

ZONING BOARD OF APPEALS

March 5, 2007

MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, March 5, 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:

Vincent Cestone – Okay. What I want to do is I am going to take care of some business first. I am going to do the reviews for completeness. So these people don't have to hang around through the public hearing. Is Tyler Gagnon here?

Mike Carr - My name is Mike Carr. I am representing this application for Mr. Gagnon.

Vincent Cestone – This is just for completeness. So we will look at it and put you on for a public hearing.

Mike Carr - All right

Vincent Cestone – But we won't discuss it tonight

Mike Carr - Okay

Vincent Cestone – Adam do you have anything on it

Adam Rodd - No. I just wanted to make sure that my notes indicate that the application looked complete. There wasn't anything missing. I would want clarification on the feet and inches distances regarding the exact setbacks

Mike Carr - Okay. So you want that broken down to more accurate than just feet?

Adam Rodd - Well feet and inches

Vincent Cestone – What we are going to ask you to do is give us exactly how much you are asking for

Mike Carr - Okay

Vincent Cestone – Kim, can we get him on for the meeting on the

Kim Shewmaker - 26th?

Vincent Cestone – 26th

Kim Shewmaker - yes

Vincent Cestone – so you will be on for the 26th for public hearing

Mike Carr - okay thank you

Bill Flaherty - I have a question that I would like to ask Mr. Carr

Mike Carr - Yes

Bill Flaherty - I reviewed the blueprints, the drawings, and what is the overall height of the building?

Mike Carr - The overall height is going to be

Bill Flaherty - I didn't see them on the drawings

Mike Carr - 25 feet. It is on the

Vincent Cestone – We'll deal with this during the public hearing

Bill Flaherty - I couldn't see it on the drawings itself, the overall height

Mike Carr - I will definitely recheck that, I believe it is on there

Bill Flaherty - I would appreciate that very much if you would check that

Mike Carr - Okay. No problem

Vincent Cestone – So you are on

Mike Carr - Okay thank you

Vincent Cestone – Okay next review for completeness is Donald Henny. I didn't find anything

Adam Rodd - The only thing is I didn't find any documentation concerning certificates of occupancy or existing structures. At least I didn't see any in my application folder

Vincent Cestone – Is Mr. Henny here? Okay so we will send him a letter. I am going to tentatively put him on for a public hearing also on the 26th. If we don't get that stuff

Robert Dee - I would just like to note that the blueprints are like a Photostat copy and are scaled down, they are a little difficult for me to read.

Vincent Cestone – Do you have a better copy of these as part of the public record

Kim Shewmaker - I'll check

Vincent Cestone – When you ask for the COs ask if he has a better print that he could bring with him

Robert Dee - The prints are here for the building department but these are photocopies and scaled down

Vincent Cestone – So we must have the originals

Bill Flaherty - Is he going to raze the building and build a foundation and increase the height on the overall building. And I couldn't see again any dimensions of the overall height on the drawing that was submitted.

Vincent Cestone – We can ask him at the public hearing

Bill Flaherty - And I didn't see, why was the building permit denied?

Vincent Cestone – It was a nonconforming structure and any time you want to change a nonconforming structure you have to come to us

Bill Flaherty - Okay

Adam Rodd - My understanding was that they had an insufficient front yard setback

Vincent Cestone – Right. So he is not conforming

Adam Rodd - I think the requirement is he needs 50 feet and he was proposing 15 feet and so we will need to clarify what our understanding is which is that he is simply going up and further in.

Vincent Cestone – Okay. Let's do the review of minutes for January 29th. Do we have any additions, changes, corrections?

Bill Flaherty - I have none

Robert Dee - No

Vincent Cestone – I'll make a motion to accept the minutes as submitted. Do I have a second?

Bill Flaherty - Second

Vincent Cestone – All in favor?

All Board Members – aye

Vincent Cestone – Okay let's go to the public hearing. This is a continuation of a public hearing. Someone to speak for the applicant?

Robert Gaudio - Good evening Mr. Chairman and members of the board. Robert Gaudio on behalf of Mr. Weinpahl on the application. As you recall back in late January the developer asked the board for more time to submit a letter from its title counsel. We haven't seen that letter

Vincent Cestone – Neither have I. Time's over

Robert Gaudio - Yeah.

Vincent Cestone – You can talk when he is finished.

Robert Gaudio - So at this stage I think that we would be happy to respond to what the developer has to say but I have nothing left to offer after the last meeting at this stage.

Vincent Cestone – Okay. Just introduce yourself for the record

Kenneth Gould - Yes. Good evening Mr. Cestone. My name is Kenneth Gould, Marcus Gould and Sussman. And I am here on behalf of Mr. DeVido who is the owner of the corporation that has gotten building permits. I did submit through the Town's office a letter and I don't know whether you have it and also Glen Watson submitted a letter to you.

Vincent Cestone – I got Glen's letter.

Kenneth Gould - Do you have our letter as well? It was dated last Friday. Dated February 25th. I just wanted to make sure you got that. As indicated in both our letter and the letter from Mr. Watson, we concluded that the opinions given by Mr. Supple that you have dated in early January and the underlining documents that you relied upon is incorrect and that the easement that he referred to as being an easement given to the village back in the 1930's, Village of Cold Spring, is actually for a different piece of property. Mr. Watson will give you a demonstration of what those documents are and the basis for that. You have many of the actual documents before you but we, Mr. Watson will explain that in a second. It is our position that therefore since we have concluded that there is no easement, that that part of the application that is before you really ought not to be an impediment in any way to this building permit. As indicated in my letter of February 25th we have however had some discussions with the Village of Cold Spring about the access issue and have tentatively agreed with the Village that that in the event that this application, the building permits are issued and all that, that an easement would be appropriated and given to the Village for access to the dam. The Village has agreed to this in principle. We don't have the actual documents yet signed or anything like that. We are not anywhere near there but there is no dispute at all and in fact the Village was quite happy with the resolution that we proposed. So, from your point of view, it is our belief that that issue really ought not be before you. You should not be determining on behalf of anybody whether there is or there isn't an easement. But I will tell you that in the event that we resolve all the other issues, the Village will be quite satisfied and will not contest anything that is done by our applicant here.

Vincent Cestone – When do you think the easement will be in place

Kenneth Gould - It is virtually done. They just have to have it before the Town Board.

Vincent Cestone – Okay

Kenneth Gould - Within a week. Before I go on I would like to turn the floor over to Glen Watson our surveyor who is going to explain why there isn't an easement at this point.

Vincent Cestone – Glen keep it short

Glennon Watson - Okay.

Vincent Cestone – We got your letter, we don't need to rehash it.

Glennon Watson - Okay well, I will quickly do my slides. Essentially you have

an opinion letter from John Supple that states that a deed from _____ Dikeman to the West Point Foundry Liber 67 page 199 is the basis for an easement over the road, over the old road that passes through the DeVido property. And we disagree with that for a number of reasons. We did some research and we looked for deeds from _____ Dikeman and there was a companion deed in the Village's deed from the West Point Foundry there are six parcels described. Five of which have to do with the reservoirs on Foundry Pond Road. The sixth one actually refers to two earlier deeds that come from a Dikeman and Ferris. What we did was we searched the records many days seeing what Ferris owned and what Dikeman owned and what they could convey and what in fact they did convey and we concluded that that whole chain of title, two chains from Ferris to the village and from Dikeman to West Point Foundry to the Village covers land that is 8,000 feet away from the reservoirs. What you see here is the Philips tax map, I believe it is a 1763 subdivision of Putnam County done by the Philipse Family. There were three children Mary Philipse, Susanna Robertson and Philip Philipse. They divided the property into nine pieces. Three lots called water lot lines; three lots called the long lots; and I forget what they called the lots over to the east side. But the purpose of my discussion of this is to point out that we have three water lots and if you go into the Dikeman Deed, and the Ferris Deed, and read through it and you have quotes in the letters that I provided you, you will see that those deeds run right along the water lot line or the Morris lot line. And I think I made a point in my letter that Mary Philipse married Colonel Morris. And as it was in those days it became the husband's property. So the Morris lot line. The Morris lot line you can see today this is the current tax map, the Morris lot line you can see this red line which we drew on top of the tax map, it lays over some black lines that are on the tax maps today and in fact you can trace several of those deeds back and you will come up with monumentation or mention of the Morris lot line. That is substantially south of the Foundry Dam. What happens with the Morris' that own lot two, they were Tories. And at the end of the revolution, their lands were confiscated and they were distributed, remember I think it was 7th grade history that the lands were confiscated and the lands were distributed to the soldiers and sold off in various chunks and various parcels by people. By people, a commission called the Commission of Forfeiture and there were commissioners of forfeiture and in about 1883 a lawyer from Carmel named Conklin I believe drew a set of maps that show the various parcels that were conveyed out. Again he drew them along the water lot line because that was, I don't believe all of the Philipse were Tories. Now if you put that map on top of today's tax map, you can see several lines where the maps coincide. The 1880 map is not as precise in terms of its plotting but you can inspect several of these parcels and you can find things like Clove Creek coming down and going north. You can find several pieces that coincide with tax lots today. We took the three deeds that we found, Governor to Ferris, Mead to Dikeman, Vernel to Dikeman and we plotted them and they fit together as nicely as old chain and link deeds fit together. We searched around and this is an enlargement of the commissioner's map and we found Mead mentioned, Ferris mentioned and Governor mentioned and the same shapes. So we have taken those plottings and we plotted them on

the maps and we found that they are there. Now we again put the same plottings on the tax map and again we repeat certain lines. We repeat this line, we repeat the water lot line and we repeat these lines in here. All these lines are essentially the same shape. Again you have to keep in mind that we are not talking about the precise instruments that we use today when we are talking about the compass and chains that they used in the 1700's. Now if we turn the commissioner's maps on, we have that overlay on the tax maps and the commissioner's maps and again several areas of similarity and we have Jaycox Pond. Let me go back a couple. You see we referred the two deeds here. And if you read these two deeds, the first deed follows the yellow line exactly. The second deed, the later deed, follows the yellow line until it gets to this point and then it says bend around the West Point Foundry land and it leaves the old description and just by reference that simple term around the west point foundry land and goes around and then it comes back to the description. So we have a little piece that in between 1843 and 1847 the description changed and mentioned the west point foundry. So we have the west point foundry hooked into this equation at that point. Hill and Ferris again sold another piece to the west point foundry and I mentioned if you plotted the shape like that, and actually for that time it is a pretty good description, it misses by 74 links. Which is about $\frac{3}{4}$ of a chain or about 40 feet something like that. Which is good for that day in age. Now if we take that piece and we plot it right on Jaycox Pond, again you see a difference in the size slightly but you can see the basic shape from here to here. And we can see if we go back that Dikeman piece, the Dikeman piece gave rights to the highway. Mr. Supple is correct about that. It says you can go over my land to get to the highway. But based on this, it is pretty conclusive in my mind that they were talking about the highway being Jaycox Road. A couple of more historic notes, if you look this is the 1867 map and you will see Jaycox Pond right here and it is labeled Foundry Pond. And you also see the reservoirs up here, just one of them the lower reservoir incidentally and you will see it is also called Foundry Pond. So we had two of them at the time. It may have contributed something to the situation. The second point that Mr. Supple makes is that the agreement in 1897 was allowed the building of the second dam. And although it doesn't say it, I think he wants you to infer from his letter that that's how the lower pond got built. But if we go back and you carefully look at the documents, that you have copies of, you will see that the lower reservoir was there in 1867 and the upper reservoir wasn't. So the dam that they were allowed to build couldn't have been the upper dam, it had to be below the existing dam because it couldn't be the upper dam, the lower dam existed. What did not exist, when we searched around that agreement that he refers to is in 1897. We found two deeds in 1897 to the Village of Cold Spring. Actually 1896 and 1895. Actually two sets for this piece and they plot more or less like this and they mention Fishkill Road or maybe they mentioned the _____ branch of the turnpike but that's the same thing. If we take that and put that plotting over the tax maps we have virtually identical line through here surrounding the Fishkill Reservoir. The Fishkill Road Reservoir of the Village. And if we look in 1893 at the West Point plot we see that by 1893 we had both the upper and lower reservoirs up on

Foundry Pond Road. We had Jaycox Pond. But we did not have in 1893, we did not have the reservoir or the beginning of the formal water system that Cold Spring has. That's where the pipe is that they mentioned in the deed where the water is put into a pipe to feed the village. So Mr. Supple's point with regard to the permission to take the water and the permission to build the second dam, although it doesn't say it directly, he would have you infer that that has to do with the lower reservoir. What it really has to do with considering the time, considering the lack of the reservoir at the time is that second set of information is pointing to the Fishkill Road Reservoir of the Cold Spring water system. And that's about as fast as I can do it.

Vincent Cestone – Pretty fast.

Kenneth Gould - It is very complicated and it is frankly one of the reasons why we are so, we believe it is not within the jurisdiction of this board to try to determine issues like this. The fact is the Village itself is not stating any more that it has an easement and as I said we will as part of an arrangement that Mr. DeVido plans to reach with the village, they will give up whatever rights they might have had so there is no ambiguity and there will be a resolution of this issue to their satisfaction. So on that issue we think that there simply is nothing for you to talk about. We think it is not within your jurisdiction to get involved in it and the issue should not affect this building permit at all. Thank you very much and of course if you have any questions.

Adam Rodd - I have one question with respect to the easement that you intend to give to the village, that's going to be an easement going across or coming within the DeVido property correct?

Kenneth Gould - Yes. Along the upper the northern portion of it

Adam Rodd - Will that affect the net lot area of the DeVido properties?

Kenneth Gould - It will in a way and with a slight variation in the line it will still result in the appropriate amount of square footage within each of the four lots. And we've done the calculations on that.

Adam Rodd - Do you have the calculations

Kenneth Gould - We can certainly show you on the

Glennon Watson - This is a composite map showing the four parcels. The building permits that are being questioned have to do with these two parcels lot one and two on the subdivision maps that we prepared to file. The claim is or was that there was a right of way over the old road that leaves Foundry Dam Road and goes northwest and eventually gets to the dam. We can provide a ten foot wide, actually it is slightly wider than that but we are proposing a ten foot

wide right of way. What that would do, lot area lot 29 is 9726 square feet. The proposed easement is 800209 square feet and that area after that would be 8257 square feet. Required is 80000 square feet. The overage is 2517 feet. There is a couple of things that just bring to the next question, we are encumbering 10 feet of our frontage we have substantially more than 10 feet which is not encumbered and therefore counts. The adjustment that is required has to do with the square. The square fit on the lot but the square may not be encumbered by the right of way. In order to fix that we have to move this line back here about 10 feet, probably about 15 feet. I don't have that number with me. And there is two other very slight adjustments that can be made to make each of those lots conform. Make each of the lots have a square, make each of the lots have a required frontage. And as the square moved down, the square on each of the lots each of them has the required area, frontage and unencumbered square.

Bill Flaherty - Is this easement that you are granting to the Cold Spring Village, is that on the north side of that property?

Glennon Watson - Yes

Bill Flaherty - The yellow line

Glennon Watson - Yes

Bill Flaherty - It is going to be 10 feet wide?

Glennon Watson - Yes

Bill Flaherty - That lot

Glennon Watson - Yes that lot

Bill Flaherty - It will give the Village access to the upper dam

Glennon Watson - Yes. Upper dam. The lower dam is right along the road

Robert Dee - So your intention is to change the lot line again?

Glennon Watson - We would have to change the lot line again in order to make the lot conform

Robert Dee - Right. Would that be changing the lot line on the building permits that have already been issued?

Glennon Watson - Yes

Robert Dee - If the building permits have already been issued and then you

change the lot line, is the building permit still good?

Glennon Watson - Well we would have to go, in order to make a lot line adjustment there is a procedure outlined in the subdivision regulations for doing that. It would require us to essentially make this map, make the conveyances, submit revised surveys to the building department and the building department would then have to amend the building permit to whatever degree it felt it was necessary.

Robert Dee - So you are amending two building lots?

Glennon Watson - No actually there is no change to this lot.

Robert Dee - Okay

Glennon Watson - This lot doesn't change. This lot gains this area and loses this area and this.

Robert Dee - you have to amend the one, is that the lot the house is being built on at this time

Glennon Watson - That's correct. Yes

Robert Dee - Okay

Bill Flaherty - This looks like to me a whole bunch of separate subdivisions that you are now talking about. You changed the lines significantly

Glennon Watson - Well we can talk about, I wouldn't except the characterization of the word significantly if that's what I understood you to just say. I wouldn't agree with that being a significant _____. There is a process for lot line adjustment in the subdivision regulations that we would follow to do this.

Bill Flaherty - Does that require review by the Planning Board

Glennon Watson - No

Bill Flaherty - No?

Glennon Watson - It does not.

Bill Flaherty - What basis do you make statement

Glennon Watson - Definition of a subdivision and

Bill Flaherty - 112

Glennon Watson - In the definitions 112 maybe it's 2. And the definition of those subdivisions that today require approval. These are all lot line adjustments. We have today given what we presented to you with lack of an easement over that map. When we did it we believed that there was no easement. We had a title company tell us there was no easement. The adjustments that were made in order to affect four lots from three there was a lot line adjustment that affected three lots. Took two nonconforming lots, this one and this one. And made them conforming. Provided them with sufficiently area, it provided them with the required square, it provided them with the frontage. And we have the argument as to whether or not there is a right of way and if that contention that there was a right of way had been true, if it were true this lot would have been still nonconforming because it wouldn't have sufficient unencumbered area. Since there is the Village's claim of a right of way is in my view incorrect and the title company has guaranteed us, insured that we have, that there are no enforceable rights over this, we have no right of way. Therefore, the three lots that were made by lot line adjustments which is not a subdivision, _____. What we did was made each of these, the two, lot 29 and lot 32, I know I am repeating myself, we made them larger, we made them conform. We then had enough in the club ground lot, whatever you want to call that, to do a two lot subdivision. Although that is proposed to be changed, today a two lot subdivision does not require planning board approval. We did get health department approval and we did file the map

Bill Flaherty - To Putnam County

Glennon Watson - In Putnam County. And if you read first the definition of a subdivision it will tell you that it specifically accepts conveyance or exchange of land between adjoiner owners. You have to read that in the definition section. Then it goes on to, I think it is 112.2 that you are referring to, it says the following subdivisions require approval of the planning board. Okay? A two lot subdivision is not among those thresholds and that's what we did.

Lenny Lim - Glen, how many lots were affected by the new lot line adjustments

Glennon Watson - How many lots?

Lenny Lim - Yeah

Glennon Watson - The ones we are saying we will do it for this easement

Lenny Lim - Yes

Glennon Watson - We would change three of the lots. This wedge here, I actually have a slide that is colored, this strip here and this funny shaped thing here. All in the vicinity of 2,000 square feet. The various swap parcels are

tabulated down at the bottom on this map.

Lenny Lim - And you said it was a minor adjustment?

Glennon Watson - Yes. There is a further, had this been a subdivision that was approved by the planning board, there is a provision for a lot line revision once a subdivision is approved by the planning board and goes through that process. You may change the lot lines of a subdivision without going to the planning board provided that you don't exceed 10 percent of the lot area. Easier way to think about it is that if you keep 90 percent of the original land with the lot you can swap out 10 percent. This is an 80,000 square foot zone. So the town has seen fit to allow people to exchange in this zone at least 8,000 square feet of their land with their neighbor without getting planning board approval. 10 percent of the 80,000 required. Now if it is a 15 acre lot they can do more, but if it is a minimum size lot they can do 8,000 square feet. And I am sure, and this is speculative on my part, but I am sure when they were thinking about those things they were thinking about the guy who built his driveway on the wrong side of the line, the guy who put his house too close to the line and his neighbor is willing to sell him a piece so he avoid having to come and get a variance. And you have asked clients of mine on many occasions to go and try to buy a piece of property from your neighbor to accommodate that sort of thing. So what I am suggesting here is that in lieu of that 10 percent rule, which you can look in subdivision regulations and prove to yourself, exchanges in the neighborhood of 2,000 feet that don't total 8,000 feet. I don't believe they do, they come close, no they don't come close. They come to about 5,000 feet. I am going to suggest to you that it is not a significant amount considering that with an improved subdivision you can go up to 8,000 square feet in this zone at a minimum.

Vincent Cestone – Any more questions from the board?

Robert Dee - The lot line changes are the lot line changes. I understand. But does each lot have to end up with the same square footage

Glennon Watson - Under this circumstance?

Robert Dee - Yes

Glennon Watson - No. And in fact, if you read the definitions it says a conveyance or exchange between adjoining owners. So one person who had a driveway inadvertently built on his property can convey that driveway to the neighbor and have a net loss and the neighbor could have a net gain provided that the neighbor doesn't do anything to make his lot nonconforming. Now if he should lose his 200 foot square or if he would lose his 20 feet of frontage, or if it would go below 80,000 square feet, he couldn't do that.

Vincent Cestone – Any more questions from the board?

Kenneth Gould - I just would like to point out that we are talking about changes as Glen said of up to 8,000 foot for any one lot. We are talking about 3 lots, a total of 24,000 feet. So that the 5,000 feet total change is insignificant compared to the 24,000 feet of the, more than 24,000 feet of these three lots. So anyway, we feel very strongly that there is no issue here with respect to this. We have fulfilled all the requirements and will make the appropriate adjustments to the building permit and therefore this easement issue really is not an issue. Thank you very much.

Vincent Cestone – Mr. Gaudioso?

Robert Gaudioso - That was a great presentation. But that was the cape and not the matador. Everything we just discussed was totally irrelevant to what the real issue is here. The whole discussion about the 10 percent does not even apply here because this was not approved by the planning board this subdivision. We need to talk about 112-2D. Let me take a step back first. They didn't start with three lots and turn it into four lots. They started with 3 lots and then to what I originally said they magically took over the old road. Now what Mr. Watson's analysis showed or purported to show was that Mr. Supple was incorrect. That the village didn't have access over the old road based on what he submitted. My point is I don't care. It doesn't matter. The board doesn't need to decide whether Glen Watson or Mr. Supple are correct. The fact of the matter is the only map, the only two maps that are on file are the 1939 map, which we previously submitted that shows the old road as a separate parcel. You have the tax accessor's letter from January 22, 2007, which confirms that the old road was a separate parcel which the Caucasian Society was not paying taxes on. Okay?

Lenny Lim - They weren't paying taxes on the old road?

Robert Gaudioso - Correct. And what happened was when the developer bought three lots, a year later the Caucasian Society gave him a quit claim deed for the old road that they weren't paying taxes on. So they gave something that they didn't own. And the reason that this is all important because the original three lots had 6.72 acres. That is not enough acreage to have four 80,000 square foot lots. So they magically took over the old road which no one to this day has explained how they took control of the old road other than a quit claim deed from a purported owner that wasn't paying taxes on it to come up with 7.596 acres which is enough square footage to have 4 lots. So they had three lots that they bought, a year later they took a quit claim deed from an owner that wasn't paying taxes on an old road that is shown on a map that the tax accessor also had as an unowned parcel and bingo they had enough for four lots. It gets more complicated than that. So Mr. Watson says he disagrees with Mr. Supple and the Village is wrong. _____ if they are right or wrong but the testimony has shown that they have used the old road some 30 some odd years or since the upper dam was constructed. They don't want to take the chance. We knew

this all along. We knew all along that they would eventually try and get an easement from the developer. So we have obtained the developer's plan that they gave to the Village to try and get this easement. Don't look at the one up on the board because that's too hard to look at. I am surprised they didn't hand this up. Actually it doesn't surprise me. Take a close look at this map. Okay? Now remember something. In your zoning code easements come out of the square footage okay. So the old road if it was an easement or a right of way they again, even if they did own it, which we clearly have shown that they didn't own it. They took it by quit claim deed from someone who wasn't paying taxes. Even if they did own it, they still wouldn't have the square footage because it was a right of way. So now they are saying okay that right of way doesn't exist now we are going to give a new right of way which also has to come out of the square footage. Look at the difference with this right of way.

Lenny Lim - How big was this old right of way

Robert Gaudioso - It was a difference between 6.72 acres and 7.596 acres. Take a look at the new easement that they are going to propose. It makes a complete right turn when you get to the top of the slopes. The one the board has does not show the slopes. The original subdivision map did. It is class 2 slopes. And they are going to drive a cement truck or an emergency truck up that dotted line? Look at the dotted line. It makes a hard right turn, or hard left turn I should say and it is a ten foot wide easement. That is in paper only. A real easement to get a truck up there would have to be much wider than 10 feet. What if it is much wider than 10 feet? It comes out of the lot coverage which makes that back lot 29 less than 80,000 square feet. Glen mentioned before they only have about 2500 square feet to work with. That 10 foot wide easement is a fraud. There is absolutely no way the Village could use a 10 foot wide easement to get heavy trucks up there the way that is laid out with that sharp turn. So the truth is they are creating a new easement but it is not 10 feet wide. And if you actually made a real easement and if you sent it to the planning board and asked the planning board and the fire department how big that easement should be, it would be much greater than 10 feet wide and it would be much greater than the amount that they have in excess over 80,000 square feet for that back lot.

Lenny Lim - You say the new easement would be 10 foot wide, how wide was the old easement?

Robert Gaudioso - Let's look at their map.

Lenny Lim - I am trying to figure it out

Robert Gaudioso - And if you remember, their map, they still have never said how the old easement disappeared. Their original map called it a right of way. The second time they called it an old road. Now all of a sudden they have changed their mind. I don't have a square with me but this is one inch equals 40

feet. It is about 40 feet wide, call it 35 in some spots and 45 in other spots. Call it much bigger than that down at the base where they need sight access and they need sight lines. A ten foot wide easement? Nobody believes that there is going to be a 10 foot wide easement up there. That's impossible.

Vincent Cestone – Especially on the slopes

Robert Gaudio - It goes straight up the hill. This is their original map, you can see the slopes that they show. Class 1 and class 2 slopes in that area and they are going to put a 10 foot wide easement with a left hand dog leg. Again get an emergency access vehicle up there. But it is even easier, I think if you look at Section 112-2D when they create a subdivision, this is the one that Mr. Watson didn't mention before, but when they create a subdivision and they create an access right of way for vehicular traffic, that triggers planning board review. So I think that by offering this to the Village they fall in the subdivision regulations. That's what we are asking the board to interpret. If you interpret the subdivision regulations 112-2D, I'll read it. It specifically says that if you do a subdivision, which they are now doing. They are changing I don't know how many more lot lines but at least three lots are affected and you create an easement or right of way for vehicular traffic, it requires planning board approval. And it all makes sense. And let me tell you why it makes sense. Glen said you build a house too close to the lot line, the code has some flexibility, you change a lot line adjustment rather than doing a variance. You don't buy three lots, magically get an old road, turn less than the 80,000 square footage into four lots by doing multiple lot line adjustments that as Mr. Watson speculated was intended for those small transactions to make the lot lines work. Not to create a four lot subdivision on three lots, 2 of which were originally nonconforming. You said it at the first meeting, you said this was, I forget the exact words but it was something about twisting the code. This is now exploded, originally it was magic now it's smoke and mirrors. But the fact I think that by offering this easement or creating this easement they have fallen directly into the subdivision regulations on its plain meaning on the face of the code. Plus we still have the original moving of the cottages. I believe they still have been moved and that also triggers in our opinion site plan approval by the planning board for good reasons.

Vincent Cestone – Anyone from the audience wish to speak?

Richard Healey - Hi. I am Richard Healey and I live at 97 Foundry Pond Road and I want to thank Mr. Watson for the history lesson tonight regarding the Tories but what I see is Levittown up the road on Foundry Pond Road. And it really hit me when I saw the three homes clustered together with the fourth home up in the corner. Personally I feel as a homeowner and you know we have a lawyer here, an architect, an arborist, and engineer, I am in the real estate business, I feel there is no regard for the homeowners on Foundry Pond Road. And you know if I went into Mr. DeVido's neighborhood and I knocked down an existing structure and then you know played around with the zoning rules to get a fourth story to

block his view and then put a few trees on the rooftop, I think he would be here on a Monday night at 8:00 too. I just feel that there is no interest in the community on this road and I can tell you something I, my property is looking at that huge dam that is the reservoir there. And in the four years that I have been living there I have experienced a brush fire, probably four

(turning the tape over. May have lost some dialogue)

Richard Healey - ...it concerns me. It concerns me as someone who is affected daily by this, by what is going on on the road. And has anyone gone up there and taken a look at this house? It is huge and I can't deny Mr. DeVido's ability to design a house. I live in a mid-century modern and I bought acres to protect my property to prevent this sought of thing from happening. But I look at what I saw tonight, these three homes clustered together and I look at the size of that house that is up there and another house wedged in the corner when they had 6.72 acres to work with in the beginning and I say, you know what's going on here? I mean this is simple. This is not about you know 200 year old boundary lines, this isn't about any of these technical things that are being brought up here. This is about look at the lot, look at the size of the house, and look at what's being done here. And I feel it is a total manipulation. I believe the word was egregious that was brought up by the board the first night I was here. Manipulation of homeowners' rights, of the good of Philipstown, and you know really the safety of people who live on Foundry Pond Road. Because we do deal with weather and we do deal with natural elements and conditions every day especially during the winter. So, I also think that it is ironic that directly across the road the person who sold the property to Mr. DeVido has her home for sale. So I think that is interesting. Maybe she doesn't want to look at three or four houses that are directly across the road anymore. But what I feel is we are getting a glorified condo development in an area that really really doesn't deserve that sort of mistreatment and that's why I moved here. And I am sure that anyone else here can say the same thing. So that's why I am here at 8:15 on Monday night and that's why we have invested in an attorney because as a group we are going to fight this because it is wrong. It is absolutely wrong. So that's really what I have to say. And I will continue to show up every step of the way and do what it takes to get this thing rectified because it is just not right. Go take a look at the house and then you tell me four homes on that lot is the right thing to do for Philipstown, for Cold Spring, for the community. Thank you

Lenny Lim - Would you be happy if he put three on three lots?

Richard Healey - I can't deny Mr. DeVido you know his return on his investment and again I don't have anything against his design. I think he is a good designer. I would have less of a problem with three houses. But again I feel that fourth house is a total manipulation and betrayal of this town and everyone who lives here. And that's why we are here

Robert Gaudio - To touch on that. I think that it is a good point about how many houses. But I think that is the whole point of it going to the planning board

Lenny Lim - That's what it is all about

Robert Gaudio - Exactly

Lenny Lim - How many houses go there

Robert Gaudio - How many houses but how it is laid out. We talked about the drainage issues and the things that the planning board does.

Richard Curals (?) - My name is Richard Curals (?), 10 Foundry Pond Road. Since we have made reference to Mr. Flaherty's eloquent comments of the first meeting, I thought I would read from the transcript which says, "I think we reviewed the information that was given to us at the time, taken place, and I believe the conclusion that there appears to be the most egregious and innovated manipulation of property lines that I have ever encountered on this board". Well stated. "By using loop holes and finding gray areas in our zoning code to do what has been done. I don't like what I have seen 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". Thank you very much. Well stated. And we saw, and today was another example of manipulation. Nice history lesson as was pointed out but it was irrelevant. What is relevant is I come back to what do we have here and what we have is we all know that the village had access to the dam and has to have access to the dam through this old road or as the Caucasian Society allowed for the last many years direct access across the flat part of the property. And so that was interesting that the Tories did something, I have no idea what was going on on Jaycox Road, but it was all a _____ to distract you and to move off on something else. The bottom line is there was access to the dam, there has to be access to the dam and it has to be meaningful. I am embarrassed by our town that they are now caving in and saying yeah we will accept the 10 foot easement but you can't possibly get emergency vehicles up. I mean, I know, two meetings ago I was proud of our town that they were standing up and they were claiming the rights to this access.

Vincent Cestone – You mean the Village

Richard Curals (?) - The Village, I'm sorry. But now they are saying yeah we'll go along with this 10 foot easement that simply does not work. The bottom line is that we all know that there has to be access to the dam and it has to be meaningful access and it was either here or here and somehow they took this property and Rob stated it beautifully. That's what's going on. One last thing we talked about drainage problems and not shown on here but I think the map that Rob presented to you, there is now going to be a dry pond here which I guess is

