

ZONING BOARD OF APPEALS

January 8, 2007

MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, January 8, 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
	Robert Dee	-	Member
	Paula Clair	-	Member
	Adam Rodd	-	Counsel

ABSENT:

some business that we have here first so that these people don't have to sit through the entire public hearing. Jules Bass review for completeness to see if we can place it on the agenda. Have any of the members had a chance to review? I have reviewed it. I think it is complete. Is Mr. Bass here somewhere? Okay. It is complete and place it on, will we make the 22nd?

Kim Shewmaker - No

Vincent Cestone - So the first meeting in February.

Kim Shewmaker - February 5th

Vincent Cestone - February 5th okay. Review of minutes of November 20th. Any additions, corrections or deletions?

Lenny Lim - I have none

Vincent Cestone - I will make a motion

Bill Flaherty - I have just a very minor correction to make on the very first page and I want to correct one word. To read nonjudgmental rather than judgmental. Other than that I have no further

Kim Shewmaker - Who was speaking

Bill Flaherty - I am

Vincent Cestone - Okay. I will make a motion to accept the minutes as

Bill Flaherty - Second

Vincent Cestone - All those in favor of accepting the minutes say aye

All Board Members - Aye

Vincent Cestone - Opposed? Okay. Next item on the agenda I want to handle is the Bump resolution. Mr. Rodd if you would read the resolution into the minutes, we would appreciate it.

Adam Rodd - Mr. Chairman you want me to read the entire resolution?

Vincent Cestone - That's what we have done previously. Normally do we have to do that?

Adam Rodd - I don't think so. I think the resolution really needs just to be made available to anyone who wants to see it. I think it would be sufficient to read the decision as opposed to going through my recitation of the procedural history and the factors, but whatever the board prefers on that

Vincent Cestone - What's the boards' pleasure? The whole resolution or just the decision and conditions?

Bill Flaherty - Well I think we can abbreviate it by just going over the decision as opposed to reading the entire document in itself. It is rather time consuming and somewhat redundant. That's my opinion maybe other people

Lenny Lim - There is no legal reason to read the whole thing, I think we can encapsulate it

Vincent Cestone - Okay. Just the decision and the conditions

Adam Rodd - Sure. Decision on, the Decision part of the Decision of Findings and Fact on Bump reads as follows. Area variances are granted, pursuant to Section 267-(b)3, in order to permit the applicants to renovate and enlarge their existing home located at 10 Hudson River Lane for purposes of constructing a two-story single family dwelling, with insufficient side yard setbacks. In connection with the grant of this variance, the Board hereby imposes the following conditions: (a) the proposed new structure shall not exceed 35' feet in height; (b) the existing side yard set backs shall be maintained and not enlarged,

with a 7' foot set back from the north side of the dwelling, a 4' foot 9" inch set back from the north side of the chimney, and a 5' foot 3" inch set back from the south side of the dwelling; (c) the gross square footage of the proposed dwelling shall not exceed 2693' feet; (d) the proposed porches, on the east and west sides of the subject dwelling, shall be neither enclosed or heated; (e) no further modifications, enlargement, or reconfiguration of the proposed renovated dwelling, beyond that which has been granted herein, is authorized without Zoning Board approval.

Vincent Cestone - Can I just make a change to (a) in saying not to exceed a maximum height of 35' feet

Adam Rodd - Fine

Vincent Cestone - Okay. I will make a motion to accept the resolution as read. Do I have a second?

Bill Flaherty - I'll second

Vincent Cestone - All in favor?

All Board Members - Aye.

Vincent Cestone - Okay now we are going to do a straw poll vote. Lenny?

Lenny Lim - I'll vote in favor

Bill Flaherty - I vote in favor

Vincent Cestone - I will vote in favor. Bob?

Robert Dee - I don't have the information on it, so being the first meeting, I will have to abstain.

Vincent Cestone - Paula?

Paula Clair - I will have to defer to you as well. I guess I will vote in favor.

Vincent Cestone - Very good. The motion carries. All right now we move on to the public hearing of David Weinpahl. Is there someone to speak for the applicant?

Robert Gaudio - Hi.

Vincent Cestone - Tell us what you are here for. I am sure you have things prepared.

Robert Gaudioso - I have a ton of things

Lenny Lim - I'm sure

Robert Gaudioso - I ask for the Boards' patience to go through it. It is somewhat of a long story but I think if I explain it in order, I think it will make it a lot easier for both myself and the board members. I am Robert Gaudioso from the law firm of Snyder and Snyder

Vincent Cestone - As long as you don't become voluminous

Robert Gaudioso - I will not. I promise. I am from the law firm of Snyder and Snyder. I am here representing David Weinpahl who lives at 88 Foundry Pond Road and he is _____ by his neighbors who are in the audience this evening. We are challenging essentially the issuance of two building permits by the building inspector. And in conjunction with that an entire subdivision "as of right" process that went on before the issuance of these building permits. We did outline our position to the building inspector and I am not sure what the board has in the file or does not have in the file. I know there are some new board members. But essentially

Vincent Cestone - Can I just interrupt for one second I have to say something to Mr. Bump.

Robert Gaudioso - Sure

Vincent Cestone - You have to bring in your building plans for us to stamp and sign

Jacob Bump - Okay

Vincent Cestone - I didn't say that. I'm sorry.

Jacob Bump - Okay

Vincent Cestone - Sorry

Robert Gaudioso - Thank you. This outlines essentially the six points of why we are challenging the issuance of the building permits. And just briefly on those six points, first we believe that there are these existing non-conforming structures on the property that were recently moved and that were required under the code site plan approval. I will talk a little bit about that later. Also that the building permit application didn't show the slopes. The Class 2 and Class 3 slopes. And in fact one of the building permits is now being amended for impact on those slopes. Number 3 is that one of the lots has an old road. And this is going to become

very important later. And because of the existence of this old road, the square footage of that old road is taken out of the lot acreage calculation and therefore that lot is substandard. It is below the required 80,000 square feet. Fifth, there is also we believe a right of way that is not shown on the plans but that in fact does exist and again when I show you the maps, I'll explain it, on lots one and two which again I will show some maps

Vincent Cestone - Is that the right of way that the Village of Cold Spring uses?

Robert Gaudioso - This is the right of way that the Village of Cold Spring has used and which we also believe is being set up to access a lot in the back, lot number 29. And I will show you that on the maps so it will become clear. And because of that, that triggered we believe subdivision approval under your own regulations as a provision that if you create a new right of way, it requires subdivision approval. And because of that right of way, also it comes out of the lot acreage again and those two lots we believe are also non-conforming. And finally, the storm water pollution prevention plan was not properly enacted, not properly putting in place and not properly or procedurally effectuated. So with that let me take a step back. Originally, there were three lots that the developer bought. And these three lots go back to a map from 1939 and I have a copy of that map here and what I have done is I have highlighted the three lots. And these three lots are part of a larger subdivision and these three lots are known and shown in _____. First there is the big lot. And that is known as the Club. See it labeled there as the club grounds? Highlighted in yellow.

Lenny Lim - Right

Robert Gaudioso - And there is lot 29 and then there is lot 32. The developer bought these three lots. And if you notice in purple there is the outskirts which are known as the old road. The old road goes up to what is known as the upper dam. The Village of Cold Spring has two reservoirs, they have an upper dam and a lower dam and they use this old road and they have going back almost 100 years to get to the dam and to maintain it.

Vincent Cestone - Okay

Robert Gaudioso - And as you look on the map in the bottom right hand corner it says that the club grounds are designated by the heavy black lines. And if you look at this map, the heavy black lines exclude this old road. So the developer bought these three lots and then he filed for a four lot subdivision with the Planning Board. This I apologize for, I only have one copy. They made an application to the Planning Board for a four lot subdivision and what he did was he took the outline there and he changed around the lots and proposed these four lots. What you have here to just to draw everyone in, this is the old road that was shown. As you see now the outline is on the outside of the old road. Okay? And then there is one lot here in the front, there is a lot in the back here, and he

proposed a common driveway to get to the lot back here. There is a lot over here and a lot over here, in an odd shape in order to meet all the bulk requirements. And just to get everyone a feel for the topography, I don't know if you've been out to the site, but there is a flat open field here. And this property was used as a camp ground and they have all these little outbuildings, these clubhouses around the camp grounds. And what he proposed to do was to divide this into a four lot subdivision. Take three lots and go to four lots. Well the CAC reviewed the application and they opposed it. They opposed it for a number of grounds. And this is all with the Planning Board. They opposed the number of lots, they said there should be three lots not four lots. They opposed it because of the tree removal and they opposed it because of the drainage issues that were going to be created. And the erosion control measures based on the drainage. It is a very steep winding road just to give you a background. It is a very small community, there are houses that are set back and well dispersed in this area and it is a very nice little portion of the town and that is why I think the residents care so much about it. And the CAC cared about it. Well the Town Planner also looked at it and the Town Planner also noted this old road. And he specifically indicated in his memo to the Planning Board how this old road was shown on the plan and he also indicated that the lots behind this old road would be land locked if it was no longer there. And that becomes very important to the Village of Cold Spring as we will get to. So the Planning Board had a number of issues and they held the matter over and they asked for a couple of things. One of which they asked for was a drainage report. And this was the developer's drainage report that he had submitted. Because again as you see on this map, this original subdivision map here, all of the shaded areas are the slopes, the sloped area. It is a very sloped property and drainage was a big issue. And the drainage report, and I highlighted some of the pertinent sections, but the drainage reports says because Foundry Pond Road has neither defined gutters or any drainage structures _____ there are existing drainage issues especially to the southwest. So they can see that there were drainage issues before this property was even developed. And what they proposed as part of the plan was a dry well and a pond, a retention pond. And they conceded in this report that I just handed to you that the pond wouldn't correct the quality of the water only the volume and the speed of which it would come off the property. So there were more drainage issues that were raised and the Planning Board was _____. So what happened next? The Planning Board asked the developer to go back and try some different plans and try some different layouts and the community objected to a number of lots and the developer withdrew the application. Everyone thought that this went away. But it didn't. What the developer did instead is he embarked on a multi-stage subdivision. Which he claims is permitted under the Zoning Code. And the Zoning Code has a number of exemptions from what requires a subdivision and what does not require a subdivision. One of which is changing lot lines is exempt. So what he did on the first sheet is he took the three lots and he transferred the ownerships of the lots and he redrew the lot lines. Now on the first page he redrew the lot lines to have two bigger lots in the back and to make the front lot, the club grounds, smaller.

And most importantly if you look along the top, he reallocated the old road to the back lot.

Lenny Lim - Ah

Robert Gaudio - Okay? Now according to the developer that is permitted under the code because it was a mere lot line change. So what he did was he made three bigger lots. And he took it a step further. If you flip the page, he took the club grounds which is now smaller under his first subdivision and subdivided it into two lots. Lots one and two. Again claiming that if a two lot subdivision in a residential zone on a town road which is permitted under the code as of right, that's the developer's argument. So now he went without going to the Planning Board and he ended up with four lots, which is what this map shows. It is very similar to this map if you look at it. You have one big lot over here which is lot 32, the one big lot in the back which is lot 29, and you have lots one and two. What you don't have is you don't have access to the flat area, lot 29. According to his map that is what he has eliminated and what he has done is that he has got access to this back road over the old old road and he has his lot frontage by going back here. That's how he does that now. Does anyone have any questions on this? It all makes sense? Well the Village of Cold Spring didn't agree. And they wrote a number of letters. And they have been writing letters for a couple of years. And this is, the latest letter I had until this evening and it makes it very clear and again I highlighted portions. And what they claim is they have access to the old road to get to the dam. And they talk about how they have accessed it over the years and they have gone up there with a cement truck and how that is very important for them to maintain the dam. What happened over the years is that this old road as you can see on the developer's map is very steep up in this portion. So what they did, with permission from the camp, is they came across the middle where it is flat and then picked up the old road from here and went up the rest of the way.

Lenny Lim - How did they do that again?

Robert Gaudio - They came across basically where the developer had proposed this common driveway to get to lot 29, they came across here and then picked up the old road and went upwards where it is a little bit flatter. Down here it is very steep to get to the road.

Vincent Cestone - I can see by the lines.

Robert Gaudio - The coloring is the different slopes under the town code. Greater than 25%, greater than 15%. It is my understanding the Village of Cold Spring, they just handed it to me, just obtained an opinion letter. That in fact their old road access dates back to the 1800's and that they still own the old road. Not that they own the old road. I miss-spoke. That they have access to the old road. And it really doesn't make a difference whether they only have access or whether

they have something more than that. Because the way the code reads if there is a right of way over a piece of property it comes out of the 80,000 square feet. So the developer had to show his plan with the property boundary going to the other side of the old road. The code changed during this process and it required the developer to submit a plat, and actual plat. And this is what he submitted for the plats one and two, which is essentially that second page that I handed out. This is just a little bit more detailed. And what you see here are lots one and two which is the old club grounds

Vincent Cestone - Right

Robert Gaudio - And here is the line down the middle. What I highlighted in orange are the septic fields. Okay? And here is the road down the middle. And if you remember, last time he had lot 29 with an access drive right down across the flat part down to Foundry Pond Road, which made good sense, which is what the Planning Board asked him to do. Now they are not showing that. But curiously they cattycornered the septic field and this spot right through here is exactly 20 feet wide just as it was with the common driveway. And curiously there is no septic field there and as we all know you can't drive across a septic field. So why did they do that? Well it is our opinion that they did it because they know when they come to build lot 29 in the back, they don't want to go down the old road because it was very steep and because it has a terrible site line to Foundry Pond Road. They want to have a right of way across lot 1 and 2 just as they had proposed when they went to the Planning Board. But if they showed that as a right of way, that requires subdivision approval, when you show a new right of way. So we think they need subdivision approval for two reasons. Number one, they just annexed the old road and they didn't have right to and the Village of Cold Spring agrees with us. And because there is this implied right of way here which when you look at the map and you know the history and you know the water department used to come across here and you know the developer proposed coming across there to get to lot 29, and because when you look at the map the septic field is cattycornered and there is a 20 foot wide strip right there, it all adds up to a right of way. Any questions on that? Here are the code sections that we believe need enforcing and just one other point here, they add a note number 7 that says the existing buildings, remember these are those existing cottages which are non-conforming structures, says they will be removed, or moved or altered. They never agreed to remove them from the property. What they have actually done is they moved a number of them and put them in the area of the old road right on the property line which would not meet the setbacks. The zoning code thought of this, the zoning code has a section that talks about non-conforming structures and what it says is that sure you can go ahead and move those, you can alter them, you can amend them, and you deal with this all the time where you have people come in, but it says that it requires a planning board public hearing. Well they moved these accessory structures and they didn't go to the planning board for a public hearing. And yet building permits were issued. So we think the first issue here is that those

structures before they were moved, before moving those structures they have to go to the planning board for a public hearing. The second thing is part of the criteria for the planning board to allow you to move an accessory or non-conforming structure, that you put it in a place where it is less non-conforming. When you look at these maps, these are in the setback area. What they have done is they have moved all them into the setback area. So now they have moved them into a more non-conforming location.

Lenny Lim - Do you have a number of how many of them

Robert Gaudio - If you look here, there is one, two, three, four, five, six. Looking from the street they are all piled up here. These little tiny you know old campers type bungalows. That's what they look like. So we think they have violated this section of the code. The next section of the code that we think they have violated was what I discussed before. The Code says that any lot that is created has to meet the underlining lot requirements. The most important underlining lot requirement here is the lot area which is 80,000 square feet. But what the code says is that you don't count easements or rights of way in that 80,000 square feet. Now we have two of them here. We have clearly the old road, which they annexed into lot 29. And the Village of Cold Spring says no we still have a right of way over that old road

Vincent Cestone - How did they do this, was

Robert Gaudio - Magic. They wrote a letter and said that we did a title search and the title company says everything is great. We therefore, and the quote from Mr. Watson is that the old right of way was ineffective. I don't know what ineffective means. The Village of Cold Spring in their letter this evening clearly states that they never abandoned the old road. We did a foil request for the Town of Philipstown, there are no records of the old road being abandoned. Whatever the old road is, we know that it is a right of way for the Village of Cold Spring to get to the dam to keep the dam maintained and to get to the reservoir. So we know there is a right of way. So we know lot 29 if you take out the area of the old road comes up short of the 80,000 square feet. And remember that was the first domino in the line. That was the first lot line adjustment to make lot 29 in the back bigger by adding the old road. But they added it with land they didn't own.

Vincent Cestone - Who was the owner of the land?

Robert Gaudio - The Caucasian Society of the Allevery, I think was the name of it.

Vincent Cestone - And haven't they

Robert Gaudio - Well that's a great question and I am sorry to cut right in.

When they deeded the three lots to the developer, the developer came to the planning board and I showed you the letter from Tim Miller saying what about this old road. Well right around the same time, a year after the original conveyance of the three lots the Caucasian Society quit claim deed the old road to the developer. But even if they owned, even if it was an old road, the most that they could have owned was half way up the old road. And we have people here in the audience that own property adjacent to the old road. You never own the whole road. You own up to the center line of the road and that is what the Village of Cold Spring's letter says tonight in the second to last paragraph they make mention to that. The most they could have deeded over is half of the old road. And they claimed to quit claim deed anything they may have had in the old road, but again it doesn't matter who owns the old road because under your code a right of way is enough to take that lot area out of the calculation of 80,000 square feet. And the Village of Cold Spring has clearly said that they have a right of way across that property and we submitted those letters and they submitted another one tonight which is actually a legal opinion from their counsel. But there is also the second right of way, and it is not shown in their plan because again if they had shown it on their plan, they would have been out of luck. And here is the reason why. Under the subdivision regulations on top of page, and I didn't highlight, but one, two, three and four, okay? One, two and three are the reasons why they tried to pull off this double as of right subdivision. Number four is reiterated down in D and what it says is if you create a new right of way, technically it says, that if a division creating a resulting in a street, highway or easement or right of way for vehicular traffic as set forth in subdivision B of the definition of subdivision in 112-1 above. What that means is if you create a right of way, you have to go get subdivision approval. So if they had said that this was a right of way or an easement to get to lot 29, it would have triggered subdivision approval. It would have also if you take the 20 foot wide by this distance here which is shown on the maps 266.98 feet, and you do the math, these lots just barely make it as it is, you take out the right of way calculation under the section that I previously handed you, and then these two lots are non-conforming. So this subdivision, as of right subdivision, in the first domino that fell was incorrect. It made an assumption that they could take the old road and it made an assumption that that old road was going to give access to lot 29. It doesn't do either. The old road is still a right of way for the Village to get to the dam and it doesn't make sense not to have the right of way to lot 29 through the flat part of the property right down the middle. In fact their own plan clearly shows that. They didn't label it as such. I agree to that. That doesn't mean it is not there. Why do the residents care about this? It is a very small little community back in there and it is very well laid out. It is a very winding road, traffic is very difficult and they are not against the developer using his land and getting a reasonable return on his investment. But what he has done is he has bought three lots, he is magically turning it into four lots by taking over the right of way, the old road which we have access to, and because he hasn't followed the simplest planning guidelines of the Town Code. When he went to the planning board they were concerned about site lines. They were concerned about drainage. Their own

drainage report talked about a dry pond which hasn't been installed. Okay? There is run-off issues that his own drainage report concedes to. Okay? There are access issues. The Planning Board suggested a common driveway which has now gone out the window. It just hasn't gone under any type of review. While we believe the building permits didn't require a proper even simple stuff like an erosion control plan, they started construction and an erosion control plan wasn't installed. _____ claims that someone accidentally knocked it down. Maybe that's the case. Then they claimed, when we took the Board's advise and we knew it was a long time from November until now and we went to the Court and we got an injunction. Particularly on the second lot that hasn't started construction. And in those papers they said oh no no we followed the New York State storm water prevention plan and we submitted an erosion control plan to the Planning Board. But they didn't install it. Okay so then they went out and installed it and then said we followed all the regulations. That was in the middle of December. Well at the end of December New York State DEC disagreed with what they said in the litigation and the DEC issues a cease and desist order. It is not easy to get the DEC to issue a cease and desist order. Particularly at the holidays. First they disagreed with the developer. They said that the area of disturbance is more than one acre and therefore it triggered what is called a notice of intent. So they said that they complied with all the requirements and they didn't even do a simple notice of intent to the DEC that they were going to start this construction. So when you go to the page that I highlighted, it talks about some of things. It talks about the erosion sedimentation control that was, where it was installed. It talks about stockpiled soil that had no controls around it. It talked about evidence of cement washing of the soil stockpile area. Most importantly it talked about the construction entrance had not been stabilized in accordance with New York State standards for erosion and control and sedimentation control. So they had trucks going in and out doing this construction, rushing this construction before we were able to get the injunction and as the DEC inspector found, there were tire tracks up and down Foundry Pond Road. There are tire tracks up and down Foundry Pond Road, you can imagine what the erosion has been and what the potential is for storm drainage. There was no stabilization measures initialized in areas where no further disturbance is required. So what we are saying to the board, now we don't want the board to say that they can't develop their property that would be crazy. We want two things. We want the Planning Board to have a public hearing for relocating these cottages because we think it is a bad plan. But more importantly we think there should be a subdivision review. We think the Code requires a subdivision review because a new right of way has been created. At a minimum we also think that the building permits should be halted because the lots are substandard. Because of the existing right of way the Village of Cold Spring has clearly indicated they still use, they still need. They can't get to the property, as your own Town Planner pointed out without having this right of way to maintain the dam. The dam holds back the upper reservoir from the lower reservoir. And the client's property abuts the lower reservoir. That dam should ever fail, his property is completely washed out. So that's why we think it is important. I

would be happy to answer any questions. I apologize that I took so long but as you can see it was a story that was worth telling.

Vincent Cestone - Has the Village of Cold Spring filed litigation

Robert Gaudio - Not yet. And just to tell you a little bit about the litigation. We received a temporary restraining order initially from the Judge. The Judge took papers from both sides and in our reply because the developer had told us that he had already poured the foundation and had expended tremendous amounts of money on custom materials for the first house, we conceded the fact that the TRO could be lifted on the first house. But we wanted it on the second house so that that construction could not commence. And the Judge upheld the injunction pending this board's review. So quite frankly, this is what this board is, the zoning board of appeals. And as you see those sections of the code and it requires some interpretation and some review by the board. But we think it is pretty clear.

Bill Flaherty - Well I for one find this issue to be complicated and confusing and I don't there is any easy way that I can understand all that you just said. I think we reviewed the information that was given to us at the time that this meeting had taken place and I believe the conclusion that there appears to be the most _____ and innovated manipulation of property lines that I have ever encountered on this board. By using loop holes and finding gray areas in our zoning code to do what has been done. I don't like what I see to be perfectly honest with you. I think that these people have taken undo advantage of situations that develop as a result of some of the gray areas that we may have in our zoning laws and created four lots out of two. I was up there today and you mentioned the cottages. They are not inhabitable are they? You can't do anything, you can't live in those cottages

Robert Gaudio - I think that is why they are non-conforming. I think you are right. I don't think they are residences. I think they are cottages

Bill Flaherty - From what I saw those cottages where just moved up to an area and just put there. I don't think they were built specifically in that area

Robert Gaudio - They were not

Bill Flaherty - And I assume that who ever did this obviously had another plan in mind relative to those cottages. I mean, tear them down, burn them up, throw them away, I don't really know. But nevertheless, that is only one issue. Cold Spring, the Village of Cold Spring has a very serious issue here relative to obtaining egress and ingress to the water source. The old road, I had no evidence of seeing that old road up there today. I don't even know how to traverse it. I didn't know where it was.

Robert Gaudio - The bottom half when you come off is where they put some of those cottages we believe.

Bill Flaherty - Exactly. I saw those cottages.

Robert Gaudio - It is impossible to access it that's why we had no idea how they intend to access lot 29 other than to go across lots one and two.

Bill Flaherty - and that's all over grown. It is significantly over grown.

Robert Gaudio - But the village has used it, the bottom portion is significantly over grown because what they did is they cut across the flat portion at the permission of the camp and then picked up the old road somewhere in this area. And if you walk up in that area while it is over grown, it is accessible by construction vehicles. And that's what they've done.

Bill Flaherty - Now I saw two homes up there under construction I believe.

Robert Gaudio - The first home is under construction. The second one should not be because that's what we still have the injunction pending this board's decision on this application

Bill Flaherty - Okay. I didn't go in that clearly because I was trespassing on private land

Robert Gaudio - Allegedly

Bill Flaherty – Whatever. I was very careful about how went in there. But there was construction vehicles

Robert Gaudio - We don't concede that the building permit should have been issued on lot one, we still think that should be stayed because the lot is substandard. What we did concede to that we wouldn't go for the injunction permanently because so much money had been spent by the developer on that property. And that is just a matter of legal strategy for my client. It doesn't have anything to do with our position that that lot is substandard based on that right of way.

Bill Flaherty - Now of course Foundry Dam Road is a very steep difficult road to traverse under the best conditions. In the winter time, I know I used to jog up there and I had to give that route up because it is too much for me. I pulled back. I don't know how it would accommodate all of that traffic that would be necessitated during construction period and future development of that area.

Robert Gaudio - That was the Planning Board's exact point. That's why they asked for different configurations regarding the lay out of the access drives trying

to combine the driveways as opposed to having four separate driveways. At the developer's whim now because there is no, currently there is no process.

Vincent Cestone - About the old road. The old road, is there some deed that shows that this is a right of way? And who the owner is? How long it has been around?

Robert Gaudio - The best I have is the 1939 map which shows the old road. And it shows it clearly being separate from the club grounds which I handed up as one of the first maps. But the board's, the Village of Cold Spring's legal opinion letter cites the number of deeds and _____. This is Mr. Faust and he has property on the line and he has deeds showing where he abuts the old road and that there is rights to half way out as I previously suggested, which is the common methodology for ownership.

Vincent Cestone - This is Mr. Faust?

Robert Gaudio - Yes.

Vincent Cestone - Can you get copies for us

Mr. Faust – they have brought cement trucks in and they brought them up the back road or the old road to work on the dam for the last number of years.

Robert Gaudio - So the Village of Cold Spring cites other deeds going back to the 1800's but they also cite to the fact that if for some reason the old road didn't exist, they would have an easement by implication, or by necessity. They have to get up there. It is land locked as your own Town Planner pointed out. So they point out in their letter from today, their opinion letter there are deeds going back to 1843. And that's is maybe where some of the confusion is. A lot of times when you have a title report they go back 40 years, maybe 100 years. But the Cold Spring attorney is saying today is that he went back to the 1800's, the mid-1800's and they cite the deeds and the need to get up there.

Vincent Cestone - Any more questions from the board? Any comments from the audience? Stand up and introduce yourself.

Bill Zutt - You want me to address who I am?

Vincent Cestone - Yes

Bill Zutt - Bill Zutt. Attorney for Mr. and Mrs. Al DeVido. They are here tonight. They own the property. Also present tonight Glen Watson their surveyor, Margaret McManus and engineer with the firm of Badey and Watson. Good evening. With due respect to my colleague, much of what he told you though perhaps true is also irrelevant to the issue before your board right now. Let me

start with hand outs and I am not going to ask you to read them tonight because they are a little bit lengthy but I think they may shed a little bit different light on this application and thus far has been created to _____. I didn't know there were two new appointments and I have to apologize I am short one copy.

Vincent Cestone - Actually you should have one copy for the clerk and the attorney

Bill Zutt - Actually I should have a couple of extra copies. Actually Mr. Flaherty why don't I give you mine and I can always run off additional ones at my office.

Bill Flaherty - Thank you

Bill Zutt - You're welcome. Let's see now. What I would like to do right now is start off by reading from, can I borrow your copy? I want to go backwards if I could because the last topic touched on by Mr. Gaudioso had to do with the action which his client filed in Putnam County Supreme Court. And I would like to read the third to last paragraph from Judge O'Rourke's Decision.

Lenny Lim - What page

Bill Zutt - Page 7 Mr. Lim. And this was following the submission of lengthy documents including many of the affidavits which I just handed you. And this was a request made by Mr. Weinpahl through his counsel for a preliminary injunction preventing any further construction on either of the two lots in question. And after reading these papers, Judge O'Rourke declared as follows "after reading all the documents submitted, the Court finds the respondent Alfred DeVido Associates LLC, _____ Corporation and Ant Ant Corporation, those being the owners of the other two lots, have complied with all requirements for the building project. The preliminary injunction and temporary restraining order issued herein is vacated as to lot number one, that was the lot under construction. Now there is a reason why the Judge ruled as he did. He had an opportunity to review many of the materials that you are being asked to review and that I will give you along the way here. But the point is is that the story here doesn't begin with an application to the planning board. The story here begins with what after that. An effort was made to gain Planning Board approval for a subdivision and was abandoned. The only reason there was an application made to the Planning Board was because the original project proposal contemplated the creation of a shared driveway to service two of the lots. Am I correct? Two of the lots, thank you. That circumstance and that circumstance alone drives the need for planning board approval, as you all know Philipstown unlike many communities does not require planning board approval for each and every subdivision. Only for certain categories of subdivisions including those that create new access, new rights of way for access, subdivisions in commercial and industrial zones and subdivisions of more than three lots, none of which apply here. Having encountered, I am being very candid now, having encountered the

