The same place uses the same kitchen.

Chairman Cosentino: How does that lower the occupancy of not needing the sprinkler system?

Robert Melillo: The State code exempted it because it's not open to the public, only for staff.

Enrico Mareschi: What is the seating now?

Alex Gregrio: One is 24 and one is 61.

Chairman Cosentino: It's still one restaurant.

Robert Melillo: You guys can deem it how you want to deem it. New York State fire code deems it as two separate restaurants.

Chairman Cosentino: You are using one kitchen for two separate restaurants?

Robert Melillo: Yes. You can do that. There is an exemption that allows that.

Alex Gregrio: It's one restaurant, Mr. Chairman.

Stanley Bernstein: Mr. Chairman, you can call a cow a horse, but it's still a cow. These are two separate restaurants, and this is not what we agreed upon. Two separate occupancies.

Chairman Cosentino: He can use it as either because the kitchen serves the two restaurants and he can call it one restaurant.

Alex Gregrio: Exactly. There is only one restaurant.

Chairman Cosentino: My question is, if we deem it one restaurant, don't you have the same problem with the sprinklers on both sides? Aren't you going to have the same amount of people?

Robert Melillo: No, because the State looked at this and we applied an exemption to it.

Chairman Cosentino: So if we called it one restaurant, it does not change the State's interpretation.

Anthony Oliveri: From a code perspective, by having the fire-rated wall, the fire-rated door, it just gets him out of the sprinkler system.

Chairman Cosentino: I am concerned if there is one kitchen for two sides, it's one restaurant.

Anthony Oliveri: But that does not come into play in terms of the fire code.

Chairman Cosentino: I understand Rob, but I'm not going to call it two restaurants.

Alex Gregrio: It is not two restaurants.

Chairman Cosentino: It should be one kitchen.

Stanley Bernstein: Then we come to the problem of the demising partition, which has to be a four-hour fire rate, I believe under New York State?

Robert Melillo: Two hour.

Stanley Bernstein: That door has to be a self-closing door. Is that door going to be closed, or is it going to be open in practice so that the staff can be walking back and forth? That door is going to be open, and if that door is open it is no longer a demising partition. When he locks up at night, he'll close the door. While the restaurant is in operation, that door is going to be open. He's not going to have his staff pushing this door open every time they have to go from one room to the other.

Chairman Cosentino: Can he take the door out and just finish the wall?

Stanley Bernstein: No. Then it's not a demising partition.

Robert Melillo: The whole key here is the one-hour door.

Ralph Vigliotti: Are you also moving liquor from one side to the other?

Alex Gregrio: No.

(Discussion followed)

Ralph Vigliotti: The conversation we are having here is whether or not liquor can be served at the buffet side, and the owner is saying "No." For the record, it is interesting that I had thought liquor was being served through this pass way here (indicating). So, you're saying no liquor?

Chairman Cosentino: If it's one restaurant, he can serve liquor on both sides.

Ralph Vigliotti: That is why I want to get this on the record, because he's saying he's not.

Chairman Cosentino: I'm looking at it as one restaurant.

Jan Johannessen: He's saying he's not proposing it.

Chairman Cosentino: Sure he's going to propose it.

Ralph Vigliotti: Now you're saying you're not. If someone is asking for a drink, it could be brought over to a table. Does the State fire code recognize that liquor is being served from one side to the other?

Robert Melillo: That has no bearing on anything. It comes down to total occupant load and open space.

Ralph Vigliotti: It sounds like one restaurant to me.

Alex Gregrio: It is going to be one restaurant.

Chairman Cosentino: If you're serving liquor on one side, it can be brought to the other.

Alex Gregrio: Absolutely, why not?

Ralph Vigliotti: You just told me you are not serving liquor on this side.

Alex Gregrio: I am answering his question.

Chairman Cosentino: He's confused, and we're confusing him. You have one restaurant. If you serve liquor on one side, you can serve liquor on the other side.

Alex Gregrio: If you look at it that way, yes.

Chairman Cosentino: If we are making it one restaurant, which we are under the code, he is entitled to do that. This board has no authority to tell him he can serve on one side and not the other. Am I right counsel?

Whitney Singleton: If the applicant is offering a concession...

Chairman Cosentino: He offered that concession because he thought that he couldn't do it. If he has one restaurant he can do it.

Whitney Singleton: If he is offering to your Board that a portion of this site will not serve alcohol, he can lose that restriction. If that is what he is offering?

Ralph Vigliotti: That's what I thought he was offering.

Chairman Cosentino: He changed within one minute when we said it's one restaurant.

Whitney Singleton: I think the applicant is saying – not to put words in

his mouth – while the State code may view this site as two separate occupancies for fire rating notices, the New York State Liquor Authority views this as one restaurant. He is before you for something completely different. He is before you for a site plan and a change of use. If he wants to offer concessions as mitigating restrictions on his property, that is up to you. Then you get into whether or not that is a policing issue. There are many times when applicants offer you hours of operation, etc., while they don't have to, they choose to, to mitigate their impacts. If he wants to offer that as a condition, that is up to him.

Chairman Cosentino: I want to get this straight. A few minutes ago you said you are not going to serve liquor on that side.

Alex Gregrio: That was my idea not to serve liquor. I answered your question because you told me it was only one place. I said, "Yes," because it's only one place. My idea is to not serve liquor.

Chairman Cosentino: When he asked you that, you said, "No, I'm not going to serve liquor there." Then when we said, "It's one restaurant, you can serve liquor there," you changed your mind in 30 seconds and said, "Okay, I'm going to serve liquor there." What do you want to do?

Alex Gregrio: You asked me if I was going to sell liquor in only one place, and I said, "Yes," because I want that.

Chairman Cosentino: We are going to put that on the resolution that you are not going to sell liquor on the other side.

Alex Gregrio: Okay.

Stanley Bernstein: If someone sits down for dinner and he wants a beer, how can you stop him?

Chairman Cosentino: We have it here. If there is a fight in there and there is liquor in there, you have grounds. Which part are you not going to have liquor in?

Alex Gregrio: In the buffet place, because I want to bring some more people coming here.

Chairman Cosentino: How do we word that in the resolution?

Whitney Singleton: That the applicant has proffered not to have liquor, as Phase 37 (sic).

Chairman Cosentino: We will have to revise the resolution, and you are going to have to come back on the 10th for approval, in order to help you out.

Whitney Singleton: I know the hour is getting late. I am just throwing this out there. If these spaces have two separate sets of bathrooms, I can't tell from these plans whether or not there are two separate kitchens. Can one space operate independently of the other space?

Alex Gregrio: No. There is only one kitchen.

Whitney Singleton: It says grill pit and range in the other space. I want to clarify this. If the applicant has a tough time and the economy goes down, and he wants to put it back to one space, can this become another restaurant?

Chairman Cosentino: He will have to come back before the Board for another change.

Whitney Singleton: So for right now, he will only operate as one restaurant under a unified ownership.

Chairman Cosentino: Yes, as one restaurant. If he wants to make two restaurants, he has to come back before this Board. Put that in the resolution also.

Vice Chairman Sturniolo: I think it would be helpful, too, picking up on the point that our counselor raised about the bathrooms, etc., if you have your architect here so we can go through this revision. Do you serve food outside on the sidewalk?

Alex Gregrio: No. I don't serve any food outside.

Ralph Vigliotti: Are you on site most of the time?

Alex Gregrio: I am at the other restaurant in Garrison in the daytime and here in the nighttime.

Ralph Vigliotti: I know there have been some issues, and it's a concern. It's good to know that you're there.

Discussion:

**Arroway Chevrolet/Cadillac
175 North Bedford Road
PB2011-05-69.66-2-3 (SBL)**

**Present: Charles Martabano, Attorney at Law, Attorney for the Applicant
Scott Blakely, R.L.A., Sr. Vice President, Principal Landscape Artist, Insite Engineering, Surveying & Landscape Architecture, P.C.**

Charles Martabano: Back in April, 2012 you approved a site plan for a modification, which, as you may recall, included a number of improvements. At that time, we were talking about separate showrooms for Chevrolet and Cadillac. Subsequent to our approval, Cadillac Motor Car Division made a decision that they would like to investigate the possibility of totally separate dealership facilities. They mean, not on 175 North Bedford Road. They wanted to look for a site off-premise to put a separate dealership. We were desirous of moving forward with some of the improvements, especially the renovation of the Chevrolet showroom, certain renovations that the Board wanted, such as the circulation improvements, the landscaping along both North Bedford Road and Preston Way. We also wanted to move forward with the lighting improvements, irrespective of the decision of Cadillac. We have taken the previously approved and want to break it up into two phases. I outlined in my letter what would be included in each of the two phases. Our intention, with your approval, is basically

restricting the resolution to allow it to incur in phases. We would immediately forward to implement Phase One, and when Cadillac makes it's decision with respect to Phase Two, we will know what we will be doing. On Page Two in my letter I mention what the two phases would include. With respect to the first phase, we would do the proposed upgrade to the existing showroom. Scott will go through them quickly.

Scott Blakely: There is a façade change here in the front that has a new Chevrolet logo. There is a car delivery area proposed here. We are going to realign this access around the front to improve circulation. Proposed plantings are along 117 and Preston Way. We provided a number of options to the lighting modifications to your Board, and the one option that was chosen was to take the existing LED lights that are at a 45° angle and point them straight down. Those are the modifications that are proposed to be made in Phase One, along with some landscape improvements to help buffer this end and this side of the building (indicating).

Chairman Cosentino: Why did you take "D" on Phase Two?

Charles Martabano: The additional green space? I believe that has to do with the storm water management.

Scott Blakely: It had to do with this area in the back. Because we were adding additional impervious for Phase Two, we reduced the impervious surface back here by eliminating this asphalt.

Charles Martabano: The necessity for this came as a result of the fact of the building itself. It's keyed to the Cadillac showroom.

Ralph Vigliotti: If Cadillac should come back, that has to be included?

Charles Martabano: Exactly. "D" is the creation of the green space. If Cadillac stays here, that is what we are going to do at that location.

Chairman Cosentino: The parking lot modifications have to do with the building, also?

Charles Martabano: Absolutely correct. If you remember, we eliminated some parking in front here, which we will not do if we just do the Phase One.

Chairman Cosentino: I went there today. There are cars parked all over the place. You can barely drive through. Somebody bought new buses, and the buses are in the back. That is okay, the back I'm not worried about. But when you drive into that property, you cannot find parking and cars are just all over. If a fire truck had to get in there, the building would burn down.

Charles Martabano: I will be honest in saying to do, as I go there unbelievably frequently for various different things, I have not encountered those problems. Part of what we are doing here is some of those circulation improvements in Phase One that Ralph suggested in order to avoid that. We are doing that in Phase One.

Chairman Cosentino: If you go there frequently, as I went there tonight, to make a left into the building, circle in front of the

showroom and go around, I have to be very, very careful. I had to park in front of the showroom diagonally to make the turn. I had to be very careful to go around. It was very difficult.

Charles Martabano: And those are the things that both Mr. Vigliotti and you brought up that are specifically changed in Phase One. Those are the changes we are talking about right now. Those are not deferred to Phase Two. As a specific reason, it's because you went to a site visit, you came back with that, and we said, "Let's do it now, irrespective of what we do with Cadillac." That is part of what we are doing now.

Chairman Cosentino: Maybe you should mark "Fire Zone" in front of your building.

Scott Blakely: That was part of your approval.

Ralph Vigliotti: Right now a fire truck cannot go through there. People are parking in the fire zone.

Charles Martabano: That is why we changed it exactly according to what you want.

Scott Blakely: We are realigning all of that.

Chairman Cosentino: I am more concerned that someone can't get around there.

Charles Martabano: Which is why I said that had to be in Phase One, irrespective, so we incorporated it in Phase One. We want to do this now.

Ralph Vigliotti: But it also comes down to the internal organization allowing the people to park wherever they please.

Charles Martabano: That is true.

Ralph Vigliotti: No matter what you do to redesign this, if the management doesn't control the fire zone, never mind the village going in to give summonses, they are allowing their employees to park there. And they are.

Charles Martabano: I've seen people do that, but this will be a fire zone, and this will eliminate that. You are absolutely correct that it has to be internally policed.

Scott Blakely: This is the entrance here. What we are doing to change the circulation, you are going to come in thorough here (indicating) as you do right now, but we are taking this access drive that is closer to the building and we're pulling this away. This is all (indicating) now going to be assigned as fire lane.

Chairman Cosentino: That solves your problem.

Charles Martabano: Actually, your Board deserves the credit, because you came up with the idea and we just implemented it.

Jan Johannessen: Is "Fire Lane" marked on the plan?

Scott Blakely: Yes, there are about a half dozen signs.

Vice Chairman Sturniolo: If that is designated a fire lane, to put some teeth in it, would the Village Board not have to promulgate that?

Whitney Singleton: Correct. They do not have to promulgate that.

Anthony Oliveri: With regard to the storm water, it looks like you are not going to have any work within the 100 foot setback, so you don't need a DEC permit for Phase One.

Scott Blakely: We actually have all of our outside agency permits.

Anthony Oliveri: As far as the DEP, you need the DEP permit for Phase One.

Scott Blakely: We have the DEP permit, but we do not need to implement those proposed modifications until Phase Two.

Anthony Oliveri: They will require a permit even if you have an impervious area. Is there an amended DEP permit that is required for Phase One?

Scott Blakely: I don't believe so, but we will verify that.

Anthony Oliveri: DEP uses Phase One as a stand-alone.

Chairman Cosentino: If you're going to come back with Phase Two with a completely different garage and/or showroom, that is another application.

Scott Blakely: If it changes. It may be an amendment.

Whitney Singleton: They are proposing to bifurcate the application they previously had into two phases. They may choose to move forward with Phase Two, they may choose not to. They are trying to eliminate as many approvals as possible in Phase One, so if they don't move forward with Phase Two, they will have to get additional approvals.

Chairman Cosentino: But if it's a different building it's another application. If the footprint changes, it's a new application.

Charles Martabano: I understand what you're saying. We already have the application for the entire changes approved.

Chairman Cosentino: No, it ran out.

Charles Martabano: That is absolutely true. We are trying to reinstitute our approvals and cut them into two phases.

Chairman Cosentino: It's nice for your client. Perfect idea.

Charles Martabano: I don't think it's bad for anyone.

Chairman Cosentino: What if you come back with a different type of building?

Charles Martabano: That is entirely different. Of course that would be

a new application.

Whitney Singleton: My question is, if you apply for something, say Plan A, and there is a component of it where the Planning Board is waiving the installation of parking. DEP will still review that and still no parking is going in, because they know that it can go in at any point in time. If you're going to do this in Phase One and Phase Two, isn't DEP going to evaluate your application in it's totality or only phases?

Charles Martabano: I think it would be in totality. I think they already have.

Anthony Oliveri: Would DEP require the installation of the storm water controls from Phase Two no matter what, or are they comfortable with Phase One as a stand-alone?

Charles Martabano: Now I understand the issue. We will get this clarified.

Chairman Cosentino: Understand if the footprint changes, that is a new application.

Charles Martabano: If you approve this in the two phases, and any aspect of it changes, it's a new application.

Chairman Cosentino: I will say this one more time. If the footprint changes, you are going to have to file for a new application.

Charles Martabano: Right, it would be an amended one, but, yes.

Chairman Cosentino: If it's the same, then it will go into Phase Two.

Charles Martabano: Agreed. But we do have to answer your question about DEP, and I understand your question.

Anthony Oliveri: You have to be covered that DEP is good with just doing this portion.

Chairman Cosentino: I don't want this to go another two years. I would say within the year?

Charles Martabano: The way we understand what Cadillac is saying, they have about 18 months to make up their mind on Phase Two. In terms of what we want to do now, we want to move forward with this immediately after your approval, I go to the village Board to get their approvals and we are ready to go.

Chairman Cosentino: A lot of things can change in 18 months.

Charles Martabano: At that point, Phase One would be completed, and then it would be self-effectuated unless Cadillac says, "We don't like a 4,200 square foot showroom, we want a 5,100 square foot showroom," and then we have a different building and then we come back for the amendment. I understand that.

Vice Chairman Sturniolo: Is it fair to say that Chevrolet needs greater square footage for exterior display because of the amount of trucks and snow plows they have, than Cadillac would require?

Charles Martabano: I would think Chevrolet would. Plus, Chevrolet volume is probably higher. It would be fair to say Chevrolet has bigger requirements, sells more vehicles, also has the truck aspect; and Cadillac, as you know, has a smaller number of models. Part of the reason why Cadillac is looking for a separate facility is they perhaps are contemplating their model line in the future. That changes virtually every month, as I think you know.

Whitney Singleton: To map out some logistics, the chairman and I talked today, and I have subsequently spoken to Charlie that there needs to be a delineation and review and confirmation by staff of any breakdown of what Phase One is and what is in Phase Two. What's not in Phase One that was previously approved, and once we have that application, there are public hearings associated with each application, whether it's just for the special permit or whether it's for the special permit and wetlands permit.

Jan Johannessen: Because the application has expired, you are going to make a new application?

Charles Martabano: If you say we need to. I understand it did, but I don't know if we need a new application or just a request to reinstitute it. I'm not sure we need a new application.

Whitney Singleton: I think you need a new application, but you don't need to reinvent the form. You need to re-submit with a delineation as to what is being done. The main thing I want to know as a representative of the Board is what the Department of Environmental Protection's position is going to be with regard to an approval in phases as far as implementation of the balance. I understand you don't want to get unnecessary approvals.

Anthony Oliveri: There could be some other water quality aspect they want in Phase One. I'm not sure. You will find out.

Charles Martabano: We will submit the application, we will verify what DEP says and you will look then to confirm the representation as to what is in Phase One and Phase Two is as being represented.

Whitney Singleton: Alternatively, for the Board's consideration, would you rather just see Phase One as an application and have them come back if, as Phase Two needs to be implemented, for your simplicity. They are certainly not hiding from you that that is a possibility.

Chairman Cosentino: We can talk about that at a later date.

Jan Johannessen: Please have a technical meeting with staff before you submit, so we can go over some of these drawings.

Scott Blakely: We will set up a meeting with DEP; we will have that meeting as soon as possible. Then we will set up a meeting with you and walk you through where we've come. The components of the original approval are all here. It's just the way we've broken them up into Phase One and Two.

Charles Martabano: Thank you.

Correspondence:

- Letter from Scott Blakely, RLA, Insite Engineering dated May 29, 2013
- Letter from Michael Caruso dated July 15, 2013
- Letter from Krista Gobins, Director of District Programs, Office of Senator Greg Ball dated July 15, 2013
- New York Metropolitan Transportation Council Notice of Comment Period dated August 1, 2013
- Minutes of the Beautification Committee dated June 5, 2013 and July 3, 2013

As there was no further business to be discussed by the Planning Board, on motion by Mr. Vigliotti seconded by Mr. Sturniolo, the meeting was adjourned at 8:45 PM.

Respectfully submitted,

Stanley Bernstein, Recording Secretary
dm