

ZONING BOARD OF APPEALS

June 4, 2007

MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, June 4, 2007, at the Philipstown Town Hall, 238 Main Street, Cold Spring, New York. The work session was opened by Vincent Cestone, Chairman, at 7:30 p.m.

PRESENT: Vincent Cestone - Chairman
Lenny Lim - Member
Bill Flaherty - Member
Adam Rodd - Counsel

ABSENT: Robert Dee - Member
Paula Clair - Member

Vincent Cestone – Sorry for the delay. We need to have a quorum to have an official meeting. First item on the agenda is a continuation of John Benjamin's public hearing. Mr. Benjamin?

John Benjamin - Hi.

Vincent Cestone – I believe the only thing that we were waiting for were numbers on the drawings

John Benjamin - Right

Vincent Cestone – Okay.

John Benjamin - I thought, I wasn't clear that those were needed

Vincent Cestone – Those things happen. So Lenny you were the one asking the questions about the heights

Lenny Lim - Exactly

Vincent Cestone – If you look at it here

Lenny Lim - That's what I need

Vincent Cestone – Do you have any questions?

Bill Flaherty - I have no questions

Vincent Cestone – Anyone wish to speak on this? I make a motion to close the public hearing.

Bill Flaherty - I second

Adam Rodd - If I can just kind of clarify so there is,

Vincent Cestone – Sure

Adam Rodd - Your submissions, the addition that you are proposing is 26 feet 2 inches and how high is it?

John Benjamin - 5 feet 4 inches in depth

Adam Rodd - okay

John Benjamin - and the height is, well it is the outside wall. So it is the outside wall of the building. 15 feet

Adam Rodd - 15 feet high

John Benjamin - It extends past the existing and above this line

Adam Rodd - So the top of the roof I see it here, it is going to be 25 feet 10 inches right? Proposed height to peak

John Benjamin - That's correct. Which is about 10 feet below the zoning guide at least

Bill Flaherty - 15 feet

Vincent Cestone – there was a motion and a second to close the public hearing. All in favor?

All Board Members - Aye

Vincent Cestone – I'll make a motion for a straw poll. Do I have a second?

Bill Flaherty - I'll second

Vincent Cestone – All in favor

All Board Members – aye

Vincent Cestone – Len?

Lenny Lim - I'll vote in favor

Bill Flaherty - I vote in favor

Vincent Cestone – And so do I

John Benjamin - Thanks guys. I have one question though. A technical question. We had to submit a thousand dollar escrow bill to you guys to be kept which I have given you which is in escrow, which you hold as the ZBA. Now when do I get that back. Just so I am clear and I can tell my wife who pays the bills.

Vincent Cestone – After our trip to Disney World.

John Benjamin - I mean does that happen now or at the end of the building process or

Vincent Cestone – I am not sure. Tom, do you know how that is returned

Tom Monroe - It is supposed to be, it is supposed to cover any expenses that the board may have in retaining any consultants or anything which you have not done. In my opinion, if it is approved, the release of that tomorrow. That's my interpretation of that.

Vincent Cestone – We are supposed to do that? Is that what's written in the code? Because this is the first time. I don't know, do we have to do this as a roll call or just say

Adam Rodd - I think you can just say that you make a motion to approve the release any escrow monies that were posted

Vincent Cestone – Okay. I make a motion that we approve the release of any escrow monies. Do I have a second

Lenny Lim - Second

Vincent Cestone – All in favor

All Board Members – aye

John Benjamin - Thank you

Tom Monroe - One little catch to that. There has to be something in writing to

get the money back.

John Benjamin - I was hoping they could sign this and

Vincent Cestone – A letter

Kim Shewmaker - I have letterhead if you want me to write something down real quick or do you want it typed?

Vincent Cestone – Write it down real quick and I'll sign it.

John Benjamin - I'll wait

Kim Shewmaker - When do you want to do the resolution?

Adam Rodd - I think the next meeting is going to be the 4th Monday in June.

Vincent Cestone – Right

Adam Rodd - So I can do it then

Kim Shewmaker - The 25th

Vincent Cestone – You know Kim what we should do is have

Kim Shewmaker - A standard letter, a template

Vincent Cestone – While Kim is doing that, let's do the review of minutes of May 14th. Any corrections or changes to the minutes?

Bill Flaherty - I have two minor changes. One on page 4 change so to no.

Kim Shewmaker - I'll take it off the machine later

Bill Flaherty - Okay. And then on page 11 where there is a blank I want you to insert the applicant.

Vincent Cestone – With that

Bill Flaherty - I make a motion accept the minutes as corrected

Vincent Cestone – Okay. I'll second. All in favor?

All Board Members – aye

Vincent Cestone – While Kim is doing that little handwritten note, we are going

to move on to the two public hearings that are basically the same thing. We will do them together. Anthony Spica and Peter Risi

Bill Zutt - Good evening Mr. Chairman, Mr. Lim and Mr. Flaherty. My name is Bill Zutt and I am the attorney representing the two applicants on these two cases. They both involve fundamentally the same facts. This is an applicant for relief under NYS Zoning Law Section 280-a(3). It comes to you after an application to the Planning Board for approval for access. These lots are on an old subdivision plat _____. And as a result they fall into a sort of casual category under the land development regulations that tells the building inspector how to go about evaluating the code's access for a lot that isn't either on a public road, a subdivision road approved by the planning board or an open development area subdivision road approved by the planning board. This is not those three. So we went to the planning board with an improvement plan for these two lots on Upland Drive. The planning board rejected them as I believe it was actually required to do because the standard by which they judge these, as I read the code anyway, is the very same standard that would apply to a proposed new open development subdivision. And among those standards is a maximum 14 percent grade. So I don't think the planning board had a whole lot of latitude here. So our remedy under that circumstance is to appeal to your board as I said under 280-a(3) of the town law and we have with us tonight in addition to Mr. Spica and Mr. Risi, their engineer Tim Cronin and Mr. Cronin has brought with him the improvement plan which I believe _____ and also Mr. Chairman you had asked for a map of the lots and are and that would be potentially affected by this. And at this point with your permission I'll ask Mr. Cronin to describe the number of lots currently accessed over this portion of Upland Drive. The location of the lots that are before you. And describe his improvement plan and drainage plan of the lots. Thank you.

Tim Cronin - Mr. Chairman and members of the board, these are the two lots in question, this lot here it is sort of pink and this lot here across the street, across the road from it. Old Albany Post Road is here, there is a dirt drive coming up all the way up and continues up. They plan to black top, improve this surface here with 28 is the black top and 2 foot of curb or gutter on both sides. So it will be 24 feet wide up to this point here. This lot here is owned by a lady in Sweden and this one here is owned by Edie McCarthy. She is here tonight I believe. The rest of these lots are built on already.. The yellow ones are built on already. And this one here is not buildable because it is too wet and the streams go through it. The green one is owned by either the County or the Town. And this one is owned by Edie McCarthy and this one is owned by a lady in Sweden. The improvements that are shown here is 1200 feet of black topped road with a, it is supposed to be less than 14 percent, the road is 1200 feet long, about 300 feet in this area here is about 17 percent and about 300 feet in this area it is 18 percent. The rest of the road is within the standards that the Town set, less than 14 percent. And that's the story.

Bill Flaherty - Excuse me. What is the lot numbers that you referred to specifically

Tim Cronin - This lot number here, I don't know if it is the file map or the town map, but it is lot number 15 and 9

Bill Flaherty - 9 and 15

Tim Cronin - oh, 5 and 15. This is 5 and this is 15 over here.

Bill Flaherty - Now in what way do you propose to make this road up to town standards

Tim Cronin - Town standards

Bill Flaherty - Are you going to reduce the grade

Tim Cronin - I beg your pardon

Bill Flaherty - Are you going to reduce the grade

Tim Cronin - The grade is already set. The road, the basic surface of the road now is all solid rock. The road, the area that will be greater in percentage wise is up here and here. The rest of it is within the specifications of the town. The steepness of the town.

Bill Flaherty - How steep is that going to be at the steepest point

Tim Cronin - 18.4 percent

Bill Flaherty - 18.4

Tim Cronin - yes

Vincent Cestone – how are you going to handle the water run off

Tim Cronin - The water will run off basically the way it does now. But we are going to plan to divert it someway. The water coming down through here will be diverted over this lot here, owned by the lady in Sweden, and comes down and goes back to here where there is a retention area. And the water comes down, right now the water comes down through here and floods down this way. Some of the water from here up will be diverted down around this way and the rest of the water will continue down the way it is now.

Bill Flaherty - We are just going to let the water run freely

Tim Cronin - Paved gutter

Bill Flaherty - There is not going to be any dry wells along

Tim Cronin - No. No drywells along the road

Bill Flaherty - Why not

Tim Cronin - We are not adding any more water to it

Vincent Cestone – As soon as you clear the land

Tim Cronin - We will have drywells on the land. Each lot will retain its own water.

Lenny Lim - At the present time does water

Tim Cronin - It has to be designed. It depends on the soil there. The soil is very permeable up in this area. We took the percolation test for the health department and it does absorb the water pretty rapidly. I don't know, zero to five minutes I think.

Anthony Spica - (Speaking to Mr. Cronin but not audible)

Tim Cronin - What? I can't hear you

Bill Zutt - This isn't getting into the record. Mr. Chairman would it be okay if Mr. Spica went on the record because he is asking questions that I am sure are not being picked up.

Vincent Cestone – Sure. Why don't you stand up

Anthony Spica - I am not the expert but I know we did a study about the run off and how it would be changed, increased or decreased, as a result of the road. And we actually found that it was not increased and we actually we stopped the erosion of the road. The road are horrible and all the dirt is washing down and it is causing silt and it is stopping the culverts and whatever pipes are collecting water now. It is actually getting backed up. So it will be less erosion and cleaner water running off. It would actually help. We did a study with a company for that and one of them was the highway superintendent that looked at that problem with us. That's all I was just trying to get across.

Bill Flaherty - Do you have a copy of that study with you

Tim Cronin - What he is talking about is when we pave the road, it will not pick up any more silt coming down the road. Most of the silt has already been picked

up and coming down here it will leave more or less clear water that will come down here.

Bill Zutt - I think Mr. Flaherty's question was did you do a drainage study and if so, could you supply a copy

Tim Cronin - Yes. Right

Bill Flaherty - Could we have a copy of it? For the record

Lenny Lim - I would also like a copy of that lot map that you have hanging

Tim Cronin - This one here

Lenny Lim – yes

Tim Cronin - This is the drainage area that the flow of water underneath Upland Drive. It is right here. This is Upland Drive. And there is 375 acres of land draining in to that. We are not increasing the area running into that at all. We are just increasing the paving of some of the area, less than an acre. This is the drainage basin.

Bill Flaherty - Did you conduct a test?

Tim Cronin - Yes we did a drainage analysis. We conducted a test on the two lots. The permeability of the soil on the two lots. On this lot here and this lot here. It has good percolation because it absorbs water in the lot.

Bill Flaherty - Did you do any tests on the road?

Tim Cronin - The road is more or less bedrock now. All the water, the erosion from the existing rainfall washed away most of the soil on the road. So it is basically ledge rock now

Vincent Cestone – And it did a lot of damage to Old Albany Post Road the last time.

Tim Cronin - It will continue to do damage to all those roads up there

Anthony Spica - You had asked us to put signs on the post to show our property. Did anybody go up and look? We had posted the signs

Vincent Cestone – Without a horse? Mr. Cronin, as far as the documentation, you can submit it, you don't have to submit it immediately. You can submit it during the process of the meeting.

Tim Cronin - Okay. Fine. Any other questions?

Bill Flaherty - You are going to blacktop, you said you are going to blacktop the upper portion of that road

Tim Cronin - I beg your pardon? We are going to blacktop the road, this road 1200 feet

Bill Flaherty - 1200 feet

Tim Cronin - 1200 feet of road, 20 foot wide

Bill Flaherty - okay. Now is that going to be in accordance with the town specifications for roads? Are you going to meet those standards?

Tim Cronin - The town's specifications call for I think 8 inches of Item 4 over the soil. We are on ledge rock so _____ over the years there have been courses of Item 4 and gravel on that road. We are leaving that alone. We are not disturbing it. So we are going to level it with 2 or 3 inches of what they call Item 4 and then blacktop

Vincent Cestone – I would like to have Roger look at this plan, the highway department

Lenny Lim - I still didn't get the answer, is it up to Town spec?

Tim Cronin - I beg your pardon?

Lenny Lim - Is it up to town spec?

Tim Cronin - No it is not up to town spec. The town spec when you supposed to excavate a couple of feet down and then build it up with gravel and Item 4. This is all ledge rock. We don't have to dig down to get a firm surface. We are just going to level the surface that is there now and then like 4 or 5 inches of that and then blacktop on top of it. Which would be a better road than the town.

Lenny Lim - Now does this woman from Sweden, does she know that the water is going to go through her property?

Tim Cronin - Yes. I believe she does

Vincent Cestone – Do you have something in writing

Tim Cronin - No we don't have anything in writing

Bill Zutt - We located the drainage study

Vincent Cestone – Okay. Adam do you have something?

Adam Rodd - Is there a way to construct this road that would not violate the maximum grade imposed by the code

Tim Cronin - No. The road, in other words, the elevation here is 364 feet and down at the beginning well down at the lowest point here which is a station 3 is 231 feet and if you come up in the grade here, it is greater than 12 to 14 percent

Adam Rodd - Have you considered more of a serpentine road type of road so you can achieve the grade according to code

Tim Cronin - Yes we have explored that

Adam Rodd - In what respect

Tim Cronin - And we are saying this is the best we can do

Adam Rodd - Well have you, is it possible to with a more serpentine contour of the road to comply with the code

Tim Cronin - We can comply with the Code, we wouldn't be here if

Adam Rodd - I mean even with, I am talking about an alternate serpentine design could you do that and still comply with the code

Tim Cronin - You mean making the road longer by taking like this here

Adam Rodd - Exactly

Tim Cronin - We don't own, we only own 50 feet of it. I mean there is only a 50 foot right of way here. We can't serpentine

Adam Rodd - Have you pursued any attempt to obtain easements to do that with any of the property owners

Tim Cronin - No we haven't.

Adam Rodd - You haven't pursued that

Tim Cronin – no

Vincent Cestone – You will have your turn. Any more questions from the board

Lenny Lim - Not right now

Vincent Cestone – One thing that we are going to want have done is we are going to want to have an engineer look at this and we would also like to have the highway department. Under town code we can ask for an escrow amount to cover that and that is what we are going to be doing. We are going to need, I don't know, an amount of money probably in the neighborhood of 3 to 5 thousand dollars so that an engineer can look at it and anything that is not expended will be returned to you.

Bill Zutt - Mr. Chairman, before we close with Mr. Cronin because I think he may have forgotten something that he discussed with me this afternoon and it had to do with the wearing surface on the road. And perhaps you

Tim Cronin - The road you usually put down 3 or 4 inches of binder and then you put down the top course the blacktop. Now the binder course is more _____ it holds the road more. It gives it more friction

Vincent Cestone – I think it is the Continental Village Fire Department, have you approached the Continental Village Fire Department and asked them if they would have safe access to the property

Bill Zutt - According to, right after your last meeting Mr. Chairman that was the last thing that you mentioned, and since then Mr. Risi has been on the phone trying to reach the Fire Department. But I think he was reaching out to Garrison not Continental Village. And so far he has been unsuccessful in reaching either. So we will continue that effort. But it is good to know now that it is Continental Village Fire and not Garrison

Vincent Cestone – I am pretty sure and they have a website ContinentalVillageFD.org

Bill Zutt - Okay. Thank you

Vincent Cestone – Any more questions from the board?

Bill Flaherty - Not at this time

Vincent Cestone – Comments from the audience? You raised your hand, just stand up and introduce yourself

David (?) - I am David _____ and I am adjacent to the _____. The question was raised what do the people (not audible) I can at least answer having a small retention pond on my property and this is the first time that I am hearing anything about it

Tim Cronin - You own this piece of property down here

David (?) - No. right here

Lenny Lim - What lot number is that? You own the property that this water is going to drain into?

Tim Cronin - He owns this property over here

Lenny Lim - I see it.

Vincent Cestone – Anyone else wish to speak? Sir? Stand up and introduce yourself

Gabriel (?) - My name is Gabriel _____. I am the first house on the left on Upland Drive. I also belong to the Continental Village Fire Department and I know there has been some discussion and I was hoping _____ could make it tonight. As far as the retention pond, that is wetlands. It is not really made to be a retention pond. Until that was built up that would flow freely and it really wasn't meant to take everyone's water from Upland Drive and force it down there. So I think an environmental study would be the way to go before you guys grant anything.

Vincent Cestone – Somebody else? Madam? Introduce yourself please

Monica (?) - My name is Monica _____. We own this property right here. We have owned it for over 20 years. I can't drive to it. Just tried before we came here. I can't get there.

Tim Cronin - You live in Croton?

Monica (?) - Dutchess County

Vincent Cestone – I've driven that road. I know what you are saying.

Bill Flaherty - Do you have a 4 wheel drive

Monica (?) - Do I have a 4 wheel drive? I have a 4 wheel drive. I cannot access that property. Have you ever seen this road

Bill Flaherty - I have seen the road

Monica (?) - Have you seen it recently

Bill Flaherty - It's been about 4 or 5 years since I've been down there but I will

Monica (?) - I saw it half an hour ago. You have to get out of your car and walk

Tim Cronin - Are you in favor of this

Monica (?) - The road?

Tim Cronin - Yes

Monica (?) – absolutely. I would like to go to my property.

Vincent Cestone – Madam?

Kathleen (?) - I am Kathleen _____. The first house on the left. Do you have your property for sale for \$179,000

Monica (?) - No I do not

Kathleen (?) - Somebody does

Tim Cronin - I think it is Murphy

Kathleen (?) - Is it the Swedish woman or

Tim Cronin - She might have it for sale

Kathleen (?) - For \$179,000

Tim Cronin - John Delano is the contact we have with the lady, I forget her name

Kathleen (?) - Somebody is trying to sell for \$179,000 and you can't build on it

Vincent Cestone – Anyone else wish to speak? Sir?

Lou Barberi (?) - I am Lou Barberi and I've lived on Upland Drive for 28 years. Many people have come into this board and other boards asking permission to build on that road and the people who have lived there have seen it and watched the board go back and forth should we allow this should we not allow this, we live up there and I think we are the ones that you should be listening to not the people who are trying to either build a house and run or make a profit. I talked to Mr. Risi many times about this. He owns the piece right next to my house. I have absolutely no problem with an owner of the property building on his property. And if he is willing to improve the road, blacktop how many inches, and the Town feels that is adequate, that is step one. The rest of the steps are once the board allows his property to be built on, there is quite a few other lots that are going to be coming before you again looking for variances and appeals and also build on that road. We just had that flood a couple of weeks ago that washed out the wetlands that he is going to put the water from this land into, doing that I think is going to make it worse. I am not an engineer but I can see that water rushing

down these blacktop swales, it doesn't have any retention or any catch basins to grab it. Again, I feel what you mentioned before about getting an engineer to look at his proposal would be a minimal step. I have met most of my neighbors and I think we would all love to see a blacktop road. I think they deserve to get to their property. But before it is approved and before the machines come in there, you have to be thinking about what is going to happen to the rest of Upland Drive once two lots are approved. There has been many variances, there has been a house built within the last five years and they had to get variances for that. They have a square variance that was approved and they got drainage variance and they had to move their driveway to the lowest level of the grade and it was approved. And with that there were conditions that the town had enforced. That property owner was to do the road five or six years ago. All I ask is that let the blacktop begin, we would love to see it. As long as it will be safe and _____. Thank you

Tim Cronin - Mr. Chairman I would like to point out

Vincent Cestone – One second. Is there anyone else in the audience who wishes to speak? Mr. Monroe

Tom Monroe - A question to Mr. Cronin. Tim will the road work be part of the overall developments thereby being more than an acre of disturbance requiring notice of intent to the EC. When you look at those two lots together along with the road work it puts you well over an acre of disturbance.

Tim Cronin - I believe it is two different properties. One would be the construction of the road, I am not an expert on that, Bill maybe you can help me with that because of it being over the, 50 feet by 1200 feet is 60,000 square feet and then the two lots are probably an acre each. It would be 120,000 square feet, 3 acres. Do they want to look at that for wetland, I don't know.

Bill Zutt - I think if the total site disturbance of the collective project exceeded an acre Tom they would probably want a filing. It is the disturbed area that they look at and I think that the existing right of way is already a disturbed area. So we would have to do a calculation

Tom Monroe - The two lots since they are going to be a joint project I am sure would be over an acre

Tim Cronin - They are being taken separate here tonight, they are two separate

Tom Monroe - They are separate here but the DEC is not going to look at them separately

Tim Cronin – okay. And it was said there were a tremendous amount of lots up there. I did a study here which we did point out some mistakes on but there are

only about 3, 5, 8 lots on this that I would envision going out to Old Albany Post Road and maybe these 3 lots would go out to Winston Road. These lots would definitely go out to Winston Road.

Vincent Cestone – Well we obviously need more information. So we are going to want to have the Town Engineer to look at these plans. I want the Highway Superintendent and the Fire Chief to comment on this and if the DEC needs to be involved, they need to be brought up to speed right away. Sir?

Audience Member - Can the town look into how many lots there are on Upland Drive and how many lots have BOHA.

Vincent Cestone – What relevance would that have to this

Audience Member - He is saying that there are only 8 lots for possible building sites

Vincent Cestone – From experience just because they don't have BOHA doesn't mean they can't go before the County and get it. And generally what happens unless it is wetlands or if it is _____ the BOH will give them some sort of BOHA with some sort of plan. It may be very expensive but you would have to come to the realization that every lot that is not under water could possibly be developed.

Audience Member - Okay. Now that the fact that it is a private road and there is only supposed to be a certain amount

Vincent Cestone – Well, they would all have to come through the process. The only time that that would be rescinded is if everyone on that road got together and improved the road and deeded it to the town. Then everyone of those lots could be developed without us being involved. Yes?

Audience Member - Deeding the property or deeding their portion of the road to the town

Vincent Cestone – The whole road in total. If it was improved to town standards and deeded to the town and the town accepted it, then all the lots would not have to go through the zoning board.

Tim Cronin - Now they mentioned that there are a lot of lots, all this green, all this shaded green here and here, that's park lands. That is owned by either the County or the Town.

Audience Member - What about Cliffside Court? It has access from Upland Drive

Tim Cronin - There are lots up there that are buildable but chances are they would go out to Winston Road. They are a lot closer than going down from this way. They would probably go out Winston.

Audience Member - But if it is going to be blacktopped, they would probably go out

Tim Cronin - It is not going to be blacktopped all the way down. Down by Old Albany Post Road is a gravel road

Audience Member - Let's just say that if this is approved and if there is a blacktop on this side of Upland Drive

Tim Cronin - The lot here is built on, chances are they would go out to Winston.

Vincent Cestone – You can't make that assumption.; More than likely that is true but you can't make the assumption just they are on one side they are going to out to Winston Lane. They can always go out to Albany Post Road because they may have a reason to go that way. So you can't make that assumption. The assumption is that they will go either way.

(?) - If they get approval to build they have to fix the road back to the main road anyway. So it would be a non-issue

Anyone? Sir?

Audience Member - It segways into that comment, the question I have for Mr. Cronin, Mr. Cronin is actually my neighbor who I understand has three lots that are potentially buildable and from what I understand potentially Mr. Cronin will then pick up from these lots and pave the rest of the road. So I wanted to substantiate the rumors if that is true or not and then also to reiterate what Mr. Cory is saying in terms of requesting an EIS if possible or if this is the venue for an EIS and a SEQR Statement. Not only for an environmental affect or for a potential archeological or cultural social sites or areas of importance as we know that that area is somewhat instrumental during the Revolutionary War. So hence, I believe some of these areas are park land because of that result. So I just wanted to ensure that we are not imposing upon something that might be a potential loss to our future generations.

Vincent Cestone – Adam, do you think a SEQR process is necessary for something like this

Adam Rodd - Yes. Absolutely.

Bill Zutt - I would like to speak to that issue if I may Mr. Chairman

Vincent Cestone – Sure

Bill Zutt - I have reason to believe that this is a type 2 action under SEQR. It is an area variance 280-a(3) under town law. And an area variance to my recollection under the _____ is a type 2 action. Therefore it is exempt. If we were coming in with a subdivision proposal or a commercial industrial site plan, that would be a different matter. Then arguably we would be unlisted and could qualify for SEQR. But I don't believe this particular action is one that is subject to SEQR.

Vincent Cestone – Adam

Adam Rodd - Well this is something obviously we are going to have to look into. But with respect to this pond, or this retention, I don't know what

Tim Cronin - It is not necessary. We could have the water go straight down the road and not go into that pond

Adam Rodd - We will need to consult with the engineer about the environmental impacts and what the appropriate typing is going to be. I mean I understand your position. I am not convinced at this point that this is a type 2. It may very well be, but I am not convinced

Bill Zutt - Even I am not 100 percent convinced. I don't carry the regulations around in my head but I do recall that an area variance is a type 2 and

Adam Rodd - That's true

Bill Zutt - But certainly Mr. Chairman what we could do in the interest, to side step the technical issue for the moment and recognize potential impacts whether they qualify for SEQR review or not, we should probably look at anyway.

Vincent Cestone – Absolutely

Bill Zutt - So I think that is what I am going to Mr. Cronin to do.

Vincent Cestone – And the other thing that we are concerned about, all that water that runs off Upland Drive on to Old Albany Post Road damages all that property along the way. If you increase that, I think that you would be liable for it

Bill Zutt - We will have to take a look at this, we will take a harder look before we come back next month

Vincent Cestone – Okay so the things that we need, we need the engineering, highway department, Mr. Rim is the Chief of the Fire Department. I've called him myself and left a message.

Bill Zutt - Mr. Chirico is the Highway Superintendent. The Town Engineer is Bibo Associates

Vincent Cestone – Yes

Bill Zutt - Okay. We will contact them all

Vincent Cestone – Okay

Adam Rodd - I mean we can initial the contact with the town engineers

Bill Zutt - Okay. What we will do is send in a sufficient number of improvement plans for you to transfer over to Bibo

Vincent Cestone – Well this is going to take some time. I am sure you are not going to do this in about 2 hours. Our next meeting is June 25th. I don't think you could possibly get this done by June 25th

Bill Zutt - That's a push

Vincent Cestone – So our next meeting would be July 9th.

Bill Zutt - That's a Monday

Vincent Cestone – Yes

Adam Rodd - Is that the second Monday in July

Vincent Cestone – yes

Bill Zutt - That will work

Vincent Cestone – We will put it on and if you are not ready, submit the documentation to the board and Mr. Rodd so that if you are not ready we can move it out another week

Bill Zutt - Thank you very much

Bill Flaherty - I would also like to know how many homes are built on that road

Tim Cronin - We have that right here

Lenny Lim - Can I get a copy of that map

Bill Flaherty - Tom, do we have any restrictions on the number that can be built

on a private road?

Tom Monroe - 8

Vincent Cestone – 8 is the maximum

Bill Flaherty - well there must be at least 20 or more on that road

Tom Monroe - a lot of those predate Zoning

Bill Flaherty - oh okay

Tim Cronin - They are all little old bungalows that converted

Anthony Spica - I would like to say something before you close the meeting

Vincent Cestone – Sure go right ahead

Anthony Spica - I would like for everyone say we came to build two homes, we don't want to ruin anybody's privacy, we respect your rights as home owners. All I want to do is build two homes okay. We are willing to take this road from an impassable road, a mule cannot get up that road. A fire truck can't get up that road, an ambulance can't get up, a car cannot get up. It is impassable. The town does not want to do anything to fix because it is a private road. We only want to build two houses. We are trying, it is a trade off, but we are trying to make something work. And physically with an engineer, an expert engineer, we have done a lot of studies. The most feasible way, there is a trade off, it is not a perfect road, but it is extremely more, I am at a loss for words, it is more safe and passable than it is now. We only have a certain amount that we can work with to make the road. So we are working with what is there. Okay. We are making a 20 foot road 1200 feet long to build two homes. So it is not going to be a score for us. A home run that we are going to make tons of money and run. It is not going to be. We are just trying to make these two homes buildable. If we, right now we are hanging from a thread because we spent enough money. I can just use those lots to let my kids ride their dirt bikes on and hunt if that's the way it goes. But the homeowners should understand, if we go away, nobody is going to do this. They are going to have holes and ruts forever. God forbid somebody has an accident, heart attack, no body is going to be able to get up that road. If a house is on fire, the fire trucks are not going up the road. Everybody is worried about that we want to build two homes and make a score, everybody's home values is going to be doubled when they have a passable road. So there is a trade off here that people have to remember. It is not the perfect road. We all agree on that. We are doing what we can to make it feasible. To make a feasible job out of this. Everyone's home is going to be worth a lot more money with a passable road. Maybe you like your house but your heirs might not be able to sell it. Down the road if you do want to move and somebody comes to

buy it, they are not going to want to go up that road the way it is. So the only thing I can see is the positives, if we go away, we are two private guys trying to do an immense project here. If we go away, you guys are going to be on your own and I can't see how physically would want to shoot this down. I mean, we are really putting our heart into this project. We did all kinds of studies, fly overs, topographical studies, really I would like to see you people think about it more seriously and think if we do go away what are you losing. What are you gaining and what are you losing? Okay. The physical aspects of this, we are doing the best with what we have. You can not make a snaked road, these are peoples' homes, it can't happen. So this road after this will almost be, be able to be taken by the town. If it goes further, maybe the town will take it and your tax dollars will be worth something after that and the town will maintain it. We are trying to go forward. I mean progress, you lose a little bit on your privacy but you do gain from access. I mean right now it is horrible. That's just what I wanted to say and I hope everybody thinks about it.

(TURNING TAPE OVER...MAY HAVE LOST SOME DIALOGUE)

Audience Member - we had a builder come in and promised the stars and the moon. He walked.

Anthony Spica - We won't be able to get our houses built without guaranteeing that

Audience Member - The water. The water is a big issue. We want to know where the water is going. Obviously it cannot go into Old Albany you are going to have a problem. So don't say that we are not for it. We are for it. We just want to make sure you do what is right

Anthony Spica - Okay. Thank you

Vincent Cestone – Okay one last question and then we are going to continue this

David (?) – David _____ again. I think that whether your property values are going to go up or not might depend on your situation. And I think that if there are, there is this road built, there is clearly a possibility a number of additional houses will be built there. That might have a negative impact on people's home properties if there is a lot more traffic. And on a road that is an historical road, the National _____ must remain dirt. You are talking about adding a black top road to it and it goes up to a very large flat area where there is a lot of potential sites. And from my property, yeah, it is going to go down in value because right across the valley there is not going to

Anthony Spica - There is only 5 building sites up above on, all the other land is owned by the town

David (?) – You don't live on Upland Drive either. You are

Vincent Cestone – Just a word from my experience, you can't make the assumption that this is going to increase the value of your property because you can't guarantee the maintenance of the road. The only time you can be guaranteed that your property value is going to go up is if it is a town road. You deed it to the town. Because then you have guaranteed maintenance on the road.

Audience Member - Who is going to guarantee the maintenance

Vincent Cestone – That happens all the time until it gets shifted to someone else and then the neighbors fall by the waist side and then Tom is behind the eight ball trying to get somebody to do work

Tom Monroe - If it is done the same way that the project over on Ridge Road was done, those are road maintenance agreements that are in the deeds to the property. So the homeowners purchasing those homes have no choice

Bill Flaherty - But to maintain the road. It will be in the deed

Bill Zutt - It is true with every private road Mr. Chairman. Absent of a maintenance agreement you are right, there is nothing. So the very best that you can hope for on anything other than a public road is an enforceable maintenance agreement that is in the title. And we fully anticipate, as Tony said this is the best that we can do given the circumstances we are operating under. The very best we can do. We are trying to meet every possible goal in our means.

Vincent Cestone – With that we are going to continue this on to July 9th

Bill Zutt - Yes

Vincent Cestone – And if you need more time, (inaudible). Kim, have we gotten anything from Rossouw

Kim Shewmaker - No

Vincent Cestone – Is Mr. Rossouw here or anybody representing Mr. Rossouw?

Kim Shewmaker - Withdrawn?

Adam Rodd – yes

Vincent Cestone – Next is Nancy Carlucci.

Kim Shewmaker - What are we doing?

Adam Rodd - It's fine. Are we going to meet the 4th Monday for Carlucci

Kim Shewmaker - The 25th of June for public hearing

Vincent Cestone – As far as old business is concerned we don't know if the meeting on the 6th to discuss Cooper. Motion to adjourn?

Lenny Lim - Second

Vincent Cestone – All in favor

All Board Members - aye

NOTE: These Minutes were prepared for the Zoning Board of Appeals and are subject to review, comment, emendation and approval thereupon.

DATE APPROVED: June 25, 2007

Respectfully submitted,

Kim Shewmaker
Secretary