

A regular meeting of the Town of LaGrange Planning Board was held at the LaGrange Town Hall, 120 Stringham Road on Tuesday October 17, 2013. Chairman Stacy Olyha called the meeting to order at 7:00 p.m. Board members John Gunn, Bob Straub, Dennis Rosenfeld Frank Sforza, Joe Zeidan and Mark Komorsky were present. Tony Brenner was absent. Also present was Wanda Livigni, Administrator of Public Works, Walter Artus from Storm water Management Consultants Greg Bolner from CPL and Ron Blass from VanDeWater & VanDeWater

Mr. Rosenfeld made a motion to accept the minutes of September 19, 2013, seconded by Mr. Gunn and the motion carried unanimously. MINUTES ACCEPTED.

PUBLIC HEARINGS:

NEW HACKENSACK TIRE & AUTO SPECIAL USE PERMIT – Proposed Special Use Permit located on Noxon Road containing 1.65 acres (Grid No. 6261-04-904196)

Mr. Ken Greco, applicant was present. Ms. Livigni said Mr. Greco is one of the owners of the tenant spaces in Jim Black's building. She said there is an existing site plan and the board has a letter from Ken which says the site plan is in conformance with the use. She said there is a mis-communication between the property owner and the tenant, neither the bond nor the chain link fence has been put up. Mr. Gunn said they need to put up and install vinyl coated schedule 40 chain link fence, as per the original site plan for T & J which was approved by the chairman on february 4, 2004. She said in order to get this use to meet zoning that is the only thing that has to be put on. She said the tenant is willing to submit a letter stating he will get the chain link fence in by the first of the year. Ms. Livigni asked the board to consider a conditional approval upon the fence going on.

Ms. Olyha stated that in the absence of Tony Brenner, Mark Komorsky would be a voting member.

Ms. Olyha declared the public hearing open. There were no comments. Mr. Rosenfeld made a motion to close the public hearing, seconded by Mr. Straub and the motion carried. PUBLIC HEARING CLOSED.

Ms. Olyha asked the board if they were in agreement with the fence going in by January 1st and the board agreed.

Mr. Gunn asked who is putting up the fence and the answer was the tenant is. Mr. Rosenfeld made a motion to grant a Special Use Permit, seconded by Mr. Straub and the motion carried, with the condition that the fence is built by January 1st. After the board voted, it was discovered that the applicant did not notify all of his adjacent property owners within 150 feet. The Planning changed the motion to adjourn the public hearing, not close it. In addition Ms. Olyha said the board also had to reverse the motion to grant the special use permit because not all the property owners were notified. Ms. Mang said she would assist the applicant and obtain all of his adjacent owners from parcel access and the applicant would have to send out the notifications before the next month and the public hearing would need to be adjourned and continued in November.

NICOLOSI SPECIAL USE PERMIT – Proposed Special Use Permit located on Sleight Plass road (Grid No. 6362-03-241425)

Mr. Charles Brown of Talcott Engineering appeared before the board. He said this property is located at 135 Sleight Plass road consisting of 3 acres. He said the house burned down about 2 ½ years ago. He said his client bought the lot and he wants to construct a single family house. He said it is in the stream corridor overlay which means they need a special use permit from the board, the corner of the house is within 200 feet of the stream and the primary septic area and the reserve septic are also in that stream corridor.

Ms. Olyha declared the public hearing open and asked for public comment.

Mr. Ralph Nihaus, member of the CAC, of 9 McAllister Drive spoke. Mr. Nihaus asked about the footprint and if the new house would have the same. Mr. Brown said it is approximately the same size, one story with quite a bit of roof on it. He said he brought elevations which he showed the board. Mr. Nihaus again asked about the footprint. Mr. Brown said it is within the area of the other house but it's not as rectangular. He added they were completely within the stone wall. Mr. Nihaus asked will it have a basement and Mr. Brown said no it's slab on grade. Mr. Nihaus asked if the septic field would be above the water level. Mr. Brown said the Health Department criteria, and this has been before them and they have

witnessed the soil testing and you are allowed to put a septic system within a 100 year floodway and this is partially in it but you are not allowed to be within 100 feet of the stream at its regular boundary. Mr. Brown said we do meet that criteria and said they did soil testing and verified that the depth to ground water was acceptable for the system that is designed for this.

Mr. Gunn said he is still waiting for the answer on the footprint. Mr. Brown he didn't really know, but it was in the same area as the original house which was within the stone wall.

Mr. Sforza made a motion to close the public hearing, 2nd by Mr. Straub and the motion carried unanimously. PUBLIC HEARING CLOSED.

Ms. Olyha advised the applicant that the comments from the public hearing must be responded to in writing. Ms. Olyha said by November 1st the response should be received by the Planning Office in order to be put on the next agenda.

POWERPLANT MOTOR SPORTS SPECIAL USE PERMIT – Proposed special use permit located on Industry Street containing 2.01 acres (Grid No. 6361-03-162267)

Mr. Gjon Vitaj, owner appeared before the board. Mr. Vitaj said he needs a special use permit for an automotive repair shop.

Ms. Olyha declared the public open and asked if anybody had any comments.

Sharon Rivera of 26 Howard Road spoke. She spoke of the previous owner Mr. Sciancio and said he was a good business owner. She said 2 years ago Powerplant Motor Sports came in and this business uses the dyno machine to tune mostly sports cars. She said she is concerned with the excessive noise and her husband has spoken to Mr. Vitaj about this. She said she called the town to voice their concern. She said spoke to Mr. DiBenedetto and he issued a noise complaint to Mr. Vitaj. Ms. Rivera said she kept records of when she heard the noise and also record the sound, as per the request of Mr. DiBenedetto. She said they have lived her for 29 years and talked about the tranquility of her home. She said her quality of life has been affected. She said she cannot open her windows or enjoy their deck when the machine is running. Ms. Rivera said she runs a

registered daycare and expressed concern when the children are outside playing. She said 2 parents have expressed concern about the noise. She said she is not against an appropriate business behind her residential property. Ms. Rivera said this business should not be permitted to operate so close to a family residence. Ms. Rivera said there are other locations in Lagrange that do not back up to residential homes that could accommodate Mr. Vitaj's business. She asked the board for an unbiased approach to resolve this problem which has gone on for years.

She said they had a video. She said Mr. McLaughlin heard the recording and agreed that the noise is excessive and he also stated he would not want this noise in his backyard. She expressed concern on the impact of selling her home with that kind of business in her backyard.

Raul Rivera of 26 Howard Road spoke. He expressed his concern that the business was run illegally for 2 years. He said they had to force him to shut down past 9 PM with the aid of the Sheriff's department. Mr. Rivera said the loud noise is intolerable. Mr. Rivera talked about the amount of time the machine is run and referred to a you tube video. He said he shows it running for 53 seconds on this video. Mr. Rivera gave the board a DVD. He said their playground is 75 feet from the border of 10 Industry Street and 200 feet from their home.

Mr. Rivera expressed his concern for the excessive noise affecting the children, their ears and their way of life, property value, and health.

Mr. Gunn asked if there was a number defining excessive noise. Ms. Olyha said there is nothing in our town code but there are EPA levels, which was in the packet.

The board listened to the CD. Mr. Gunn asked if this business was in a c-1 district and Ms. Livigni said it was industrial. MS. Olyha asked Mr. Vitaj the typical # of times he runs the machine on one car. Mr. Vitaj said he does 1 car a day if he does it at all every day. On the average he runs the machine 15 times a day, on the absolute high side. Mr. Gunn asked him if he ran it every minute and Mr. Vitaj said no, it was impossible.

James Englishby from 28 Howard Road spoke. He expressed his concern. He said they moved here in 2007. He said the dyno machine causes unnecessary noise which endangers comfort, repose, peace and safety and will cause damage to his property. He said he has tried to talk to Mr.

Vitaj about this and Mr. Vitaj told him to call him and he would close the door. Mr. Englishby said it's not his responsibility to do this. He talked about calling the sheriff and ultimately he went to the town, where he said nothing happened. He said he spoke to Dominic DeBeneditto and filled out affidavits and he was issued a violation. Mr. Englishby said there is no CO. Mr. Englishby explained the process of court they went through where Mr. Vitaj was shut down. He referred to a meeting that was held a town hall to remediate this, present was Ken McLaughlin, Joe Luna, Mr. Vitaj and the Riveras. He showed the video there. Mr. Englishby said he had the code for design standards for special permits and read it to the board.

Mr. Englishby talked about the frequency of the noise, stating it was probably 4 times an hour. He said he has tried and nothing worked. He asked the board to please consider this.

Mr. Zeidan asked if closing the door helped and Mr. Englishby said it is still loud and he added when they asked Mr. Vitaj to close the door, he said he couldn't because of the fumes and make him sick. Mr. Englishby said part of the agreement was to keep the 2 doors closed he showed the board and the 1 door open while running the machine. He said it seems like he's done that but that Mr. Rivera has some video of him not doing that. He said the last time he approached Mr. Vitaj about closing the door, Mr. Englishby said he told Mr. Vitaj they were going to the town and the reply he got from Mr. Vitaj was the last time the town didn't do anything so who cares.

Carl Fister of 274 Freedom Rd. spoke. He referred to last month with the pending violation for the court. He said it was dismissed totally so a noise violation does not exist. He said it was withdrawn. He said he was there with a decibel meter and a board member was there with an app on his phone. He said the actual test is 15 seconds. Mr. Fister said there is no court case against this noise. Mr. Gunn asked the levels. Mr. Fister said on his meter it read 86.9 at the edge of the blacktop and it added it was a super charged mustang.

Ms. Livigni asked Mr. Blass to describe what happened at court. Mr. Blass said he was not in court and gave his recollection. He said this matter was not dismissed without condition and it was not a scenario where the parties came before the judge and the town withdrew the charges. Instead there were terms and conditions that were worked out with respect to the

operation of the device. Mr. Vitaj said he was told his lawyer, his sound guy and the zoning expert spoke with the Riveras and the Englishbys and came to an agreement Mon-Fri 9-6 and sat 10-5 pending he kept the door closed that's behind the dyno and keep t he opposite door open for air movement. Mr. Blass said as explained to him by the associate attorney who was there, there was a noise attenuation barrier that was to be installed with respect to the operation of the dyno. Mr. Blass asked if that was installed and Mr. Vitaj replied no. Mr. Vitaj said when it gets warmer, he said he would keep the door closed in this weather but once it gets hot he has to keep the door open and once it is open he will have some sort of barrier to absorb the noise once the door is open. Mr. Blass said you are running the device with at least one of the doors open and Mr. Vitaj replied yes, the door furthest from the machine. Mr. Blass referred to the conditions built in for the town to dismiss the charge. Mr. Blass said he talked to his mechanic of 30 years and asked if it is possible to vent the exhaust from the operation of a vehicle on this machine to the outside so that all doors can be closed without interfering with the accuracy of the testing and he said to him that it was certainly possible. Mr. Vitaj said it is not possible and explained why. He talked about the exhausts of the cars being all different therefore it would be super expensive. Mr. Blass said having an exhaust system hooked up to the car no matter how it had to be hooked up would not affect the results and Mr. Vitaj said it would affect the results of high performance cars without a doubt. It would choke the system which would put back pressure to the motor and change the parameters. Mr. Blass said that was contrary to the anecdotal information he picked up for what that is worth.

Mr. Straub said you can't restrict exhaust but on the other hand you can contain the sound or build a barrier around the car and exhaust through the roof and put sound deadening. Mr. Straub said there are solutions but it's going to cost money. Mr. Vitaj said he doesn't have that. Mr. Blass said his understanding there was sound attenuation that was built into the understanding in the court and he said he didn't recall any report to him that the sound attenuation would be sometime in the future, as opposed to now. Mr. Vitaj that's exactly what it was. Mr. Blass asked how long into the future would it be installed. He said when he needs to start opening the door because of the heat, that's when he would have to have it. Mr. Blass said one of the doors has to be open now and in November and December and that the noise attenuation as explained to him was to be associated with the door that needed to be open, and Mr. Vitaj said no it was the door

that would be open right behind the dyno. By keeping the one door open on the farther side, once it gets warm outside the temps reach 70 and above, it's not enough open doors, the door behind the dyno will need to be opened and that's where the sound barrier would go. He said that was the deal. Mr. Blass asked Mr. Vitaj if it would go between the houses and your establishment and Mr. Vitaj said yes. Mr. Blass asked why it is not up now and Mr. Vitaj said because the door is not open. Mr. Vitaj explained.....he has 3 bays, all the way to the left is the dyno, that door stays shut. When it gets warm that door will have to open and that's where the sound curtain will go and the door that is open is the one furthest from the dynamometer.

Mr. Straub talked about a class he attended included addressing special permits not changing the character of the neighborhood and added he thought was a significant statement. He said considerable noise and exhaust in close proximity to a residential area, he thought that is criteria that changes the character of the neighborhood. Mr. Straub said you have to confine what you are doing. Mr. Vitaj asked in what manner. Mr. Straub said whatever it takes and added you might have to hire an engineer. Mr. Vitaj said yes for \$100,000. Mr. Straub said that's a solution and Mr. Vitaj said at that point he would just pick up and leave. Mr. Straub said we don't want you to leave. Mr. Vitaj said he doesn't have \$100,000.

Michelle Englishby of 28 Howard Road expressed her concern about the noise. She talked about quality of life. She said it is right as a resident to enjoy her property. She said it is just the machine, there is nothing else, it's super loud. It hurts her ears, rattles her nerves. She said she told Mr. Vitaj there are other places he could go to Commerce Street, there's empty buildings or Firemans Way. She said she is 100 feet away. She talked about the value of her home and said she wouldn't be able to sell it.

Mr. Rivera spoke again. He referred to the video, showing the door closed and it's still loud and fumes. He expressed his concern about the fumes and the daycare.

Mike Triglia of 2851 Rte. 82. He said he works with Gjon and said the noise level is not all day, every day and added there's more noise coming from the fire house with sirens. He said they are an industrial park. He said before they bought their houses, they should have noticed this kind of stuff. He said he doesn't cover his ears when the machine runs. He said he has been yelled at by them too, they were sandblasting and for

whatever they do they get a hard time. He said they are just trying to run a business. He said the dyno is loud but it is short seconds and it is not every day, it could be once a week.

Michele English by spoke again. She invited the board to her backyard to hear it and she said it is all day and it is every day, almost every day. She said some people are not being truthful.

Sharon Rivera spoke again. She said she has 2 acres and her home sits in the middle and she has a huge front yard and huge back yard. She said she doesn't hear the fire house, just when it happens to go off. She said the problem with this business is the stress. She said it alters our blood pressure. She said the gentleman with the business in the front is not getting what she is getting because that door faces her property. She said she enjoyed her house today. She had to bring her party inside. She asked the board to consider the businesses that it allows to butt up to residential homes. She said she loves her home and doesn't want to move. She spoke of Mr. Vitaj's website and the recordings are much longer than her husband has. She said they recorded at the request of Mr. DeBeneditto. She said and yes, it's not every day. She said it ran on the 4th of July and Columbus Day.

Raul Rivera spoke again. Referred to the sandblasting, and said he didn't have a permit either.

Ms. Olyha said excuse me we are not talking about that, this is a special use permit for powerplant motor sports.

Carl Fister spoke again. He said one person got up and spoke and said it's not every day and another said it's every day and all day. He said on Columbus day it was his car and it was 10:00 a.m., 86.9 in the parking lot which is not near the property line, that is not excessive noise.

Mr. Sforza made a motion to close the public hearing, seconded by Mr. Straub and the motion carried unanimously. PUBLIC HEARING CLOSED.

Mr. Rosenfeld said unlike the Code Enforcement Office and the Building Inspector, he was at the property last Thursday and he did hear a demonstration of the dynamometer. He was standing to his back to the Rivera property right at the edge of the black top and the decibel meter

spiked at 87. He said while we were having a conversation here with everybody, his decibel meter spiked at 85. While he was there, the furthest east garage bay door was closed, the middle door was closed and the furthest west garage door was open and the demonstration took 15 seconds at the most and with his decibel meter it spiked at 87. Truck traffic is 80 decibels, a telephone dial tone is 80 decibels, so he can certainly appreciate the residents' concern but he did not find an adverse impact while he was there.

Mr. Komorsky said he went to the property, 5 separate times on 4 different days. He said he never heard the dynamometer running at all but if he did the math the owner said the maximum he can run it 15 times a day and he counted off 11 seconds, that is 165 seconds, to keep it in perspective. If the young lady was telling us its' 44 seconds x 15 times a day, that's 11 minutes a day. He said he was trying to get an idea of what all day means because he can't conceptualize that everyday all day because it only amounts to 11 minutes at the maximum.

Mr. Gunn said he heard 44 seconds, 54 seconds, 1 time a week, 4 times an hour, 1 time an hour, and said he got confused doing the math in his head so he couldn't possibly tell when this machine ran, how long, when it ran. He said it would be possible to limit operations of the facility to 9-4, it is an industrial zone. He said he looked at the chart and it said 70 decibels is apparently bad for his hearing but now that he heard truck traffic is at 80 decibels, he was wondering if he would go deaf sooner or later. Mr. Gunn added maybe no holidays, change hours of operation to 9-4.

Ms. Olyha said they would have to check the court issue because they already worked out the times of operation during that. Mr. Gunn added and the remediation with not the \$100,000 facility but maybe the lower cost facility, sound barrier, that type of thing.

Ms. Livigni said she thought if the hours were more stringent than the judge's hours, and the owner consented, she didn't think that would pose a problem. Mr. Gunn said he runs a business for high end cars so therefore if he has 9-4 mon-fri and no Saturday and holidays he asked Mr. Vitaj if he could work around his clientele. Mr. Vitaj said the court hours were accepted by the Riveras and the Englishbys which are 9-6 mon-fri and 10-5 on sat. No holidays and no Sundays. He said they went in front of Judge Eggito and everybody accepted it and he withdrew the complaint. Mr.

Straub asked if that was in writing and Mr. Vitaj said it had to be in the court writing and added that Dominic was in the meeting and the other town attorney and it was all accepted. Mr. Straub asked who enforces that and Mr. Vitaj said considering nobody has ever been out there except Dennis, he didn't know how. He said he has asked Dominic repeatedly to come up and Ken to repeatedly come up and Joe Luna and nobody has ever shown up. Mr. Blass said he thought the board might consider that agreement to be a base line that would be brought to the board as an aid in its consideration of the appropriate mitigating measures if any; relative to hours of operation, noise attenuation. It's not something that binds the hands of the board, it is something that Mr. Vitaj agreed to live with immediately so it's a base line. Mr. Gunn suggested a site visit and Ms. Olyha said she thought so. Mr. Gunn said he would like to hear this. Mr. Vitaj said he had no problem with that. The Board agreed to go on Saturday, October 19th and some of the board agreed to go together.

Ms. Olyha said where she lived next to HO Penn, they test jet engines and truck engines, school bus engines so she knows the sound. She said but that's the area in which she lives and she chose to live there. Mr. Straub said if the board thinks this changes the character of the neighborhood then by law we are legally bound to execute what is right. Mr. Vitaj said a site visit would be nice, for anybody to come. Ms. Olyha said Mr. Straub is talking about mitigation, like hours of operation, equipment to atone the sounds, etc. Mr. Vitaj said when Dennis showed up to hear the sound, there was a 2004 super charged Dodge Viper making 750 horsepower so the car in question was what you wanted. Mr. Straub said we are not going to kill your business.

Mr. Zeidan asked the neighbors if it be would ok to go on their property. The neighbors responded that it was ok for the board to go on their property.

COVERED BRIDGE FARM SPECIAL USE PERMIT – Proposed special use permit located on Stringham Road containing 45 acres (Grid No. 6460-03-338270)

Mr. Mark Day of M.A. Day Engineering appeared before the board.

Mr. Day said this is a 45 acre flag lot parcel created through SEQR by the Planning Board with the frontage on Stringham Road. He said and

unfortunately the only way to access this parcel is over Sprout Creek and it runs through the flagpole of the flag lot. He said Mr. Swanson has done some clearing and has beef cattle on the parcel. He showed the board the proposed driveway and future barn and home which he said they have dug the deep test pits for the proposed septic area.

Ms. Olyha declared the public hearing open and asked for comment. _____ of 19 Stringham Road spoke. She expressed concern with the rain and the creek overflowing and coming up to her property. She said with the bridge over the creek in the area that floods, they will have to lift the land and where is that water going to be, it will be on her property which is a flood zone. Ms. Olyha asked her which side she was on. She said when it rains, it floods. Mr. Swanson asked how far the water came to her property and she said close to the back step. Ms. Livigni said they already have plans before the DEC, there is a floodplain there and the engineer is aware of that and it will be reviewed by the town. Ms. _____ talked about the water pump next to her home and asked what is that going to do for me and her property, if you understand what I'm talking about. Ms. _____ said she is talking about rain and flooding and the bridge. Ms. Livigni said there is a floodplain along Sprout Creek that falls under fema regulations so the engineer is working with the DEC and added she was sure he was trying to avoid doing anything in the floodplain. Mr. Day said they are actually raising the abutment significantly so they were not doing any fill in there. Ms. _____ asked it how are you going to raise it if you are doing fill. Ms. Olyha said he is building a bridge. Mr. Day said they are raising the bridge abutments. So if you go to the creek there's a significant drop from the earth to the water level and they are actually raising that with concrete and spanning over the creek, not adding fill. Ms. _____ said what about the other sections. Mr. Day said there is no additional fill being installed on that roadway; the only improvements being made are on the north end of the property. Ms. _____ continued to complain about raising the section causing flooding and Mr. Day continued to explain he was raising a one foot wall so they can set girders on it. Ms. _____ kept saying she understood and Mr. Day said he didn't think she understood. Mr. Day again said he is raising the abutment, not raising the water or bringing soil in, it's just the abutment that is being raised. Ms. _____ she understands and Mr. Day said he was missing out on what she saying.

Ms. _____ asked about the house. Mr. Day showed the board the proposed house, almost 1,800 feet away and said it's on a very elevated plateau of the property and showed her the floodplain. Ms. Olyha said to Mr. Day, are you telling us that the house is outside of the floodplain and Mr. Day said yes and Mr. Day showed where it usually floods way down in an area on the map. Ms. Olyha reiterated what Mr. Day said, building a bridge down across the creek area, where the wetlands is in that little tiny part and the house and barn is up on the hill away from where the water floods so it's not being built where the water floods, so the only thing being built where water floods is the bridge and there will be no building in the floodplain. Ms. Olyha said they have to do extensive engineering and work with the DEC, the agency that controls the wetlands to make sure that through his computer models that nothing is affected on any of the properties around his property during flooding. Mr. Day said the bridge is 38 feet long. He said they are reducing the width of the flow or the floodway, they are actually keeping it out here and they are not encroaching on it at all. He said it was one of the requirements of the DEC and added they are not allowed to put monuments in the creek. Ms. Livigni asked if we have a full set of plans of what they submitted to the DEC and Mr. Day said he believed we do. Ms. _____ asked about traffic. Mr. Swanson said he has a beef farm now and eventually he would like to start growing trees. Mr. Swanson said there would be cars and trucks coming in on an occasional basis and added he has tractors. He said he would like to start a little tree farm. Ms. Olyha told the applicant he needs to respond in writing to these comments then the engineer and board members can also hear what the potential issues might be out there.

Ms. Livigni said she needed to point out a procedural thing. She said when Mr. Swanson started this; they talked about all different types of permits with all different applications and added a SWPPP was submitted for this. She said the special use permit application that was filled out is for the stream overlay, and what we still need, which she said she missed, is the wetlands, water bodies and water courses permit. Ms. Livigni said Mr. Artus notice some things as well. Ms. Livigni said it would help the board and the public if they did get to see the whole DEC information with the bridge so they can negate some of those concerns. Ms. Livigni said she apologized, it was her fault.

Ms. Olyha said she had a comment concerning the project that was submitted by John Gagliardi of 41 Stringham Road stating he had no objection to the project.

Mr. Zeidan made a motion to adjourn the public hearing, seconded by Mr. Gunn and the motion carried unanimously. PUBLIC HEARING CLOSED.

Mr. Artus requested Mr. Day add the location map and adjoining property owners for the next public hearing.

RYAN SPECIAL USE PERMIT – Proposed special use permit located on Downing Road containing 3 acres (Grid No. 6562-01-447782)

Mr. Christopher Ryan was present. He said he wants to get his kitchen approved in his basement that's been in existence since he bought the house.

Ms. Olyha asked if this was for an accessory apartment. Mr. Ryan said yes.

Ms. Olyha declared the public hearing open and asked for comment. There was none.

Mr. Gunn made a motion to close the public hearing, seconded by Mr. Straub and the motion carried unanimously. PUBLIC HEARING CLOSED.

Ms. Olyha asked who lived in the apartment and Mr. Ryan replied no one. Ms. Olyha asked who is planned on living in it and Mr. Ryan said no one. Ms. Olyha asked if he knew the rules of having an accessory apartment and Mr. Ryan replied yes. Mr. Gunn said family. Mr. Ryan said they usually come once a year. Mr. Ryan said he just wants to make sure it is legal.

Mr. Zeidan made a motion to grant a Special Use Permit, seconded by Mr. Gunn and the motion carried unanimously. SPECIAL USE PERMIT GRANTED.

SHELL STATION SPECIAL USE PERMIT/LOT LINE REALIGNMENT – Proposed Special Use Permit/ Lot Line Realignment located on Rte. 55 (Grid No. 6460-02-827873) discussion

Mr. Gary Beck Jr. of Z3 Consultants, Mr. Gary Beck Sr., Mr. Bob Turner from Tinkelman Architects, Mr. Chris Lapine from Chazen Engineering and Jr. Jon Adams from Corbally, Gartland and Rapplyea were present.

Mr. Beck said they are here for a special use permit for a drive-thru and a lot line realignment. He said we are asking the board to declare themselves Lead Agency and set a date for a public hearing this evening. Ms. Olyha said we had one outstanding question and we got our response for regarding the parking spaces. Mr. Komorsky said it is still unclear that there's considered parking spaces at the pump, from what he read.

Ms. Olyha asked if everybody got the letter from Mr. Blass. The board said yes. Ms. Livigni asked if the board got the Chairman's letter and the Building Inspector's response. The board acknowledged both.

Mr. Lapine from the Chazen Companies addressed the board. He said their office is working in concert with Tinkelman Architecture to refine the plan set and resubmit what we consider to be a complete application along with the drainage report and the EAF for the project. These plans for what we have contributed show an extensive grading plan for the entire site along with the comprehensive storm water management plan which was requested by the town consultants. Stormwater Management will collect it for a portion of the site, particularly the portion of the site in contact with any of the gasoline disposal areas and route it through what is called a hydro dynamic separator treatment structure. That along with the remainder of the runoff from the rear of the property then collected and distributed to a catch basin which is shown at the corner of the site. Plans have shown a dedicated area for a septic disposal and they have conducted the deep tests and percolation tests on the site and the work has been witnessed by the Board of Health and they are prepared to submit to them a detailed design system. He said they have also provided the details associated with their slight modifications to the access along Route 55, getting prepared to submit a package to the DOT for those minor improvements for within the right-of-way. He said at the request of the consultants they have provided detailed erosion sediment control plans for prior to and during the course of construction. He said they have provided the associated details.

Mr. Bob Turner of Tinkelman Architects spoke. He said they are trying to create some buffer areas both to the east and to the west through the use

of evergreen trees. These would be white pine and Norwegian spruce trees. He said they will be using evergreen bushes that will be flowering, the ink berries as well as the privets in the area he showed, which will shield and screen the drive-thru area from Route 55. He said they are looking at providing a fence in through the area he referred to so it will baffle the nose from the menu board. He said they provided a small green area which they are trying to work with plants that will flower and mature and provide color of the seasons. Mr. Turner referred to beds that were all ready in place and said they are providing a little bit of accent colors in and around the site. Mr. Turner said there is also an image on what the plants will be looking like. Mr. Lapine spoke and said his office received a letter from SHPO indicating there are no impacts associated with this project and submitted it to the board.

Mr. Bolner said there were a couple of comments he wanted to draw the board's attention to in his comment letter. He said he didn't think they need to make a determination tonight. He referred to the landscaping plan and said typically the board wants to have input in that so it's a matter of providing the input to the applicant regarding the plantings being proposed. He said the sidewalk, there was a question, with this being a part of the town center and their sidewalk being done as part of the DOT, even though he believed that does end prior to this property, as to whether or not the board would like to see a sidewalk along the frontage of this property. He said those are 2 things he applicant had indicated that they would consider doing if that is the wishes of the board. Mr. Bolner said there was question with regards to the architectural standards, although this is a minor modification to the building, if the board wants to provide any input on that and added the board should consider to what extent the architectural standards of 240-35 should be addressed. Ms. Olyha asked Mr. Bolner if he gave the board the difference of what they have and what our code states. Mr. Bolner said he didn't think there's been any formal submittal of elevations. He said the elevations were modified and added he doesn't now where the project starts. He said it started with a special use application but the elevations have been modified. To that extent, it's done. Ms. Livigni said with all due respect, the project started before the special use permit but that was done through the Building Department. Mr. Bolner said any additional modifications that are being made, he thinks that needs to be clarified as to whether or not there's any input that the Planning Board wishes to have on that.

Ms. Olyha said so it's any additional changes to the building from the plan that was submitted to the Building Department. Mr. Bolner said correct and added to be more clear, it is a minor, but the town center has architectural standards so he's really saying to what extent does this Planning Board feel that those architectural standards even apply. Ms. Olyha said this Board as to follow what the code says. Ms. Olyha said we don't have a leeway for that and added if it's in the code, we have to follow it. Ms. Olyha asked the difference. Mr. Bolner it would have to be discussed more clearly to what exactly are the changes in the architecture, what is part of this application. Ms. Olyha said what applies to the architectures.....we triggered site plan so that encompasses everything.

Ms. Livigni said she would think that because the building improvements were done through the building department that the architectural review wouldn't be on the building at this point only because of the way it was done. Ms. Olyha said the façade changed, not the addition of additional services. Ms. Livigni said it would be the window, back side. Mr. Bolner said on something like this it's hard to apply the architectural standards and Ms. Olyha said the public is going to be seeing the back so it's different where than a business where the public never sees the back ends of buildings.

Mr. Ken McLaughlin, Building Inspector for the Town of LaGrange spoke. He said the west, south and east sides are all affected by this application. The addition on the west and south side and there's a door and some elevation changes to the east side adjacent to the Taconic State Parkway. Mr. Bolner said those elevations would need to be provided. Ms. Olyha said so we need elevations for architectural review for the west, east and south, everything but the north, the front or the part of the building facing Route 55.

Mr. Bolner said there was a question about the lights in the front of the building being 18 feet which the front of the building and that area of being parking, there's 2 different standards and he said he believed it was addressed to a certain extent in response as far as the lighting. He said there's 2 different standards on the heights of lights within the town center, one is in parking areas and one would be non-parking areas. Mr. Lapine said one would be called street lights and he said their interpretation of street lights of resources of light at the edge of a street. He said those lights within the site are actually within parking areas. He said they utilized

the maximum height of 20 feet which they allow for parking lot areas but we've gone to 18'. Mr. Komorsky said he didn't hear what was said and Mr. Bolner said the lights are 18 feet and will remain 18 feet as being classified as part of a parking lot, as opposed to street lights.

Mr. Bolner said there are a couple of other minor comments in his letter that was provided to the applicant. He said the last item is the question about the area of disturbance as to whether the area of disturbance on the previous plan showed different areas of disturbance and whether or not those are part of this application or not. Ms. Olyha said so the plans we've had before.....Mr. Bolner said the previous plans showed the full island in the front of the building and a large portion of landscaping along the Taconic side of the property and part of the area of disturbance and the current plan shows areas not being part of the area of disturbance. He said he is not completely familiar with what happened at this site between where it was 6 months and where it is today. Ms. Olyha said so they're already built out there and not included as new areas disturbance on this plan. Mr. Bolner said yes. Mr. Bolner said but on the previous drawings they were shown as being in areas of disturbance, so it's a question as to why that changed. Ms. Olyha said one plan was when the Building Inspector.....Mr. Bolner said the plan submittal prior to this one, so it was a couple of weeks ago. Ms. Olyha said the plan that the building inspector looked at did not have those areas of disturbance, the one we are talking about, the first submittal before it came to us, when it went to the Building Inspector, were those areas of disturbance on there.

Mr. Bolner said the plan dated September 12 showed those areas of disturbance and the plan submitted October 7 does not show those areas being disturbed. Ms. Olyha said when we did that overlay and were looking at everything that was, so that we can distinguish between all the different parts of the property and what was improvements prior to coming to the board through the agreements through the building department, were those areas built or disturbed. Mr. Bolner said he would have to look at that. He said he just brought that up as a comment as to why the area of disturbance changed from the last plan to this one. Ms. Olyha said she wanted to clarify that, is it a part of this application or was it a previous agreement before. Ms. Olyha said according to the overlay was, we don't know that answer to answer his question. Ms. Olyha said do you understand what I'm trying to ask. Mr. Lapine said let him give the reason as to the limit of disturbance delineated on their plan. He said they

provided the limit of disturbance based upon what is existing now, the landscaping is in, the stone walls are in, some pavement is in so they took a look at the improvements going forward and that's what they delineated for their line on their plans for the total disturbance. Ms. Olyha said so you are saying you took that out because that was on one of those submittals that we were looking at prior to this as being, this is the state of conformance, this is the state of non-conformance area and he is saying because they are already built, that he took those out. She said that was a part of their original discussion last month about the retaining wall and all that stuff. Ms. Olyha said to Mr. Lapine so you are saying that the retaining wall that you now have in there.....Mr. Lapine said the stone wall along the front, the smaller one to the northeast corner, we took that out and the landscaping. Ms. Olyha said you just took it out of the plan, it's still a part of the project. Mr. Lapine said it's still part of the project, it's still there but what they did for their limit of disturbance since that will not be disturbed going forward, we've taken that out and just delineated just where we would be doing our disturbance. Ms. Olyha said that was our question last month. What is part of the agreement of the building inspector. She said you are telling us that the retaining wall you did not approve? Mr. McLaughlin said the retaining wall is an unauthorized improvement based on the submittal by Mr. Turner. He said in our agreement for the improvements to the site for the DEC consent order. Ms. Olyha asked what about the planters or what actually are they. Mr. Lapine said they are landscape beds on the front part. Ms. Olyha asked so is that included. Mr. Lapine said it's to the north of the retaining wall adjacent to there's an existing landscaping.

Mr. McLaughlin said the stone wall and the improvements in front of the wall is supposed to be the Beekman Patton wall and those improvements were authorized under the original site plan that we approved. Ms. Livigni asked a question to Walter, she said she understood what Chris was saying he's done, when Chazen walked in they said here is the project that we have in front of us, this is our limits of disturbance and addressed Walter and said the overall site development, can you break out pieces to avoid the SWPPP. Mr. Artus said he thought that is what Greg's question is, exposed soils, what is the area of exposed soil and there's been some exposed soils in the previous months and there's some proposed soils, is this segmenting the project to avoid getting a Stormwater Pollution Plan? I think that is what we are asking the applicant, to come up with that number and if he wants to avoid that, he reduces the area of disturbance. He said

it's a question to the applicant and he needs to respond to Greg's comment, but that's really the question, it's exposed soils. Ms. Olyha said but for our purposes, since the retaining wall was not part of the original discussion, does that have to be on this plan since now we have to look at that and Mr. Artus said he didn't think it's specific to what might have been approved, it's exposed soils relative to this project in its entirety, whether it was done 3 or 6 months ago. Ms. Olyha said let me pose it to you another way. Say the retaining wall is in violation and they removed the wall, that's disturbance. Mr. Artus said they would to have exposed soils to install the retaining wall. Ms. Olyha asked should the retaining wall be included in this area of disturbance since we are not sure what is happening.

Mr. Blass said his recollection is there is a May of 2013 determination letter by Ken that is addressed to the retaining wall. He said it concludes that it was unlawfully or impermissibly put in, that it was in the nature of a violation and unless it was cured by being rolled into a part of this application and approval of this application, it would continue to be a violation. Mr. Blass asked Mr. McLaughlin if that was a fair summary and Mr. McLaughlin replied yes. Mr. Blass said the retaining wall, by virtue that determination as well as common sense a part of this application. He said the fact that it occurred and the disturbance to it occurred prior to the application being filed or in the midst of it being filed, it's an intricate component of the application. Ms. Livigni said simply stated in the MS4 requirements, they don't care about who permitted what portion of the site, it's the overall site, so anything that was disturbed during this whole process. Mr. Blass said given the provisions of the town code that says the Planning Board is not authorized to issue special permits with respect to existing violations on site unless the retaining wall is cleaned up so to speak by being integrated into and approved by the board in this context then the board won't be issuing any decisions on the application. Mr. Lapine asked the consultants if they considered the remediation per a consent order from the DEC as disturbance within the site plan, because that was an action that either the previous owner would have had to take, but is the responsibility of the current owner. Mr. Blass said his gut reaction is he didn't think it's relative at all. He said disturbance is disturbance and the site plan is what it is and who cares what the DEC remediation requirements or plans are. There is a pending application in front of this board. Mr. Lapine talked about maintenance measure as part of a remediation and under the DEC storm water permit, maintenance is not considered a disturbance. Mr. Artus said

relative to that one specific issue, he said he could contact an individual in Albany and ask that question and get an answer.

Mr. Lapine said he personally didn't have a problem adding the walls and the little landscaping in but when you take into account the area of remediation; obviously that takes them over the 1 acre threshold for a storm water pollution prevention plan. Mr. Blass said there is some degree of sensitivity over the meetings of this project as to the changing and the modification of the plans as they go along and said he thought the board was somewhat sensitive to plan modifications and in this particular case, plan modifications between a mid September site plan and a mid October site plan. He said you are running into that sensitivity.

Mr. Artus said the biggest issue in his comment memo was, is the applicant going to complete a complete submission and his determination is they have submitted a complete application. He said he had a few outstanding comments on the EAF which were addressed, handing to him this evening so he doesn't have any major comments.

Ms. Livigni said Ken is here to speak for himself, but she wanted the board to know that since his letter from last week about not being able to meet the October 11th deadline for responding to Stacy's request, her understanding is that ken will be able to respond by November 1st.

Mr. McLaughlin said he thinks everybody knows that he received a letter from the Chairman requesting either a revised determination regarding the status of the project and whether or not his initial determination has changed. He has reached out to the state and to the Association of Towns to receive some guidance as to what his obligations are relative to making determinations as to special permits. He said until he receives that information from them, and he can educate himself fully on this, he needs to reserve any decision he is going to make at this time. He said he doesn't want to shun any responsibility that he would have relative to the application; he is merely just doing his due diligence.

Ms. Livigni said, the ramifications of that Ron, does that limit the Planning Board with what they can do tonight, or does it limit them. Mr. Blass said he thinks with respect to Mr. McLaughlin, with respect to zoning issues, there are a couple of issues that have developed, the first issue is manifested in the Planning Board's most recent letter to Ken asking for a

determination as to whether or not the proposed drive-thru servicing a Dunkin Donuts franchise at this site would be in the service of a fast food restaurant or not. The reason that issue was relevant was the site is within the town center business zoning district within the town center business development standards is a provision reading as follows "Drive-thru service facilities are not permitted for restaurant and fast food restaurant uses", that's the operative principal that governs town center and drive-thru's. He said the issue on the table by virtue of letter from the Chairman to Mr. McLaughlin is not to ask him to revisit, revise or modify determinations but to make an initial determination as to whether or not this proposal constitutes a drive -thru in the town center in the service of a fast food restaurant or not. He said he didn't think there was any dispute that this drive-thru is intended to be installed for the exclusive servicing of a Dunkin Donuts franchise in this structure. He said if there is any issue about that, then someone should speak up. Mr. Adams said he as a problem with the process of exchanging letters. The whole process here should be transparent, he doesn't see transparency. He's suggesting a lot of factual findings that have no validity. He said he is asking for an opportunity when you have this exchange with the zoning enforcement officer, that we have an opportunity to participate in that because we can't have decisions based on facts that have no valid basis. Ms. Olyha said Ken issued the board a letter in May and he gave us 3 scenarios and he asked for more information. So we are getting the more information and her letter in August asked him... you now have the information what's the determination. Mr. Adams asked were we copied on that letter. Ms. Livigni replied yes. Ms. Olyha so then Mr. McLaughlin wrote her a letter back but again gave her a couple of scenarios, there was no definitive. She said she wants to make a definitive to say everything is finalized, it's ok, the board can proceed. She wants to clear up all these lose ends. Mr. Adams said all he is asking for is an opportunity to participate and comment so that we have actual rather than assumed facts. He said he doesn't know you can assume facts when you don't have any basis for facts. Ms. Olyha said the facts came in when we asked you for submittals, those are your facts.

Ms. Olyha said all those go to the.....Mr. Adams said not on that issue.....Ms. Olyha said yes the issue. Mr. Adams said he disagrees. He said he is asking for an opportunity nothing more. Ms. Livigni said when she replied yes, she qualified that they were shared with the applicant and his professionals, various letters that went between these determinations. So whether or not it actually says cc: it has been e-mailed and she would

also point out that you can always respond to them, that's why they are shared. Mr. Adams said we got a letter today, we had set up a protocol for comment that everybody had a fair opportunity to comment on letters before a meeting and we got a letter today 7 pages long and we're supposed to comment on that? Mr. Adams said he is looking for fair play here. Mr. Blass said this conversation began with a question of the applicant by him whether there was any issue that this drive-thru was exclusively devoted to a Dunkin Donuts franchise. Mr. Adams said at the last meeting he said there was no franchise, he said he read the minutes, did you? Mr. Blass said so there is an issue as to whether or not the drive thru is devoted to a Dunkin Donuts operation. Mr. Adams said I think you are mis-characterizing the situation. Mr. Blass said he is asking the question, he's asking if there is any dispute. Mr. Adams said he wants to comment, an opportunity to comment on it. Mr. Blass said this is a pretty open process, we are here in front of the board and trying to gather facts and the issue that's been asked of the Building Inspector by the Planning Board is whether or not this drive thru is in the service of a fast food restaurant in the town center because it is highly important in relation to the zoning code's prohibition of that activity, so if there is any issue at all that the drive-thru is devoted to something else, let's develop that, here we are, let's go. Mr. Adams said as far as he is concerned he made that issue in May, he decided that issue in May, nobody appealed that determination. Ms. Olyha said no, his letter in May said he cannot make a definitive determination because he does not have enough information. Ms. Olyha said we've been asking for the information and it's been coming in bits and pieces and now Walter just tells me know that he now has a complete set, he's ready to, if it's complete she is not putting it to the zoning administrator, ok he has everything, what is your definitive, not open end, she wants definitive. Mr. Adams said he is simply asking for an opportunity to comment, set a deadline so we understand the protocols for submission because he doesn't agree with the characterizations he is hearing.

Mr. Blass said , again, not to beat a dead horse, but at the February, 2013 Planning Board meeting, a principal of the applicant stood up and said that this drive-thru is for a Dunkin Donuts franchise as a consequence of conversations had out of state between him and the franchisor. He said he said he confesses he's been operating under the assumption..... Mr. Adams said I would submit to you that the minutes of September 19th contradict what you just said. Mr. Blass asked how so? Mr. Adams said the issue of franchise came up and it was specifically said, no, it is not a

franchise. Mr. Blass said this is not for a Dunkin Donuts?? Mr. Adams said that's correct, and added no no, it's not a franchise. Mr. Adams said you are playing with words now and Mr. Blass said he is trying not to. He said he's trying to do everything but that. Mr. Adams said he doesn't want to debate this issue here; he simply wants the opportunity to comment. Mr. Blass said where else would we debate it? Where else can the board gather the facts it needs to review this application, why not do it here, what's the problem? Mr. Adams said you are asking me to react to your letter of today and Mr. Blass said you just changed there, there you go again, to quote Ronald Regan. He said his letter of today has nothing to do with Dunkin Donuts and a drive-thru. Mr. Adams said on the submission to him that should be with our participation. Mr. Blass said we are here, this is an open forum. Mr. Adams said first of all Mr. Nesheiwat couldn't be here tonight so he couldn't help him there. Mr. Adams said you are submitting something to him, I want to have a chance to respond or comment on our submission and make my own comments. Mr. Blass said I'm submitting something to whom? Mr. Adams said to the zoning inspector, zoning enforcement officer and Ms. Livigni said you've received copies of that so she said she thinks Mr. Adams is looked for when you can respond by. Ms. Livigni said so you've gotten 3 letters, 2 from last week and 1 today. Mr. Adams said none of them invited their participation. Ms. Livigni said they were sent to you, just like comments are sent to you from CPL and SMC, submissions come in, she said she is confused and added feel free to respond to letters. Mr. Adams said fine, let me know that I can do it. If you are copying people on intra-agency.Ms. Olyha said no, anybody that is copied on a letter has the right to comment, that's why you are copied. Mr. Adams said thank you for the clarification.

Mr. Blass said he wants to go back to the fact that as he understands it there's been a floor plan submitted for the interior improvements to the structure which show an area to the east of the building that is separated from the westerly portion of the building, has 2 pos's or points of service shown on the floor plan, 1 POS which s across the demarcation between the west and the east ends is at the drive-thru, which he assumes something akin to a cash register and an employee and the other POS appears to be a counter that separates the west end of the convenience store from the east end, whatever that is going to be used for. It appears to be some degree of segmented use of the structure relative to POS and delivery of product and commerce. Is that in regard to the establishment of the Dunkin Donuts operation or something different. Mr. Adams said if I

wanted a bottle of milk and asked the drive-in, do you think they'd say no? Mr. Blass said that's a very good question. Ms. Olyha said that's our question and we've been asking it for since February. Mr. Blass asked is there going to be a message board associated with the access to the drive-thru and a microphone for purposes of placing an order? Mr. Beck Jr. said I wasn't going to answer that question. Mr. Blass said it's on the plan he thinks. Mr. Turner spoke and pointed out their response back in September 12, 2013 and we were dealing with that and the floor plan shows the primary point of sales, which is adjacent to the main entrance of the building then there are 2 satellite points of sale, which are located at the drive thru and all of them connect to that primary POS because you cannotlike they said if someone pulls up to the drive and gets some product from the convenience store through the drive-thru, they have to pay for it at that specific location so that register is then connected to the main register which is up toward the front because it's all one computer system. So you have a primary with 2 satellites. Ms. Olyha asked and they all can buy anything? Mr. Turner said they can buy whatever they want from inside that convenience store that can be brought to the window and handed to them through the window. Ms. Livigni asked a six pack of beer? Mr. Beck said as Mr. Nesheiwat stated last month that this is a convenience store that happens to see Dunkin Donuts products, it's no different than any other convenience store that sells green mountain product. Ms. Livigni asked so this is unlike Mr. Nesheiwat's at Beekman/55 and Titusville/Noxon? She asked if this is a different operation at this one. Mr. Beck said this is not fast food, there is no cooking. Ms. Livigni said no, both of those sites have gas stations and Dunkin Donuts so what she is asking is, is this a different operation than those 2. Mr. Beck said he hasn't visited those 2 and asked if anybody had. Ms. Olyha said so the register is a mixture of all sales so you can take anything to any three registers? Mr. Turner replied correct, that's what we were explaining. Ms. Olyha said that was one of the items that needed to be cleared up.

Ms. Livigni asked can it be clarified if it's going to be like his other 2 gas stations/Dunkin Donuts sites. Ms. Olyha said we need that in writing from him because he's not here. Mr. Lapine said I think we'd like to reserve our comments on this until Mr. Nesheiwat returns. Ms. Livigni said sure and Ms. Olyha said we want to be definitive on this, we want to make sure. Mr. Lapine said he has worked on the Beekman station, it's not characteristic of the Beekman station. Ms. Livigni said correct, that's why she was asking. Mr. Lapine said he worked on the Rte. 44 station. Mr. Gunn said so if

wants a pack of Marlboro's he can't get it through the Dunkin Donuts window. Mr. Lapine replied no, we can't Ms. Livigni interjected maybe this is a different set up. Ms. Olyha said well that's what we are clarifying. Mr. Blass said the proof in the pudding would be hypothetically, if the Planning Board were, hypothetically to impose a condition that the sale of all product in the convenience store must be available through the drive-thru at that POS and at the POS also shown across the demarcating line between the easterly end and the westerly line, would that be acceptable to the applicant. The same condition would be hypothetically, if we were to spin it out further, must the message board with respect to the access drive to the drive-thru also make available to the customer all products, give notice of all products of sale or a representative sample of all products for sale within the facility so that there would be no possibility or potential for an exclusive segregated Dunkin Donuts component within the structure in relation to the drive thru. He said these are hypothetical's but to the issue of what we are talking about, it's really important because the Building Inspector is being called upon to make certain determinations and if the facts are different than people are thinking that they are or they are in flux, how is he supposed to do that. Mr. Lapine said he's read his determinations and his initial reaction to this is it's a convenience store, so I get what you are saying added he reserves it to Nesheiwat to make that determination. This is his store, and we are not at liberty to make a business decision on his part. Ms. Livigni asked is there a sign going up on the building, she doesn't recall seeing that. Mr. Lapine said no elevations have been provided which include that. Ms. Livigni asked is there any intention to put a sign on the building or another sign out by the road or anything like that. Mr. Lapine said there is an intention to make a modification to the existing sign just for Dunkin Donuts, Ms. Olyha asked the Shell sign? Ms. Livigni said the existing monument and Mr. Lapine said and then there would be the menu board in the rear for the drive thru. Ms. Olyha asked is that on the plan that says there will be a modification to the sign and asked is it getting larger in any way. Mr. Lapine said there's been no rendering or elevations provided. Ms. Olyha said that has to be on there whether it's getting bigger, not the footprint but the actual sign itself. Ms. Livigni asked Mr. McLaughlin if the sign was conforming now and Mr. McLaughlin replied yes.

Mr., Straub said Mr. Adams seems to have a concern, is the loop closed with him and cc: is that going to get him to respond in the future. Ms. Livigni said we opened it for him to respond to whatever he would like to

respond to. Mr. Straub said he's got to acknowledge. Mr. Blass said he's not quite sure he understands the point and said Jon can speak for himself. Mr. Blass said we have just sort of beat the drum pretty heavily with respect to one zoning issue which goes not so much to the process of the board but the approvability of the project itself, that is whether or not it is really going to be approvable as a hypothetically a drive-thru, worst case scenario for the applicant, a drive-thru devoted to a fast food restaurant in the town center. Mr. Blass said so that's an issue of approvability. The 2nd issue of approvability of this particular plan that's come up is his letter which was dated yesterday with respect to the issue posed by the applicant as to whether or not that 8 hypothetical parking spaces associated with gas pumps could be kept as parking spaces relative to the requirement for parking spaces under the town code. He took a look at the issue and said he was sorry he didn't have a definitive answer for the board because it's not his job and function to make these calls. He said the issue really is, is there any real need to deeply analyze the turn parking space or whether or not that's an issue that falls within the plain language rule or plain language concept of average person. He tried to layout that this is an issue raised by the applicant and raised by the site plan if it's going to continue to be an issue; it's going to need to be resolved by the interpreter of the code which would be the Building Inspector. Mr. Blass said that's the purpose and function of this letter. Mr. Blass said the issue on the table squarely is and he hopes he was able to frame it, it whether or not these areas can hypothetically serve dual purpose of parking and a place for pulling up to dispensing on your own and departing away from gasoline pumps. Mr. Blass said is that a parking space or not a parking space and how much interpretation really does attach to that given the plain language rule. Mr. Straub asked who is going to answer that. Mr. Blass said in the absence of a modification of plans relative to the number of parking spaces, it's going to have to be answered by the Building Inspector.

Mr. Straub asked Mr. Adams if he had any contention on any of this. Mr. Adams replied it's a moot issue.

Mr. Lapine said the code neither defines parking at the pumps as acceptable or not acceptable in terms of the parking space. But past approvals by the Planning Board has allowed parking at the pump in consideration for the overall parking, to meet the parking demand of the site and said he brings before the board Mr. Nesheiwat's station on Noxon Road. He handed out material to the board. Mr. Gunn said so what you

are stating is that we have all ready set a precedent that we would count them as parking spaces on Noxon Road, right? Mr. Lapine said you are correct and showed the board a copy of the plan.

Mr. Adams said at the last meeting, we acknowledged we would provide all of the parking spaces required so the issue of whether or not the parking spaces under the gas station is a moot issue because we are separately providing everything that's been defined as being necessary, 11 for the gas station and 14 for the convenience store, they are providing 25 separate spaces aside from what's available at the pumps. Mr. Blass asked is that true? Mr. Straub said Mr. McLaughlin will have to agree with that. Mr. Lapine said we are asking the zoning administrator to agree with the parking that was previously approved for other applications by the Planning Board. Mr. McLaughlin said he thinks the issue at hand here is that the gas station is a legal non-conforming use and that all of the features that are required for the non-conforming use have to remain on the existing site so we will have to look at that also, that just came to his attention today. He said he has reached out to the Association of Towns attorneys to give him some guidance as to what his responsibilities are relative to these issues.

Mr. Blass said one way to look at it is that the precedent as it exists is either right or wrong. He said he had the point that there is some precedent. Mr. Blass asked the last 2 or 3 meetings of the board there's been a discussion as to whether or not the applicant would be committing by note on the map to no further development of the property, most of which is located to the rear/south of the structure and he looked at the September and October plans and he didn't see the note. He said it has come up at each meeting he recalls being at and added that Chris was not there. Mr. Lapine said he can state for the record that there is no proposal in the future for development in the rear of this site on this current site plan. Mr. Blass asked are you saying there are no current plans for development in the rear of the site. Mr. Blass said that's a little different than the exchange between the Chairman and project representatives in the past. Mr. Blass said this issue came up because in January and March, roughly, the months may be incorrect but the time frame is generally correct, there were representations made by the applicant that there would be development of the land to the rear of the existing convenience store. In one iteration for commercial buildings and in another iteration for multi-family housing. Mr. Blass said earlier versions of the map so included that sort of activity within the scope of the action itself. And then there came a

point in time that ecription of the action sort of peeled away the reference to either commercial or residential development to the rear of the existing structure raising questions from the board about that. In that exchange and in that context there were representations by the applicant as he recalled that there would be no future development of the rear of the property and not the variation of that, which is that there are no current plans for future development of the rear of the site. Mr. Blass said so if this is changing, this is now the time and opportunity. Mr. Lapine said the current plan before the town and you consider the management of the waste water in terms of a sub-surface sewage disposal system and the management of the storm water, there is no further opportunity for development in the rear of the site. Mr. Beck said we did agree to that last month. Mr. Lapine said there is no other future development planned here, no opportunity for future development in the rear of the site. Ms. Olyha said that note needs to be on the plan. Mr. Lapine said he could put the note on the plan. Mr. Blass said to the extent that the Planning Board finds that this site is a little tight, there's plenty of room in the back anyway to accommodate modifications to the proposal, in theory, without interfering with future plans and development. Mr. Lapine responded absolutely.

Mr. Blass said he thinks this sort of summarizes the open questions that we have. One appears to be and somewhat surprisingly to him, what now appears to be factual, is really what is the proposed use of this drive-thru facility and is it not or is it coming head on into collision with the rule of no fast food drive-thru's in the town center zone. He said they need to get to the bottom of that. Mr. Lapine said or drive-thru's for convenience stores, pending the interpretation. Mr. Blass said put yourself in the shoes of Mr. McLaughlin who is looking for assistance and facts and needs to make a call, if this is moving around he's not going to be able to do that. Mr. Lapine said Mr. Nesheiwat returns Tuesday of next week and they will formalize a letter to the board saying what the intentions are of the menu board and the operation inside, where is everything is devoted to, if all 3 cash registers are devoted to the entire store, that's what you put in the letter and if it's not, that's what you put in the letter. Mr. Beck said we will answer that, when Mr. Nesheiwat comes back. Mr. Beck said Ken has a plan as we stated, it is under one POS system. He asked where are we at now? He said they are asking for the Planning Board to determine themselves Lead Agency, we have a complete application in and Ms. Olyha said we don't have a definitive determination from the Zoning Administrator and he can't do that until he gets that information that you are

going to write the letter about so that he can be 100% sure of his determination. Mr. McLaughlin said he want to make it very clear that he has reserved decision on this so because he is awaiting counsel and for the record Mr. Beck called him today and asked him if he was going to be having a conflict attorney and he said the decision has not been made whether he will have a conflict attorney relative to this decision and he has not asked the Town Board at this time but he just needs to state for the record that the question was asked of him and he supposed he would have to discuss that with the Town Board as to whether or not this is in the best interest of the town, should this move forward to any other type of proceeding. He said if it is in fact his responsibility he will make those determinations. He said his conference with the attorneys at the Association of Towns, they are still trying to guide him as to what information he is entitled to request and he will possibly be asking for very specific information relative to very specific floor plans, elevations and details for the building, possibly to make that type of determination or whatever information is necessary to make a definitive answer on this issue. Mr. Blass asked him how do you frame the issue that you are going to be deciding. Mr. McLaughlin said to him the primary issue is whether or not this is a convenience store that it is a distinct and independent use within the building making this an additional principal use. He said he believed that's what the board is asking him, whether or not this is an incidental and subordinate use within the convenience store or if this is a distinct and separate use. Mr. Blass said he thinks what the board is asking of him is manifested in the letter, actually it's a letter that went from the Chairman to Jon Adams and Mr. McLaughlin was copied on it, Mr. Blass said he was sorry, that was an earlier letter, he continued saying in a later letter from the Chairman to Mr. McLaughlin and copied to everybody, the question posed was whether or not the drive thru as proposed for this project was devoted to a fast food restaurant or not a fast food restaurant. So from the Planning Board's perspective that appears to be the issue. Mr. McLaughlin said his concern in his discussions with the Association of Towns attorneys were that am I weighing in on a plan or is he weighing in on the code and that's where his concern lies, if he is interpreting a plan versus the code. Mr. Blass said based on what you heard tonight here definitely are factual elements in flux. Mr. McLaughlin said this is my concern, if a determination is made one way or the other, is this going to continue to move in even flow to basically continue to tailor the plan until it gets to the point where determination is positive or negative either way. Mr. Blass said tonight's discourse is trying to do everything possible to rein

in modifications and to put a point on what the project is for the benefit of everybody and that will await consultation by the applicant and sharing of the outcome with the board, as he understands it.

Ms. Olyha said if Ken needs any other information after he talks with his consultants can he go directly to the applicant for those or does he have to come through us. Ms. Livigni said she would request respectfully that it goes through the Planning Board so that the file is complete. Mr. McLaughlin said he agreed, you are the agency hearing the application and that all of the information should be handled through the secretary to the planning board. Mr. Blass said he concurred and said he felt this was a productive discussion in trying to gather the facts. Ms. Olyha said she wants it cleared up so we know everybody gets their piece.

Ms. Olyha asked if the board can do Lead Agency and Mr. Blass said we have an application, there's no real impediment as to getting the SEQR process ongoing and declaring intent to be Lead Agency and circulating.

Mr. Blass said the motion would be that the Board states its intention to be Lead Agency among the involved agencies and circulate for coordinated review. Mr. Rosenfeld made a motion to that effect, seconded by Mr. Straub. Motion carried. Mr. Lapine said on Tuesday we would submit a letter outlining the purpose of the convenience board and what could be sold at each register, and added he believed there was a floor plan given to Ken that he hasn't had an opportunity to review. Mr. Gunn said we asked what is going to be sold and Ms. Olyha added at every cash register. Mr. Blass asked the date on the floor plan is it really current and asked if the board has seen it. Mr. Turner said it was the same floor plan. Ms. Livigni said it was with the lot Line submission.

Mr. Lapine said the other question is Ken said he may have to review it and may have comments and asked if they would have to wait for those comments until the November meeting or was that something that could be issued to the Planning Board and copied to them. Ms. Livigni said as with the other letters you receive, they were sent to you within a day of us receiving them so she would say you would get them within a day of us receiving them. Mr. McLaughlin said if he requests additional documents in order to make a determination, he would like to make the request to the Planning Board Secretary or whoever the agent is for the Planning Board and then that would be disseminated to you, copied immediately and then

that information would be provided, is it that you would want to make a decision on this as to whether or not these are the documents that we are going to require or are we going to be moving ahead with this as we request the documents and they will be providing them or is this all going to go through the Planning board and you'll make a decision on these documents. Ms. Livigni said the Planning Board is moving ahead with SEQR, we have no reason not to at this point and Ms. Olyha said we can't close SEQR until all the issues are tied up. Mr. Lapine said he thinks their responses they can send directly to you. Ms. Olyha said send it to the Planning Board and copy him. Mr. Lapine said he's getting the impression that's something you want as a submittal or is that something we can do in the interim. If you give us a comment on Wednesday, we can turn it around on Friday, we don't have to wait until the actual submittal to the Planning Board a few weeks later. Ms. Livigni said correct. Ms. Livigni said everything should stream through and from Eileen so the record is complete.

Mr. Artus said Eileen will need 6 sets of plans and EAF and architectural renderings will have to go to Dutchess County Planning. And the sign.

Mr. Beck said he would have the 6 sets of plans tomorrow.

FREEDOM PLAINS PRESBYTERIAN CHURCH – Proposed amended site plan and special use permit located on Rte. 55 and Stringham Road (Grid No. 6460-02-650904 & 710874); discussion

Mr. Mark Day appeared before the Board. Also present was Paul Lent

Mr. Day said he put the map together to show the board what is really going on with the property. He referred to parcel 2 and parcel 1 and showed the board. He said they have already started work on this. He showed the board a taking from the church by the DOT, showing the entrance to the proposed round-a-bout and the new Stringham Road and the new Stringham road cul-de-sac which will be north of that exception, the Knapp property and he showed the strip of Stringham Rd. that will be dedicated to the church. Mr. Day said he has summarized – the disposition of what was there and what we are getting and what we are giving back. With this plan, they did a zoning analysis the board asked them to do and he didn't bring it with him. He said they meet all criteria for setbacks and building coverage with the exception of and he added he must clarify and

stipulate that it is in the event that the town does grant this. He said right now it is TCR and he knows the Town Board is considering this parcel being TCB. He said the church has no involvement in this parcel so this would remain TCR. He said the only variance they would need to seek is the setback from the refuge enclosure, he said it's gets convoluted because it would actually be the town right of way and he's not sure who came up with the way this line was drawn. If it was drawn more at a right angle, we wouldn't need the variance at all and said they wouldn't need any variance, even with it being TCB. He said they did do a full blown application with engineering, and added they have designed both the storm water system and done the deep test pits for the septic system, it's all gravel. Mr. Day said he's not sure where they now go, the board has asked him to clarify the zoning variances or what work we would need to do with the ZBA. He said at this point they don't really need anything if they were able to realign this angle instead of being a connection, we would just come down and they would meet their setback or he could move the refuge enclosure slightly.

Ms. Olyha said the parish hall is not the 2 story, do they have to do anything with that. Mr. Olyha said TCB is 2 story. Ms. Olyha said the intent is we are making the one side match the other side so it looks symmetrical to a degree. Mr. Gunn asked is it a shall or should. Mr. Lent said he was told by this group when he asked the question, that it is not a business application. Ms. Olyha asked which way do we want to send them, go to the ZBA for that or go to the town for a lot line realignment. Ms. Livigni said the problem is the town is not going to be able to do that and Ms. Olyha said we are not going to own it for 2 years. Ms. Livigni said the town can't give you a chunk of Stringham now and Mr. Lent said you already have given us a chunk of Stringham for the future. Ms. Livigni said there is an agreement that we will. Ms. Olyha said you can go to the Town Board and ask that, to square it off. Mr. Day said ok so then the only other issue is if that becomes a 2 story or is it required to be a 2 story and Ms. Olyha said or you would need a variance. Mr. Day asked would it be prudent for them to make application to the ZBA? He said he wasn't sure he could go any further with this. Ms. Livigni said the ownership where that is is currently TCR so she thought that Paul's idea is genius because its not zoned TCB and said Paul is spot on and go to the Town Board and ask to change it. Mr. Day asked so do we continue to bring this back to the Board for review while we wait for the change? Ms. Livigni said her understanding is they are attempting to have all the

rezoning done by the end of this year and added she can't promise anything and the magical words were said that it is at your own risk. She said she thought it was a risk worth taking. Mr. Day said we will continue and said they have put together everything the board has asked them to. He said they did show the DOT proposed improvements and showed the board overlays they got from the DOT.

Mr. Bolner commented on the word "shall" He said should means it's up to the Planning Board and "shall" is you have no disgression. It basically says the new building "should" relate to the traditional mainstream design as well as enhanced.....specifically the design principles for the TCB district are to 3 promotive mix of commercial and residential uses and multi-story buildings. So it's a should not a shall. Ms. Olyha said so we are ok.

Mr. Lent said just to be clear one story, the Planning Board sort of understands their reasoning and you are doing ok with not having 2 stories and Ms. Olyha said yes, and you are also trying to match the other side that's also the 1 ½ so you are getting a balance on both sides. That's why you took out the rotunda. Mr. Day said they will pursue the town board.

Mr. Day said he submitted this new entrance to the DOT and it will be a right in, right out only. There will be left hand turns into this.

Mr. Bolner said in site standards it talks about 2 and 3 stories are required and then it says the Planning Board may waive height and setback requirements for civic buildings and churches. Ms. Olyha said so we are ok no matter what. Mr. Bolner asked is the height requirement referring to the 2 story? Mr. Blass said he would think so.

SLEIGHT FARM SUBDIVISION PHASES 5 & 6- Proposed amendment to the currently approved subdivision Section two, phases 5 & 6 (60 lots) abutting east & west sides of Sleight Plass Road containing 53.74 acres of total property of 183.9 acres (Grid No. 6361-01-037969 & 6361-01-130972)

Mr. Tom Housle appeared. He said they submitted an amended plan in August shifting 13 lots to the opposite of Sleight Plass Road and condensing the site somewhat. It eliminated 900 feet of road and 20,000 feet of pavement. We have made the application and paid fees and we would like the town to declare themselves Lead Agency and ask for a public hearing. Mr. Blass said he thought SEQR wise the board already is

the lead agency for this project going back to 2004 when a 6th phase subdivision was approved and you are dealing with the tail end of phases 5 & 6 so he didn't think there was a need to go through that preliminary SEQR process. He said he sent the board a letter and said there is still a need as lead agency to entertain any relevant facts as to whether or not there are potentially significant environmental impacts that arises from this project and if so, which is probably unlikely, to do a supplemental EIS and if not, to do nothing. The ball is in your court to advocate probably through a submission to the board as to why there are no potential significant environmental impacts arising out of this reconfiguration. Mr. Blass said it should be an engineer's report submission with opinion to be reviewed.

Mr. Bolner said it should go down through the impacts specifically identified in the SEQR process, impacts to water, and kind of indicate point by point, not just a letter that says we're good.

Mr. Bolner included the area of disturbance related to wetlands impacts and that it is no greater than it was in the previous.

Mr. Bolner asked with the 9,000 sq. ft, in the code it says for the cluster subdivision, he can't recall, is that 9,000 sq. ft a change in the code from when this application and in that section it says with a favorable recommendation from the Town Board, has the Town Board made that favorable recommendation on this application. Mr. Blass said no, there was a code amendment done 4 or 5 years ago to accommodate people who are interested in 5 & 6 at that time, who are no longer interested. He said nothing's happened other than to put the modified lot size legislation in place. Mr. Blass said the TB would need to make that favorable. Mr. Bolner asked at what point should be applicant go to the TB? Do they need anything additional from this Board. Ms. Livigni said you might want to have the SEQR reviewed before. Mr. Bolner said he wasn't sure procedurally. Mr. Blass suggested the SEQR aspect is taken care of, a record is developed that the Planning Board whether or not a supplemental EIS is necessary, the odds appear to be heading in the direction that it won't be necessary and then at that juncture, the Town Board. With that context for it to make a recommendation to the Planning Board. Mr. Hausle said so the Planning Board would like the TB to support it. Mr. Bolner said it's a requirement of the code. Mr. Blass said we are trying to give the TB something less than a vacuum within which to work.

LOIS SPECIAL USE PERMIT – Proposed Special Use Permit located on Noxon Road containing 10.99 acres (Grid No. 6459-01-295892). Set public hearing.

Ms. Livigni said the applicant called her late this afternoon and said they couldn't be here. She said they have a permit for a stream overlay and it looks like we don't have an EAF. This is one that comes from the Zoning Department so she said she has to check with Susan. She said if she receives that in a timely fashion would the board consider setting the public hearing without the applicant here. Ms. Livigni said they are building a garage in the 200 foot overlay zone from the center of Sprout Creek.

Ms. Livigni asked if got an EAF by November 1st would that be ok and Ms. Olyha said yes. The Board set the public hearing for November 21, 2013 and Ms. Olyha said if they don't get it in by November 1st, we will take them off the agenda.

NORTHEASTERN TRUCK AND TRAILER SPECIAL USE PERMIT – Proposed special use permit located on Industry Street (Grid no. 6361-03-162267); set public hearing.

Mr. _____ appeared before the board. Ms. Olyha asked him where his shop was. He said it was on Industry Street in the front of the building. Ms. Olyha asked if Ken gave us a letter. Did he mention the fence and Ms. Livigni said no. Ms. Olyha said what you need a special Use Permit for is he has to tell us if it needs a fence or has a fence and he has to tell us if the buffer is met for the actual building. She said it's formality. Ms. Olyha asked Ms. Livigni if she thought would be able to do that so we can do the public hearing. Ms. Livigni said maybe the Planning Board Chairman could write him another letter. Ms. Olyha said ok, that's what we will do. Ms. Olyha again repeated that we have to get a letter from Ken stating that the site that has the 2 body shop has a fence. Ms. Livigni added so it meets the zoning requirements necessary for them to operate their business. Mr. _____ said being that we are separate businesses in the same building, does what he does affect what I have to do. Ms. Olyha said no and Ms. Livigni said this question is the same answer for both of you, it's the same as the public hearing for the tire and auto. She said in the town code it states if you are operating this type of a business you need a fence around your property where the cars sit. Ms. Olyha said in Ken's letter he

didn't tell the board that. Ms. Olyha said we can still set the public hearing for November 21, 2013.

OBRIZOK SPECIAL USE PERMIT – Proposed special use permit located on Freedom Plains Road containing .43 acres (Grid No 6361-03-031257); set public hearing

Bob Obrizok of 32 Miller Hill Drive and his son John appeared. He said his son is purchasing 472 Freedom Plains Road which is Mitchell Motors. He showed the board what is existing on the site. He said Mitchell Motors has been in operation with a special use permit since 1987. He said he is requesting a special use permit for auto repair and auto sales which is a continuation of what it is now. He showed the board an existing site plan, dimensions and also showed the board improvements that need to be done to fulfill the requirements for this, which would be a fenced in area, schedule 40 vinyl clad fencing and they are requesting the continuance of the auto sales for a maximum of 15 cars. Ms. Olyha said are we really bound to the plastic fencing, the vinyl? Mr. Obrizok said there's a stockade fence separating from the residents in the back and there's also a stockade fence that surrounds the dumpster area, which was requested in 1987 and its been maintained since then. Ms. Olyha said not for over night cars, just for separation between the business and residential.

Ms. Olyha said the building is sort of historical looking, like an old service station and then you are going to put this 1960-1970 plastic fence with it. That's why she said she wanted to know if they were bound to the vinyl fence. Mr. Gunn said the vinyl fence is the economical feasible thing to do. Ms. Olyha said it's vinyl because it has to be hidden, they don't want an open chain link fence because you can see the cars. Back when the code was written they didn't have the nice vinyl stuff, the stockade looking vinyl.

Ms. Olyha and the board continued to discuss the issue of the fence. Mr. Obrizok said he had an informal discussion with Ken and ken asked him where he thought he would put the fence, that it had to be a schedule 40 pvc clad. Ms. Olyha said it has to be for break-ins. Ms. Livigni said it could be researched between now and the public hearing. The Planning Board set the public hearing for November 21, 2013.

Mr. Obrizok said one of the contingencies for the closing for this property is that we can get a special use permit and asked the board if they saw any thing that would preclude him from getting a special permit.

Ms. Olyha said it's the same business, just changing owners. Mr. Straub asked has anyone check to see if the soils are contaminated. Mr. Obrizok said he had a copy of a survey that was done in 1991, when the property was purchased and Mr. Straub said he didn't think that was good enough. Ms. Olyha asked with what? Gasoline or oils? Mr. Straub said with whatever. Mr. Artus asked wouldn't that typically be handled with their real estate transaction? Mr. Obrizok said the bank will request it. And said he was working with the bank now. Ms. Olyha said we have to see what our SEQR standards are. Ms. Olyha asked if the storage facility was for the used oil underground or above ground. Mr. Straub said that's not an issue. Ms. Olyha said the oils for the used oil is not underground, it's above ground and it's in a containment shown on page 2. Mr. Straub said he wants to be sure.

Mr. Obrizok said it doesn't have a pit lift, it has floor mounted lifts. The issue of existing floor drains was discussed.

The Board set the public hearing for November 21st and asked if Ken sent us a letter for this one, what it needs and the answer was yes.

RE-APPROVAL

HARVEST RIDGE SUBDIVISION IS REQUESTING A 3RD AND 4TH RE-APPROVAL OF FINAL SUBDIVISION APPROVAL.

Ms. Livigni updated the Town Board's comment and said they were not giving a re-approval to Harvest Ridge at this time.

Mr. Gunn made a motion to adjourn the meeting at 10:30 p.m., seconded by Mr. Straub and the motion carried unanimously. MEETING ADJOURNED

Respectfully submitted

Eileen Mang
Planning Board Secretary