

Philipstown Planning Board
Meeting Minutes
April 16, 2009

The Philipstown Planning Board held its regular monthly meeting on Thursday, April 16, 2009 at the VFW Hall on Kemble Avenue in Cold Spring, New York. The meeting was opened at 7:30 p.m. by the Chairman.

Present: Anthony Merante, Chairman
Kim Conner
Josephine Doherty
Kerry Meehan
Andrew Pidala
Pat Sexton
Ron Gainer, Planner
Adam Rodd, Counsel
Absent: Michael Gibbons

Public Hearing

Philipstown Square - Site Plan Approval - Route 9, Cold Spring: Discussion

Mr. Paggi said that he's been advised by his client that they are prepared to offer to the Planning Board to create the opening in the front as requested, but keep it gated and only give keys to the fire department. He said that the entrance would be constructed as agreed upon at the increased width of thirty-six feet with a twelve foot median. Mr. Paggi said that his clients remain extremely concerned about thru-traffic being permitted into the parking area and the potential for vehicular conflict in that area from traffic entering from the adjacent gas station into the applicant's property. He said that he knew there were also wetland issues that they discussed last meeting. Mr. Paggi said that he reached out recently to the Wetland Inspector and feels that they have addressed all of his concerns, but would confirm that and if the Planning Board is willing to move this forward to site plan approval, he believes they would be agreeable to making it conditioned upon satisfaction of his comments because most of them were just explanations. He said that he was requesting additional topographic information and natural wetland delineation by the stream and their position is that while they agree that the information does not exist on their maps, they are also of the opinion that since there are no improvements planned in that area, the information isn't really going to be of any use to this application. Mr. Paggi said that they will have a conversation with the Wetland Inspector and they understand the Board would be looking for some indication from him and from its engineering consultant that they have been addressed.

Ms. Sexton asked where the sign was.

Mr. Paggi said that the application was submitted to the Zoning Board.

Mr. Merante said that the meeting is not until next month.

Mr. Meehan asked if the fire company requested they put the gate there.

Mr. Hyatt said that was a suggestion that he asked as far as opening up that front area.

Mr. Paggi said that they are agreeable to the gate and obviously it will give the fire department access from that property.

Mr. Meehan said that it's still going to be opened out back though.

Mr. Paggi said that's not going to be opened.

Mr. Noschese said that the curb that's between the plaza and the gas station...it's only thirteen feet wide and the fire code requires the road to be a minimum of twenty feet wide all around the building.

Mr. Scanga said that they only own sixteen feet of the property.

Mr. Noschese presented the plan to the Board.

Mr. Merante said that Mr. Noschese had plans back in December or somewhere around then, and that this was the first the Board heard of this.

Mr. Noschese said that he understood that.

Mr. Paggi said that it is saying it's required on all four sides and he thought that was the part he would disagree with. He said that he didn't believe that any building is required to provide access on all four sides...with certain size limitations. Mr. Paggi said that he thought they would have to look at that a little bit further.

Mr. Noschese said that he has been in the Town for more than thirty years and that curb was never there.

Mr. Paggi said that's correct.

Mr. Noschese said that they always had access between the two buildings.

Mr. Paggi said that's correct. He said that it was actually the intention to eliminate that as a matter of fact.

Mr. Noschese said that the original plan...this is the plan the fire marshall's office was given, which shows the out and the in, in the middle and you had an in on the north side and an out on the south side. Since then there's been revised plan that his office....(did not finish sentence).

Mr. Merante asked if he was talking about in and out to the site from Route 9.

Mr. Noschese said right.

Mr. Merante said that's been eliminated and they're widening from twenty-four to thirty-six on the car entrance into the site, but Mr. Noschese was talking about the curb.

Mr. Noschese referred to the plan, pointed to a location and said he was talking about this curb. He said that the distance between that sidewalk and curb...the plan says sixteen feet, and he measured it at thirteen feet and the code requires twenty feet access all around the building.

Mr. Merante asked Mr. Gainer if he was aware of this.

Mr. Gainer said no.

Mr. Paggi said that he didn't read what they were saying.

Mr. Noschese said that he understood the concern about the traffic between the gas station and the plaza itself, but the curb between the buildings...it is his opinion and belief that the curb has to be removed to meet the code requirements.

Mr. Merante asked if they were talking fire code.

Mr. Noschese said that's the fire code.

Mr. Merante asked Mr. Gainer for comment.

Mr. Gainer said that he wouldn't be prepared to respond to this tonight anyway and would have to research it.

Mr. Rodd said that he thought they would need time to research the applicability of the code to this case.

Mr. Scanga said again that they do not own more than sixteen feet, so they are never going to achieve the twenty feet.

Mr. Noschese said, and there's no easement.

Mr. Scanga said that the curb is also not a preference. He said that the insurance company will not insure them with traffic from one piece of property to the other. Mr. Scanga said it's a non-issue. He said that the minute that curb comes down, their insurance gets dropped.

Mr. Merante asked Mr. Scanga if the insurance actually told him they had to put that in.

Mr. Scanga said yes - they do not want traffic crossing from one piece of property to the other.

Mr. Noschese asked why the previous owner of the property didn't have the problem with the insurance.

Mr. Scanga said that it was a pre-existing condition, they made a renovation to the plaza, this is a new carrier and this is what they told them.

Mr. Merante asked Mr. Scanga if the Board could get something in print for the records. He said to Mr. Noschese that the Board needs some information on this with regard to the fire code.

Mr. Noschese said the other issue is the widening of the main entrance - they're going to make it twelve feet wider to make it thirty-six. He said that they are putting brick/belgian block around it or some type of curb.

Mr. Paggi said a mountable curb.

Mr. Noschese said that they can't do that because with every vehicle, fire truck or eighteen-wheeler, they are going to drive over that to get up.

Mr. Paggi said that is why it is there and why it was asked of them to do that - so that those vehicles could do that.

Mr. Noschese said, but they are going to be driving over the raised curb.

Mr. Merante asked Mr. Paggi what they were talking about when they say raised.

Mr. Paggi said that it is a typical mountable curb. He asked if Mr. Noschese was familiar with a mountable curb versus a vertical curb. Mr. Paggi explained that it is at an angle that allows you to drive over it.

Mr. Noschese said it is not going to stick up.

Mr. Paggi said that it will stick up - at a forty-five degree angle, so that the vehicles can drive up onto it.

Mr. Noschese said that he did not have a problem with that. He said that they had a drawing showing a turning truck and asked how he would eliminate not using the parking spaces to make the turn. Mr. Noschese asked how he would do it if there were vehicles parked there.

Mr. Paggi said that again, that's tractor trailer traffic and they are not intending to bring tractor trailer traffic into the site. He said that if there is a fire, hopefully there will not be cars parked up against the building.

Mr. Noschese said that there's no way you can guarantee that. He said that they could have the busiest day of the year and something could happen.

Mr. Paggi asked if they would physically drive into the site with a fire vehicle to fight the fire. He asked if that was what Mr. Noschese was telling him.

Mr. Noschese said that they're going to try to get in there, sure. He said that it depends on where the incident is - everything's not going to be parked out on Route 9. Mr. Noschese said if there is a fire in the corner of the north side of the building, the first two trucks are going to come in and make that initial attack from the parking lot. He presented the plan, pointed out the fire truck and said that they don't (inaudible) as many parking spaces.

Mr. Paggi said they don't wipe out any.

Mr. Noschese said that they do here (pointed out).

Mr. Paggi said you're talking a foot and that could probably be adjusted. He said that the purpose of the drawing was to show that they don't want tractor trailers in the site. They don't belong in the site regardless of how much activity is given to the road because they can't manipulate inside the site. He said all they are going to do is have conflicts with vehicles.

Mr. Noschese said that they're not going to have any eighteen wheelers.

Mr. Paggi said that's the intention.

Mr. Gainer asked if the fire access would be mitigated if there was a frontage connection and connection in the rear between sites, between properties. He said that the Board has been suggesting that access along the frontage be provided. The applicant previously talked about having access between the sites in the rear by removing the curb in the rear of the property. Mr. Gainer said that the Board thought that would be acceptable.

Mr. Noschese said that they are going to do it here (pointed out) with a gate and asked if that was correct.

Mr. Gainer said that he was asking if that mitigates the concern Mr. Noschese has.

Mr. Noschese said that it does as far as two access points, yes.

Mr. Paggi said that the applicant would also like to make an additional point, which is becoming clear. If they're agreeable to a gate in the front, they would also be agreeable to a gate in the rear, so fire access would be able to be achieved here and here (pointed out on plan).

Mr. Noschese asked how large the gates would be.

Mr. Paggi said that they can't be any wider than twenty-five feet - that's the isle width between

the parking spaces.

Mr. Merante said that the Board's concern is that you have about a two or three hundred yard stretch from East Mountain Road South to the new and "improved" Fishkill road, where there's extreme traffic concentration and the Board is adamant about having that curb removed in the front so you have access back and forth between two properties. Mr. Merante said that's why he wants proof from the insurance company that it's not possible. He said that the Board has been ready to adopt the Resolution with that condition in it, because it knows that coming out of Philipstown Square you have to cross a lane of traffic and cross back again to get to the other facility, and from experience of that having been there almost fifty years, they've never seen an accident caused by the cross traffic. Mr. Merante said that it's a safety issue with the Board - there's no other issue.

Mr. Gainer said that there's been the issue of concern over the front access. There's been concern over making sure that all prior wetlands and CAC comments have been properly addressed. And there's been concern to understand and be sure that the latest plans mitigate any concerns of the fire department. Mr. Gainer said that they still seem to be on the table until there's resolution on all sides, so he didn't know that the Board was prepared to take any action again tonight until those things are concluded with some finality.

Mr. Merante said two things they would ask for tonight is a statement from Mr. Scanga's insurance company to the affect of what the restriction is on this and also from John Noschese, Fire Marshall, regarding the fire code and how that deals with the entire curb. Mr. Merante said that opening the curb in front and putting a gate in it does not meliorate the condition, in fact, he thought it exacerbates it.

Ms. Doherty said that she thought the issue is that they want a single access.

Mr. Noschese said God forbid something happens in front of the main entrance that they're going to make thirty-six feet wide, you will not get anything in or out of that plaza. He said that they've had incidents in front of that entrance.

Mr. Paggi said that he was there to tell them all day long that's a DOT standard all up and down Route 9 - a single entrance to a commercial site.

Mr. Merante said that it seemed to him that when they talked to them, they had no problem with it.

Mr. Paggi said that they're trying to accommodate the Planning Board - that's exactly right.

Ms. Doherty said and they try to accommodate the owners of the property.

Mr. Paggi said that he's there to go on record to say that he disagrees and thinks the Board is making a more unsafe condition by making that connection.

Mr. Pidala said that it would cause a problem if they opened it up.

Mr. Merante said that he'd have to come before the Board anyway to review any plans.

Ms. Doherty said that it's been for years and years - it's just recently (did not finish sentence).

Mr. Pidala said that it's someone else's property. He said that he wouldn't want someone driving over his property either.

Ms. Doherty said that maybe they have to look at another access. She said that she felt a single access is (inaudible) and it seems to be the easiest way to do it and the way it's worked for many, many years - it worked just fine. Ms. Doherty said that if that's going to be taken off the table, then she thought they needed something else.

Mr. Merante said that they are private properties - two contiguous private properties and that's true, but they are not private residences. They are commercial entities with a lot of traffic in and out in a very busy section of Route 9. He said that's why the Board is looking at it differently than if it were two private entrances.

Mr. Paggi said, but that's why you don't have a twelve foot wide driveway. You have now a thirty six foot wide entrance.

Mr. Merante said that they know other sites along Route 9 where they have an in and an out and they're both twelve or sixteen feet.

Mr. Scanga said that it's not a problem to get the insurance information in writing.

Mr. Merante said that's what the Board needs.

Mr. Scanga said that again, if the Board is willing to pick up the insurance liability...(did not finish sentence).

Mr. Merante said that he knew the Town was not going to do that.

Mr. Scanga said then it's a non-issue and once the Board gets that letter, it's a non-issue.

Mr. Merante said we'll see.

Mr. Rodd said the one caveat he would add on and he did not want to open up a can of worms, was that they're saying there is one insurance company who said if you're going to provide the particular access, they won't insure it. He said that he did not know if that, in and of itself, rises to the level of the property therefore becoming uninsurable by any entity as opposed to, by the way, this one company won't do it.

Mr. Scanga said that he'd have to find someone to insure it without the curb because someone feels that the curb should be open. He said that they live in America and he has a right the same way they have a right.

Mr. Merante asked the attorney if the Board should continue this until it gets the information.

Mr. Gainer said that he thought the Board should take no action tonight and see what further information comes in.

Mr. Rodd said that he would agree. He said to produce the letter from the insurance company. Mr. Rodd said that he thought they should ask the fire department if they are agreeable to the site as designed with two gates that would provide access to the rear and to the front and those locations shown, and they'll get a hold of the Wetland Inspector and try to get those issues off the table. Then at the next meeting with all that information, they'll put it to a vote.

Mr. Merante said that Mr. Noschese had initially asked tonight that the curb be moved down to the middle of the divider. He asked Mr. Noschese if he was correct.

Mr. Noschese said yeah - the curb between the two properties.

Mr. Rodd said let's ask him, in lieu of removal of the curb.

Mr. Noschese said, and twenty five feet wide.

Mr. Paggi said twenty-five feet wide gates.

Mr. Noschese said both gates.

Mr. Paggi said both gates.

Mr. Noschese said that issue's done.

Mr. Paggi said he thought they would ask the Board to be prepared to vote one way or the other based on this information at the next meeting.

Ms. Doherty said that the applicant still has a variance.

Mr. Paggi said right.

Mr. Merante asked if with regard to the sign there was any consideration given to making it conform.

Mr. Scanga said that the part that doesn't conform is the setback and if they go with the setback,

it would be in the middle of the parking lot.

Mr. Merante said ok....it's not the size, it's the setback.

Therapeutic Equestrian Center - Special Use Permit - Route 301, Cold Spring: Discussion

Mr. Watson said that the Board made a site visit and he went there another time with Mr. Gainer. He said that he thought they would all agree it was a wonderful setting and place to be. The barn is fairly level. Mr. Watson said a bit of grading on the driveway, but other than that, it's really fairly remote from anybody that can see it or use it. It's compatible with the gardens and the farm next door. Mr. Watson said that it's a relatively short distance to the lake for fire water. He said that they were hoping the Board would see fit tonight to give them a positive recommendation and send them back to the Zoning Board.

Ms. Conner asked if there was a stone wall through there.

Mr. Watson said that there is a farm wall through there. He said that they'll be utilizing those rocks for decorative purposes around there. Mr. Watson said that this is really the only place that is available. He said that the other place you could build it where it would be allowed is up on the hill and in his view it would be too prominent. It's just better off...it seeps down a little bit, it's a little lower and leaves the walls, fences and pastures in tact, so it actually does a minimal amount of damage. Mr. Watson said that they're not built walls and are not particularly historic.

Mr. Gainer that for those who have seen it, it's in a very open area. He said that there's very standard engineering issues to deal with in terms of storm water management having to be satisfied. Mr. Gainer said that there are SPEEDES issues that have to be evidenced on the plan prior to action. The one open issue that has been touched on but hasn't been clearly identified is fire protection, which is an open issue that he thought with any referral back from the Planning Board to the ZBA would seek to assure that is resolved prior to final action, in addition to satisfying the statutory storm water management.

Mr. Meehan asked if the farm had a dry hydrant.

Mr. Gainer said that there are hydrants around Glynwood, but he did not know if they were fed by the lake or not - if not, it wouldn't be a difficult matter to put a dry hydrant into the pond.

Ms. Sexton made a motion that the Board send a positive recommendation back to the ZBA. Mr. Pidala seconded the motion. The vote was as follows:

Anthony Merante	-	In favor
Kim Conner	-	In favor
Josephine Doherty	-	In favor
Michael Gibbons	-	Absent
Kerry Meehan	-	In favor
Andrew Pidala-		In favor

Pat Sexton - In favor

Proposed Local Law to amend Chapter 175 Zoning Map - Referral from Town Board

Mr. Merante read the letter from the Town Clerk aloud (copy on file at Town Hall). He asked if there were any comments.

Mr. Gainer said that he had nothing to add. He said that he thought the Board's been aware of the issue. Apparently, it probably has existed in two different zones - commercial and residential. The applicant has always alleged that it was a defect on the zoning map that was prepared. Mr. Gainer said that this local law serves to correct that and put the property in a business zone in its entirety.

Ms. Doherty made a motion to authorize the Chairman to send a letter to the Town Board. Ms. Conner seconded the motion. The vote was as follows:

Anthony Merante	-	In favor
Kim Conner	-	In favor
Josephine Doherty	-	In favor
Michael Gibbons	-	Absent
Kerry Meehan	-	In favor
Andrew Pidala-		In favor
Pat Sexton	-	In favor

Quarry Pond - Request for amendment to site plan approval: Letter from William Balter

Mr. Balter said that they were present because the timing of things is such that they're requesting that the Condition of Approval be amended so that instead of having all the intersection improvements complete prior to the first c.o., that they can have all the improvements complete prior to the 51st c.o. Mr. Balter said that they now have the park about ninety percent complete. He said that they built the intersection. One of the big issues that was always out there is the sight lines were never cleared, so when you're sitting at their intersection and looking left or right, you can see the road. Mr. Balter said that they are going to close circling all of the affordable homes this year certainly before they're going to have the intersection done. They'd like the opportunity to close the senior homes as well. Mr. Balter said that there's no issue of safety, so that's why they are there tonight.

Mr. Merante asked if Mr. Balter talked about expected timing for the construction.

Mr. Balter said that they'll either get it done by the end of this year or in the Spring of 2010.

Mr. Merante said that the request is just an amendment to the site plan to allow additional time to complete the required DOT approval. He asked if there were any comments.

Mr. Rodd said depending on how the Board felt, the only thing he thought would need to be done because it was a prior condition, that the access be completed as he understood it before c.o's were issued, is to simply make some sort of SEQRA determination that doing what the applicant

proposes would be consistent with their finding statement.

Mr. Gainer said that he is unfamiliar with the actions taken to grant the original approval, so he has nothing to offer. He said that if it went through an EAF process, he would...(did not finish sentence).

Mr. Balter said that it didn't.

Mr. Gainer said that he wanted to make sure the Board is protected in this review of the request for change - to understand the basis for the original decision granted to verify that it doesn't have an impact on the prior consideration.

Mr. Balter said that the original approval actually had the development coming in off of Horton Road, which was in the PDD approval. Then they came back and amended the approval because they didn't meet any of the thresholds required to reopen SEQRA.

Mr. Merante said that the applicant has the wording and asked if the Board should have it put into a Resolution.

Mr. Balter said all they did is put in their letter to only change that portion.

Mr. Merante asked if the Board had any comment.

Mr. Conner said that she wondered the reason.

Mr. Balter said they'd have to relocate again, (inaudible) Route 9, and re-curb across the street - all stuff that they offered to do as part of their approval. He said that the biggest thing that needed to be done and was why they did it immediately was curb vegetation. The mitigation of it really is more than anything else...the left turn onto Hustis.

Ms. Doherty asked if there was a time limit if that light didn't have (did not finish sentence).

Mr. Balter said ten years.

Ms. Doherty said then they would return the money.

Mr. Gainer asked if there were any other conditions affected by this change.

Mr. Balter said that he just expected to be further along. He said that had he known he was in this market...twenty/twenty hindsight, he would have asked originally (did not finish sentence).

Mr. Gainer said so the only timing on the DOT improvements being completed were based on the issuance of the first c.o.

Mr. Balter said right.

Mr. Gainer asked what the 51st represented and if it was half the project.

Mr. Balter said that the development is in two phases. That's the first hole on the second phase.

Mr. Gainer asked if there was any other timing the applicant could offer or wish to commit to in terms of when he'd complete the DOT access - independent of the number of co's.

Mr. Balter said that he hadn't thought about it, but it was not a matter of the safety from their development. It never was. It was really about Hustis Road.

Mr. Gainer said and that will always exist, so the goal is...might be the no-timing.

Mr. Balter said that if their development never had been, that left turn never would have happened. So it's going to happen at some point.

Ms. Sexton asked what happens if they never move into the second phase and don't finish the first one.

Mr. Balter said that the Town has already gotten a forty acre park that they built. They've done the work necessary to have the intersection to be safe. Mr. Balter said that never is a long time - it has to happen, because basically their approvals are vested. It is going to happen.

Mr. Merante asked if that was the requirement of the PDD.

Mr. Balter said yes.

Ms. Sexton said if that didn't happen, it would never really be completed then.

Mr. Balter said yeah, but that was also true on the first one.

Ms. Sexton said right, but they wouldn't have fifty homes in there without that work being completed, whereas in the second phase, whether it happens or it doesn't happen, shouldn't the work be completed...maybe the fiftieth home before they start the second phase.

Mr. Gainer said or the forty-ninth, right.

Mr. Balter said actually, there's some sense to that. He said that was a good idea actually.

Ms. Doherty made a motion that the Chairman compose a Resolution (to include "condition L" based on the 49th home) Ms. Conner seconded the motion. The vote was as follows:

Anthony Merante	-	In favor
Kim Conner	-	In favor
Josephine Doherty	-	In favor

Michael Gibbons	-	Absent
Kerry Meehan	-	In favor
Andrew Pidala-		In favor
Pat Sexton	-	In favor

Lyons Realty Company - Route 9: Discussion

Mr. Watson said that some of the Board members were out there and took a look at the site from the back of the Pemm Corp. building. He said that he and Mr. Gainer visited the site again and walked up into the mine. Mr. Watson said that he explained some of the changes that are underway. He said that they have met with the DEC and have a punch list from them. Mr. Watson said that they are addressing those comments to the greatest extent possible. In terms of presentation material, it's not going to look an awful lot different, but it is going to be different. There are going to be changes in the beginning of the road - it is going to shift over a little bit. The water treatment pond is going to get lowered down so they can catch more of the water. Mr. Watson pointed to a location on the plan and said the basic plan there is not going to change very much at all. The potential thru-road is coming off of the plan. He said that was something they felt they had to do to demonstrate usability to the DEC. Their meeting led them to conclude that it's not necessary, so they're taking it off. Mr. Watson said that they actually don't anticipate that that will ever happen. He said that frankly, they want to put it out there as a possibility, but they also anticipated that it would be something of a political football to have to deal with. Mr. Watson said that they are probably two months away from making a re-submission to the State. There are sound studies going on. There are many traffic studies going on. He said that again, they are revising the plans and are trying to provide additional protection for Clove Creek. Mr. Watson said that perhaps the Board would want to schedule another site visit as the weather is better. He said that other than that, he thought they could put this back into abeyance for at least two months.

Mr. Gainer asked Mr. Watson when he would have the revised plans to incorporate the changes being requested by or suggested to DEC.

Mr. Watson said that they are being developed now - the grading is done and they are working on the drainage. So he would say within a month, they'd have those.

Mr. Gainer said that the Planning Board might wish to see that.

Mr. Watson said sure - any plans would be submitted, as they normally would do.

Mr. Pidala asked if when they put the entrance in, the first minor phase of the project was ten years.

Mr. Watson said that it depends on how you count the phases, but they average about five years each.

Mr. Pidala asked if they (inaudible) it out pretty quick when you first come into the entrance.

Mr. Watson said yes, that's early in the process. He said the with first phase, they're going to come in over an existing driveway with permission from the adjoiner that comes through the Moore Cement property and on through here (pointed out). Mr. Watson said that will allow them to do a lot of work there and trap a lot of the sediment for potential erosion and not let it get out to Route 9 or Clove Creek. He said that there was the start of a highway entrance and the notion is to build this part (pointed out) first and get this part (pointed out) stabilized and at that time, they'll be able to direct runoff into that pull. It will accumulate there and they'll take it out. Later on, they'll make the connection - four or five years from now. Mr. Watson said that by the time they make that connection, this (pointed out) will be pretty well stabilized and replanted.

Mr. Gainer asked if the penetration in onto Route 9 was phase two.

Mr. Watson said that he would say it's the end of phase one.

Mr. Merante asked if the elevation above Clove Creek was fairly steep as he really couldn't tell from the drawings.

Mr. Watson said you have to hold on to the trees to go up the bank on Clove Creek. He said it's very steep.

Mr. Gainer asked Mr. Watson to talk about the elevation change, as he was trying to help the Board understand it.

Mr. Watson said that they have a high point of about three hundred ninety feet today and it will be dropped down to about seventy feet. The road is at two hundred sixty feet. Mr. Watson said what will happen is that the bank will stay essentially the same - it'll get re-graded and re-planted because there's no way to avoid that and still build the road, but it will come up and press along here (pointed out) and instead of continuing up to the high point, it will fall off and go back down in, so most of the years of the operation, it will be fairly well hidden from view by the original bank. There obviously will be some visual impact at the beginning when it's going to be re-graded. That means it's going to be exposed, it's going to have to be re-planted. There is a landscape plan for that. Mr. Watson said that's not really going to change very much - it will change to accommodate the slight re-configurations. He said that is the very first thing they're doing - getting the bank in there, getting the service road up to the initial staging area up at the end of the service road, and getting that stabilized. Then they'll work their way in behind that bank so that the vast majority of the material that's actually being taken out will be taken out from behind the bank that's left.

Mr. Merante asked if the material coming out of there was going directly to consumers or the Lyons site a little further south on 9.

Mr. Watson said that probably at the beginning, there will be some of that (directly to consumers) just because there won't be enough room and they'll have to just get rid of the

material, but once the staging area is established, it will be established at the beginning of the mine and that staging area moves into the mine so that the front end loader or excavator digging out the material doesn't have to go far to dump it.

Mr. Merante asked about how many linear feet it was from the farthest point back from Route 9, from the point of excavation.

Mr. Watson said he'd say it's a thousand feet.

Mr. Gainer said that Mr. Watson said that Route 9 corridor is about two hundred sixty and currently that first read three hundred ninety in elevation, so the first grid is one hundred thirty feet higher. Once the mine is constructed, they'll still need the berm - the ridge is going to be a lot lower than it is today.

Mr. Watson said that there's not going to be a ridge. He said the ridge is going to move forward.

Mr. Gainer said exactly and that's going to also be depressed to seventy feet.

Mr. Watson said no. He said the floor of the mine is down about seventy feet and then it comes back up and meets the berm.

Mr. Merante said that the floor of the mine will be at one elevation compared to Route 9 when they're done.

Mr. Watson said about fifty or sixty feet higher. He said that what will happen is...from Route 9 - Route 9 is level, it comes up onto the little plateau by the Pemm Corp building, then it goes up, the driveway in will cross that and get to a point where it will curl over and go back down. Mr. Watson said that he thought the back was at least thirty feet high - not forty feet high.

Ms. Sexton asked Mr. Watson if in the beginning on top of the berm, they were going to do plantings.

Mr. Watson said on the face of it that faces Route 9.

Mr. Sexton asked how high the trees would be that they're putting in there.

Mr. Watson said that he'd really have to check.

Ms. Sexton asked if they would really be a good height to start with and said because they'll take a long time to mature.

Mr. Gainer said that he thought as he read the plan, they were about two inch calipers, so they're not very significant to start.

Ms. Sexton said that she had hoped they would be at some height to help with the screening,

because that's going to be there a lot longer than five years.

Mr. Watson said that there will be a period when you see some of that, but the vast majority is going to be happening down behind the bend.

Ms. Sexton asked how long that period would be.

Mr. Watson said that the mining moves in from the northeast end and moves to the southwest, so that grading will happen and there will still be a lot of bank here (pointed out) afterward - for several years, because they won't be touching the high point. He said that you will never see the whole ridge denuded. You'll see parts of it, but this is planted as early as possible. Mr. Watson said that he doesn't know the specific answer and that Mr. Gainer probably knows better than he does with regard to the size of the tree, but this is not a formal plan in the sense of...it's formally drawn and there are specifics with regard to what's going to be planted, but it's not your formal English garden. It's being planted to replicate a wood situation. Mr. Watson said that there will never be more than five acres exposed. He said that the way the plan is drawn, the operation occurs in five-acre units and that's really to conform with the stormwater management requirement. There's a guideline - it's not absolute rule, but there's a guideline that says you shouldn't have more than five acres exposed at any one time, so they've generated a plan that would stick to that guideline. Mr. Watson said again that it's never going to be a gigantic area.

Ms. Conner asked how many years this was going to operate.

Mr. Watson said thirty.

Ms. Conner said that the people who live on Horton Road have already had twenty five years of rock crushing, banging and building, and that it would be nice if they gave them some kind of a break.

Mr. Watson said that they have the approval process to get through.

Ms. Conner said that it was just something to be thinking about.

Mr. Watson said yes. He said that this is substantially further away from the Horton Road side. He said that at the beginning of it, there will be several years where the top of the hill will still be there and it will provide a sound screen, but they have hired a sound consultant and the reason they hired this particular sound consultant was because they actually provide a guarantee that their sound mitigation plan will be affective. Mr. Watson said that it is a company from Long Island called "Sound Sense".

Mr. Merante asked if there was any further comment.

There was no further comment.

The Board decided to schedule a site visit for Sunday, April 26, 2009 at 9:30 a.m.

TTLV Corp. - Approval of Access - Upland Drive, Continental Village: New submission

Mr. William Shilling, Attorney for applicant introduced himself.

Mr. Cronin said that they've been in front of the Board before for similar access of coming up this way (pointed out on plan). After studying it and getting denied, they thought coming around this way (pointed out) would be a much better road profile.

Mr. Shilling said that he met with the Building Inspector a couple of times about the most favorable access to this. They've had several meetings with the engineer and Mr. Cronin regarding design and the manner in which they will proceed. Mr. Shilling said that they tried to comply with 112-64 of the code - all regulations. He said that again, it's pretty compelling to look at the color coded map. Mr. Shilling said that the code section is the section that permits properties that are in private subdivisions on private roads to gain access to their lot.

Mr. Cronin said that it says on the plan, the travel way may be improved to fifteen feet wide. He said that it would be basically in the center (inaudible) right-of-way, (inaudible) of item four. Mr. Cronin said that the drainage would go to an existing stream - goes across and goes down to Winston Lane. Mr. Cronin said that the Town owns quite a bit of property back there, which they would have access to, but he didn't think they wanted to do that. He said that they're basing it on the one home.

Ms. Doherty said that Mr. Cronin said that he'd been there once before for the access coming in from the other direction and that the Board denied him. She asked if that was right.

Mr. Cronin said that they had a joint meeting with the Town and he thought they withdrew the application because of some of the conditions they put on it. He referred to the plan and said that coming up this way (pointed out), the grade of the road would be about twenty percent. Mr. Cronin said that it goes ten percent.

Mr. Pidala asked what the condition of the road was and what the grade was back from where he mentioned.

Mr. Gainer asked what Mr. Cronin used to establish his limits of work with the road improvements and why he picked there and not further (inaudible).

Mr. Cronin referred to the map, pointed to a location and said that there was an existing house there and was serviced with a road. He said that he did not think they were required to go beyond where the existing Town services a house there.

Mr. Merante asked how he could say the Town is servicing a house, as it is off of a private road. He said that the Town probably got the lots from the County. Mr. Merante said that he was certain the Town did not come in and buy the lots up.

Mr. Cronin said no, they didn't buy the lots up, but there's a house and it's serviced by the fire department.

Mr. Pidala referred to a location and asked what the condition was from that point back to the road.

Mr. Merante said, which is the entire length of Upland Drive back to Winston Lane.

Mr. Cronin said that every once in a while, they improve it somewhat. He said that he could get that for the Board.

Mr. Pidala said that's where he would start though.

Mr. Merante explained that Winston Lane is a Town road and the moment you get off Winston Lane onto Upland, you're on a private road. He said that for the Board to grant access, that road has to meet Town specs, which among other things is the grade of slope.

Mr. Shilling said that the submission date by Cronin Engineering (inaudible) that the existing road will be leveled (inaudible) fifteen feet. He said that he didn't know what the grade was from Winston to the start point of the submission. Mr. Shilling said that his understanding was that...he didn't know that all the houses were pre-dated and there were no existing roads servicing existing structures. He said that they thought the start point from their vantage point would be from the last improved parcel to where their improvement would be.

Mr. Merante said that the problem is that most of the Board members know that road and he felt it kind of hard to accept that anything had been improved. He said that he went down with a four-wheel drive vehicle.

Ms. Doherty said four or five years ago, the Planning Board met a number of times to try to come up with standards for Upland Drive and Ridge Road. She said that they were getting a number of these applications in. Ms. Doherty said that the Planning Board also met with the Town Board and that the Town Board wanted to (inaudible), which was a paved traveled way - twenty feet.

Mr. Shilling said that he didn't have the Code section, but was familiar with it. He said that he believed it's sort of a totality situation, where they have to make a determination that the proposal is sufficient to service emergency vehicles at any access (did not finish sentence).

Ms. Doherty said that again, the Planning Board met with the Town Board because this was a great concern. She said that the end result from her recollection, was that the Planning Board developed a standard of probably exactly what the Town Board wanted, which was a travel way of twenty foot. She said that the grade had to be ten percent. Ms. Doherty said that the ten percent, the Planning Board thought was maybe a little bit of a stretch, and she thought they went to fourteen. She said that they kept the twenty foot paved travel way.

Mr. Shilling asked if that was the Town 112-64.

Ms. Doherty said that she believed it was 115-19 that the Town Board wanted them to adhere to - the ten percent, and the Planning Board thought that was too stringent.

Mr. Cronin said that's why they decided to come in this way (shown to the Board), because they could keep it close to ten percent.

Ms. Doherty said yes, that will help the grade, but it's not going to help the width.

Mr. Cronin said they'd make it twenty foot.

Ms. Doherty asked if he meant the travel way.

Mr. Cronin said yeah - from here to here (shown).

Ms. Doherty asked if that was what Mr. Cronin was showing on the road profile.

Mr. Merante said that the road profile only shows the (inaudible) indicated in blue.

Mr. Cronin said yes.

Mr. Merante said that as Mr. Pidala mentioned, there is a significant length of road from Winston Lane to the beginning of the blue mark.

Mr. Cronin said that's currently being utilized by the homes in here (pointed out).

Mr. Merante said that again, it's still a private road and any lot with a house on it is pre-existing. He said that it's an old site that goes back to the forties and the zoning didn't come into the Town until fifty-seven. Mr. Merante said that the Town does not service the houses. He said that the applicant is asking for access and he's got a whole section of the road that's not even discussed and this is a discussion about access.

A woman (unidentified) said that she was one of the owners and said that she knew people were in front of the Town Board before she was. It was really based on three lots near the Old Albany Post Road side. And then it was dropped. She said that she did not know where everything ended up on that. The woman asked if she was responsible from her one little lot to include...(did not finish sentence).

Mr. Merante said that she was not responsible for it, but if she's asking for access, she's asking for access over the entire road to her lot.

The woman said that every so often there's improvements made and the last time she was down,

the road had gotten a lot better. She said that one of the neighbors told her that pretty much you take care of what's in front of yours.

Mr. Merante said no, this is a private road. There is no road maintenance agreement.

The woman said that there is no formal agreement, but people must be doing some sort of repairs, because it does get better.

Mr. Merante said that he could not get into the nitty-gritty of what's going on down there and he tries not to go down there too often because it takes a beating on the vehicle, but as far as the aspects of the road, maintenance, etc., if someone's filling pot holes and stuff for grading in front of their site, it's not considered road improvements. It's basic maintenance. Mr. Merante said that road improvements are what Ms. Doherty just delineated. He said that when he was on the Town Board, they did three roads in Continental Village that had been private roads. The property owners on those roads applied to the Town Board to convert those roads to public roads and the whole process thing went through. The main process was the engineering to make the road conform to Town specs.

Mr. Shilling said that they're suggesting that they improve the road to Town specs from the last improved site only to their site.

Mr. Merante said that he maintained that that road is not improved. There is no last improved section of that road.

Mr. Shilling said only to the extent there's a house on and accessing that house on an existing road.

Mr. Merante said that they did not get access from the Planning Board. He said that they had received access through a process before the Planning Board. Mr. Merante said that there's no access that had been granted to his knowledge on any house on this property.

Mr. Shilling said, so all the houses...(did not finish sentence).

Mr. Merante said pre-existing, probably.

Mr. Shilling said that he didn't know about the legal right of his client to go extend the road in front of these people that access was in the first place, and he thought the Board was probably cognizant of the fact that it would be costly to improve the road all the way to the proposed structured development

Mr. Merante said that he would defer to the Board's attorney and planner, but would ask regarding the section that the applicant has marked in blue, if he or she were to improve this to full Town specs, what about the part getting to it? He asked how they rationalize that.

Mr. Shilling said by acknowledging the fact that there's an improvement in houses accessing the existing road. He said that his client has proposed in his submission....and he agrees with the Board - it's not road improvement, but in his submission to the Board, he said the existing road will be leveled by filling pot holes and widened to a width of fifteen feet, which Mr. Shilling believed complies with the section that they govern themselves to in 112-64.

Mr. Merante said even if the Board was to accept that, what is to guarantee that it would continue to be maintained - a year from now, five years from now, with a change of ownership for instance. He said that there's no legal obligation on any other homeowner with frontage on that because it does not have a maintenance agreement and is still a private road no matter what you do.

Mr. Gainer said that he thought the point of it was, as he understood it, that the Town regulations specify that in order to obtain access from an existing private road, you have to bring that roadway up to an accepted standard that the Town has established in the code. It's independent of what area they derive specific frontage from - it's the length of the private road that's providing access to them from the neighbor's public road. Mr. Gainer said that is what the Planning Board has been saying and it's how they've applied it ever since the code provision has been in existence. He said that he was not trying to be difficult, but if the applicant is seeking an access permit from the Planning Board, they're trying to apply that standard to the applicant and it's the only way they can apply it.

Mr. Shilling asked Mr. Gainer if his recollection was that all the houses there are predated as well.

Mr. Gainer said that he did not have any recollection.

Mr. Shilling said that it's just a screeching halt to require anyone with lots down toward the bottom...he said that Ms. Doherty was right - his client did petition seeking access the other way a few years ago, but it was voluntarily turned down. He said that he did not think it was turned down by any Board.

Mr. Merante said no, it wasn't turned down. He said that he meant they tried to make it as clear as possible without prolonging the process.

Mr. Gainer said that he thought even with that application, the Board must have applied the same standards.

Mr. Merante said the Board did.

Ms. Doherty agreed.

Mr. Shilling said that in that case, it was a grade on the property that his client was looking to improve, and he thought that was the reason why they decided to try another avenue.

Mr. Merante said that the other significant road as mentioned is Ridge Road and the Board applied the same standard there. He said that the homeowners on the full length of that road could get together and approach the Town Board. Mr. Merante said that he knows they're not amenable to it anymore - they've had a lot of problems with these road converting. But the owners could petition the Town Board and if they get fifty one percent of the property owners, they could take it from there.

Mr. Shilling asked if half the road had to be owned by the owner of the property.

Mr. Merante said that he didn't know how the deeds read. He said that he would assume it would be on the deed. Mr. Merante said that he thought the only way they could do it, and they've gone through this, is that fifty one percent of the property owners on the full length of the road would have to agree to it, notarize the agreement and then approach the Town Board and go through the whole process. He said that the one they did on Mountain Road took about three years from conception to completion and that's much shorter than this road and there were only six or seven houses at the time.

Mr. Shilling said that Mr. Merante's interpretation then is, as he says it is, would that be an interpretation they could get formally so that if they chose to, they could take it to the Zoning Board - the interpretation of the code section.

Mr. Rodd said that he was not sure when they talk about interpretation...the code sets forth a standard, which basically embodies safe and adequate access - the certain requirements they have to meet to obtain that. He said that he didn't think there was disagreement as to what the code says or how its applied here.

Mr. Shilling said that the only question he had was that he acknowledges it's not a public road and knows it's a private road, but it's a private road that's been in existence in servicing structures and houses for a long time. So the question is, is the property owner who wants to improve the road duty-bound to improve the entire road all the way up, even though it's serviced houses for fifty years, or is he obligated only to continue the improvement pursuant to Town specs from the last access point to his lot? Mr. Shilling said that he guessed that's the interpretation that he would speak to his clients about seeking.

The woman said even with the people that are currently there...what if they don't want it there? And they're living there and accessing it now. She asked if the Town Board was going to make them go fix their (did not finish sentence).

Mr. Merante said no, they can't do that. He said that this is what happened...the contrast - Valley Lane and Mountain Drive as opposed to Ridge Road. The people of Valley Lane and Mountain Drive went up and down the road, got notarized signatures and approval of their neighbors. Once they had more than fifty percent, they went through the process of the Town Board. Mr. Merante said that the people on Ridge Road specifically said they did not want it. So there was

nothing done. He said that the Town Board is not going to come in and say, “we’re going to improve this road whether you like it or not”. Mr. Merante said that what happens is, if they were to do this on this road and all the people say they want to do it from Winston Lane to Old Albany Post Road, you’re going to pay for it. The Town is not going to pay for it. He said that the Town will take up initial financial obligation, but homeowners are going to pay for it.

The woman asked if it mattered that this is a through road, versus all the other roads Mr. Merante mentioned, which she thought were cul-de-sacs.

Mr. Merante said no, he did not think it made any difference.

The woman said that she had another access, where they only have one access.

Mr. Merante said that it depends on how she’s using the term “access”. He said that she may have a way to get into the road, and it may not be legal access, but you can get to it with a vehicle. Mr. Merante said that because she can come in from two directions, it doesn’t mean that she has official access to build a home where none now exist. He said that he thought the Board made its point clear. Mr. Merante said that he was almost certain that some of those houses were built even before there was zoning because that area was developed beginning in the late forties.

Mr. Rodd said that he did not know where the Board wanted to leave this. He said that he was going to suggest that if the applicant wanted to pursue it, to file an EAF with the Planning Board.

Mr. Shilling said that he thought there were two avenues he was going to advise his client to explore. The first is the legal right and the economic consequences of going and seeking to improve the entire road to service the lot. He said that legally, he did not know how that road is (inaudible). Mr. Shilling said that it must be half ownership to the center of the road and even if they wanted to and had the financial ability to do so, unless they got permission of the people there..., and he did not think they were going to get it. Mr. Shilling said that the second thing is...he understood the Board’s interpretation. He said that he doesn’t necessarily agree with it by the reading of the code and believes the Zoning Board has interpretive powers, so to the extent he got a decision this evening that the Planning Board was requiring improvement to Winston or from Winston all the way to their site, he’s got that decision and they’ll take a look at the code to see if they’d like to have the Zoning Board interpret/determine if they agree with it.

Minutes

-March 19, 2009

Ms. Sexton made a motion to adopt the minutes. Mr. Meehan seconded the motion. The vote was as follows:

Anthony Merante	-	In favor
Kim Conner	-	In favor
Josephine Doherty	-	In favor
Michael Gibbons	-	Absent
Kerry Meehan	-	In favor
Andrew Pidala-		In favor
Pat Sexton	-	In favor

Correspondence

1. Letter from the Supervisor regarding Lyons escrow account.
2. Letter from the Supervisor regarding Lausca (Philipstown Square) escrow account.
3. Letter from the Supervisor regarding Boscobel escrow account.
4. Letter from the Supervisor regarding County Line Equities escrow account.

Miscellaneous

-Fees

Mr. Merante asked Mr. Gainer to make the amount of fees clear in the Resolution per Dottie Turner.

Mr. Gainer stated that the Finger Resolution was different than any other Resolution because Finger only has preliminary approval from the Planning Board. He said that they had questioned whether any written Resolution was necessary and Mr. Gaba had insisted one be prepared just for the record. Mr. Gainer said that he asked the specific question of the extent of text that would normally be associated with just the granting of preliminary approval. It doesn't require the payment of rec fees or any of the standard conditions that the Board places on their final subdivision approval, which is given at the point where they're ready to get a plat signed. Mr. Gainer said that Mr. Gaba directed the Board to still include the standard text with payment of rec fees. He said that those rec fees are not paid or most of the statutory things that are in the Finger Resolution don't come into play until they pursue the final subdivision approval from the Board. Mr. Gainer said that even though they're referenced in preliminary as a condition, there's no insistence that they be paid at this time. They still don't have any standing to pursue those lots.

Mr. Merante said that he thought they were looking to have it notified - even though it is a preliminary resolution.

Mr. Gainer said right - in terms of the number of lots that will be paid rec fees. He said they'll make that clear.

-Resolutions

Mr. Merante said that as far as Mr. Gainer and Mr. Gaba, the Board has it straightened out on who's doing the Resolutions.

-Wetlands Issue (from David Klotzle, Wetlands Inspector) - Noe

Mr. Gainer said that at some point - he would say last summer, they attended a meeting with the Chair, Mr. Shea and David Klotzle, the Building Inspector and talked about a wide range of issues. One of them from David's perspective was to be sure that the Planning Board approvals evidenced what he would desire to see in the text.

Mr. Merante said that he also talked about submitting a wetlands application.

Mr. Gainer said right. He said that he cuts notes on everything they do and they identified what he thought he heard from David at the time and distributed that to everybody. At the time, David indicated it was acceptable. Mr. Gainer said that they've been using it ever since. He said that recently, David has indicated that he doesn't like the text of the standard notation. Mr. Gainer said that he and Mr. Klotzle spoke on the phone. He distributed correspondence to the Board and went over it briefly with the Board. Mr. Gainer said that Mr. Klotzle had originally suggested that all he wanted to see in the Resolutions was to say that as part of the approval that the applicant still had to file the necessary wetlands paperwork with the Wetlands Inspector, so that the Wetlands Inspector had an ability to be aware of the project and apply any standards that he wanted. Mr. Gainer said that he thought the text they were using was acceptable to him, but he more recently told them that it really wasn't what he wanted. He developed the correspondence (given out to the Board) yesterday. Mr. Gainer said that the Board could see that from the top page that Mr. Klotzle was saying everything's fine. So he thought Mr. Klotzle was agreeing that if Mr. Gainer starts to use this text, he'll find that o.k.

Adjourn

Ms. Doherty made a motion to adjourn the meeting. Mr. Pidala seconded the motion. The meeting ended at 9:20 p.m. The vote was as follows:

Anthony Merante	-	In favor
Kim Conner	-	In favor
Josephine Doherty	-	In favor
Michael Gibbons	-	Absent
Kerry Meehan	-	In favor
Andrew Pidala-	In favor	
Pat Sexton	-	In favor

Respectfully submitted,

Ann M. Gallagher

Note: These minutes were prepared for the Philipstown Planning Board and are subject to review, comment, emendation and approval thereupon.

Date approved: _____