

TOWN OF WALLKILL PLANNING BOARD

MEETING

APRIL 16, 2008

MEMBERS PRESENT: G. Lake, W. Capozella, R. Carr, A. Dulgarian, T. Hamilton, C. Najac, H. Ross

MEMBERS ABSENT: None

OTHERS PRESENT: J. Bacon, D. McGoey

1. **INFORMATIONAL PUBLIC HEARING** - 7:30 P.M. - Amendment to Zoning (Section 249-27) Adult Entertainment Use Law

G. Lake: Informational Public Hearing started at 7:37 P.M. M. Hunt read the Informational Public Hearing notice.

M. Hunt: PLEASE TAKE NOTICE that a PUBLIC INFORMATIONAL HEARING will be held by the Planning Board of the Town of Wallkill at the Town Hall, 99 Tower Drive, Building "A", Middletown, New York 10941 on April 16, 2008 at 7:30 P.M. or as soon thereafter as the matter can be heard that day on the proposed Local Law of Chapter 249 of the Code of the Town of Wallkill, County of Orange on an Amendment to the Adult Entertainment Law. All parties of interest will be heard at said time and place. S/Gary Lake, Chairman

G. Lake: Before I go to the Public, Mr. McGoey?

D. McGoey: Yes.

G. Lake: Do you want to just get on the highlights?

D. McGoey: I can do that.

G. Lake: That we talked before about.

D. McGoey: The reasoning is as I understand it for the adoption of this Local Law is to resolve an issue with the new zoning whereby the adult entertainment was left out of the ordinance altogether. It was originally allowed only in the M-I zone but they did away with the M-I zone and it didn't land anywhere else in the ordinance apparently. So, the Town

Board is now recommending this Local Law which would allow adult entertainment with many restrictions in the Enterprise Light zone. Just as an overview, the ordinance is very comprehensive. It's quite restrictive, much more so than the existing ordinance. One of the things that I like about it is that it not only targets new adult entertainment but requires that the pre-existing non-conforming adult entertainment and we have a couple of them, two I believe. They will have to conform to the new ordinance also. They will have to be licensed every year and to show that they are conforming. Not in respect to their location but with respect to their operation such as age of employees. They have to be eighteen (18) or over. There are a lot of other restrictions. Some of the other restrictions in the Enterprise Light zone is that you cannot have two (2) adult entertainment facilities within fifteen hundred feet of each other and you cannot have adult entertainment within fifteen hundred feet as they refer to in the ordinance as a sensitive area. Sensitive area could be a dwelling unit, it could be a church. It could be a school and they list the various uses that could be considered a sensitive area. It has provided some protection. There will be an application for it and it will consist of a two step approval. I'm unclear about this and we probably should get some clarification. They need a license approved by the Town Board after a Public Hearing and they need a Site Plan and Special Use Permit approval by this Board. That would also require another Public Hearing. What I don't know of this law is what comes first? Does the license from the Town Board come first and then they come to the Planning Board.

G. Lake: Thank you. Before I go to the Public, I will go through the Board.

A. Dulgarian: Nothing.

H. Ross: Nothing.

R. Carr: I will wait.

W. Capozella: After the Public.

C. Najac: After.

T. Hamilton: After.

G. Lake: Is there anyone from the Public who wishes to comment on this informational hearing? Hearing none,

MOTION to close this INFORMATIONAL PUBLIC HEARING at 7:42 P.M. made by A. Dulgarian and seconded by C. Najac.

A. Dulgarian: Aye

H. Ross: Aye

R. Carr: Aye

W. Capozella: Aye

C. Najac: Aye

T. Hamilton: Aye

G. Lake: Aye

MOTION CARRIED. 7 AYES

G. Lake: We got this in detail last yesterday or the day before. I think Mr. McGoey did a good job giving us the highlights. I have not had the time to go through it in it's entirety myself but it's something that needs to be addressed and put back into the zoning to make sure and I think we have to provide for it. Mr. Dulgarian, do you have anything else?

A. Dulgarian: No. I just got it within the last half hour so I haven't had a chance to go through it. I do respect Mr. McGoey on it but for me to comment on it, I can't. I got my paperwork on Monday and this when I got here this evening.

H. Ross: I did have a chance to look at it and asked a few questions. I like it.

R. Carr: I agree. I only received this about a half hour ago. Mr. McGoey, one question I have is it an annual review?

D. McGoey: You will have to renew your license every year.

R. Carr: Then, are the license, the Public Hearing required also?

D. McGoey: I don't believe a Public Hearing would be required annually. A Public Hearing for the first time when you take the license out with the Town Board and one (1) Public Hearing for the Special Use Permit.

R. Carr: Not for the existing ones?

D. McGoey: No. That would be for new establishments. The existing facilities would have to come in to get licensed by the Town Board. I'm sure they would have an opportunity for the existing facilities when they take out their first license. I'm not sure about that.

R. Carr: Would the existing ones if they weren't within fifteen hundred feet be grand fathered in?

D. McGoey: I don't know the answer to that but I don't believe they are currently within fifteen hundred feet.

R. Carr: I know one of them has a massage parlor?

D. McGoey: A massage parlor is excluded and is not allowed unless they're licensed practitioners with the State of New York.

R. Carr: That's all for now.

W. Capozella: I'm just going to reserve my comments for later because I just got it. It's fifteen pages long along with a twenty page application.

C. Najac: I have no comment until I've reviewed it.

T. Hamilton: It's been in the works for a while now. Mr. McGoey, on the policing of it?

D. McGoey: Primarily, the Building Department.

T. Hamilton: The Building Inspector.

D. McGoey: Yes. It allows the Police Chief also and any other designated officer of the Town. It does have protection on what it can look like on the outside.

G. Lake: Tell me, do you know by any chance when you're going to act on it?

N. Neighmond: We're having a Public Hearing on it a week from Friday. I mean, a week from Thursday. At the next Town Board meeting, the Public Hearing will be before the meeting.

G. Lake: But, you wouldn't necessarily act on it at that point?

N. Neighmond: No.

G. Lake: That would give us time to get answers on some of our questions brought up this evening. I'm going to ask the Board to get your comments in as soon as possible so that we can forward them on to the proper people.

MOTION to TABLE for further review made by T. Hamilton and seconded by A. Dulgarian.

A. Dulgarian: Aye

H. Ross: Aye

R. Carr: Aye

W. Capozella: Aye

C. Najac: Aye

T. Hamilton: Aye

G. Lake: Aye

MOTION CARRIED. 7 AYES

2. **TETZ/PHILLIPSBURG** - SITE PLAN/SPECIAL USE PERMIT - Extension to Final - Cemetery Road (78-1-29) #35-03

G. Lake: You're here for an extension of final? You've been with other agencies, I assume?

Mr. Tetz: Correct.

G. Lake: And, are you through all of those agencies?

Mr. Tetz: Yes.

G. Lake: Are you ready to go?

Mr. Tetz: I'm meeting tomorrow with Mr. Fritts and (not clear), but we're hoping to move forward.

G. Lake: Okay.

Mr. Tetz: We need an extension for the Site Plan/Special Use Permit.

G. Lake: I guess he's had one extension but he's also been tied up in I don't know how many agencies. I know he was tied up down the hall for quite a while. Can we give him another extension?

J. Bacon: A reasonable period is appropriate if the Board finds a hardship.

Mr. Tetz: What we would like is a one year extension if we can get it.

G. Lake: I assume you will be ready to get to work?

Mr. Tetz: Yes.

G. Lake: Any questions?

MOTION for a ONE YEAR EXTENSION to SITE PLAN/SPECIAL USE PERMIT made by A. Dulgarian and seconded by W. Capozella.

A. Dulgarian: Aye

H. Ross: Aye

R. Carr: Aye

W. Capozella: Aye

C. Najac: Aye

T. Hamilton: Aye

G. Lake: Aye

MOTION CARRIED. 7 AYES

3. **COOPER** - 2 LOT SUBDIVISION - Extension to Preliminary - Route 302 (10-1-2.21) #29-05

G. Lake: Your name for the record, please.

D. Yanosh: My name is Dan Yanosh representing the applicant.

G. Lake: Go ahead.

D. Yanosh: I received Preliminary Approval on this project in October of 2007. Six months have expired. We need another one. We took care of the Department of Transportation and we re-did the entrance in front and put the culvert in. We're waiting for the sign off on that. We're okay there. We're with the Department of Environmental Conservation for the disturbance of the wetlands in the buffer zone. We had a notice of continuance with the application in February 2008. It was advertised in the newspaper. That's our next step. We still are in the process with Chase Engineers for the entrance design. We're still working on the maintenance agreement. The biggest thing is the septic system. When we get done with that we will take care of Mr. McGoey's comments.

G. Lake: Six months?

D. Yanosh: Yes please.

G. Lake: We have to come back for Final anyway. I will go through the Board.

A. Dulgarian: No problem at all.

H. Ross: Nothing.

R. Carr: Nothing.

W. Capozella: Nothing.

C. Najac: Nothing.

T. Hamilton: Nothing.

MOTION for a SIX MONTH EXTENSION to PRELIMINARY APPROVAL made by T. Hamilton and seconded by R. Carr.

A. Dulgarian: Aye

H. Ross: Aye

R. Carr: Aye

W. Capozella: Aye

C. Najac: Aye

T. Hamilton: Aye

G. Lake: Aye

MOTION CARRIED. 7 AYES

4. **KUNIS BEVERAGE STORE** - SITE PLAN/SPECIAL USE PERMIT - Dunning Road (50-2-43.1) #104-07

Cancelled.

5. **RSR** - SITE PLAN/SPECIAL USE PERMIT - Ballard Road (41-1-70.21) #16-07

G. Lake: Your name for the record, please.

J. Capella: My name is John Capella from Jacobowitz & Gubits. I'm here with representatives from RSR and the Engineering Firm.

G. Lake: Go ahead.

J. Capella: I understand the Board has looked at this application to modify the office which is a portion of the RSR application. The Board has two issues that you had questions about. My partner responded to those two questions in a letter dated March 15, 2008 to the Board.

We are awaiting a response from the Department of Environmental Conservation. In their response they indicated that RSR had complied to those concerns. The other question was regarding the Citizen's Advisory Committee. We looked that up and it appears that was disbanded since 2002.

G. Lake: Basically the two big issues were the Department of Environmental Conservation issues and you did receive that letter. I think everybody got a copy of it. Let me go through the Board.

A. Dulgarian: I think everything has been addressed. I think it falls into someone's realms other than us. On the Site Plan issues I think it is minimal. I think it's improving the site. I have nothing else.

H. Ross: In part, I agree with Mr. Dulgarian. We're here to address what we have to with the Site Plan but I have to say that where do you stand on the paperwork with the Department of Environmental Conservation? Is it complete or is it possible that they may come back and ask RSR for more? How close to the finish line are we? It's been touchy.

J. Capella: I think we're, I know it's been with them and they were going to do it then, RSR was planning to do it and they said no, they were going to do it. Finally they told us to do and now, we're finally doing it and it will be subject to the Department of Environmental Conservation to sign off.

H. Ross: My second question is your interpretation is this transfer is, is it going back to you or going back to the Department of Environmental Conservation? I'm not clear. We had asked you, does this somehow initiates your commitment to the Citizen's Advisory Committee that was part of the original?

J. Laws: Basically a work plan was submitted. We're awaiting approval but in that work plan, it would be a new committee that would have to start up.

H. Ross: In terms of this, I'm completely fine except that the potential for expanding your facility by expanding your headquarters (not clear).

R. Carr: Nothing.

W. Capozella: Unable to hear.

C. Najac: So, the Citizen's Advisory Committee will become part of . . .

J. Laws: The Department of Environmental Conservation as part of the work plan..

T. Hamilton: In the letter I disagree. I think I myself have the right to ask for this information for the Special Use Permit for us to double check that the health and welfare of the Public in the area. If you looked in our book it states that we have the right to ask those questions. It was not improper to bring all this information up. At least now, we have some sort of letter we can say we have done our job questioning these items and now we have the information that we never would have had before if it wasn't brought up.

J. Capella: Understandable.

T. Hamilton: We don't profit by asking these questions.

G. Lake: Mr. Bacon, we have gone ahead in the past on certain type of projects, this one and mining operations that we've gone ahead and given the approval as long as they get their Department of Environmental Conservation approval. Is that pretty much standard?

J. Bacon: We have the work plan.

J. Capella: I'm not sure if it was submitted. It's part of a larger application that was submitted as a modification. The conditions will become part of it. Anything else from anybody? If not,

MOTION for SITE PLAN MODIFICATION approval subject to all comments made by A. Dulgarian and seconded by C. Najac.

A. Dulgarian: Aye

H. Ross: Aye

R. Carr: Aye

W. Capozella: Aye

C. Najac: Aye

T. Hamilton: Aye

G. Lake: Aye

MOTION CARRIED. 7 AYES

6. **CROSS VIEW REALTY** - 13 LOT SUBDIVISION (Sketch) - Scotchtown Collabar Road (19-1-10) #78-02

G. Lake: Your name for the record, please.

M. Donley: My name is Michael Donley. I'm an Attorney in Goshen, New York. I'm here this evening representing the applicant. With me is Lorraine Potter with Lanc & Tully Engineers along with Joe McKenna from the developer. It's my pleasure to be here. I have not been although the applicant has been before this Board since 2001 when the project started. This was a project that showed twenty two (22) lots. There were a number of alternatives with a long road, a short road, a cluster. It seemed the way to go was a connecting road to the adjoining property and we did engineering for that. The Town passed a law limiting the length of the cul-de-sac. We then were referred to the Zoning Board of Appeals to get a cul-de-sac variance length. We were unsuccessful in that attempt. Now we're trying to see where we can go here. One of the things that you put forward in your papers and the lawsuit was a preference for a conservation subdivision layout. We're taking a try at that but we're here this evening to try and show you what we're proposing and see if it's a concept that you can endorse so we can move forward with it more fully. The reason why we're abandoning the connection to the adjoining property is in order to accomplish that without a cul-de-sac length waiver the entire roadway would have to be built all the way through our property to our neighbors property and then all the way across that property to join the other side. That simply is not economically feasible for us to do therefore, what we're doing is going back to a smaller subdivision. We're abandoning the twenty two we were looking for originally and what we're proposing for you this evening is a thirteen (13) lot subdivision. The idea now is to make it a conservation subdivision and what we tried to do and we think it is meaningful is we've protected the lots that are on Scotchtown and Collabar and Cross Road with significant setbacks and protected areas in the front and even more significantly we preserved the twenty three acres of land to the rear that we have identified for the purpose of the public, passive recreation. We're going to either grant a conservation easement to Land Trust, I think that was suggested from one of the reports from your planner. More frankly it would be a permissible granting of an easement. It's also a municipality and we would extend that to the Town of Wallkill. That way the public would be able to use that land forever for the purposes of passive recreation. As I said, we're down to thirteen (13) lots and we propose a cul-de-sac that will not reach our property. The cul-de-sac length needs a waiver from you if you're inclined to pursue this but it does not require a variance from the Zoning Board of Appeals. One of the other things that we have tried to do

is provide a possible future connection to the adjoining property by way of an identified area that we could either encumber as an easement or offer a fee or file some kind of document that would enable us to transfer it to the other developer or to the Town as the case may be. But, if and when that other intermediate developer was inclined to develop that property and if it were then the preference of this Board to seek that connection that possibly would be there and shown on the map and it would bring that connection at the same location where it had been proposed if we were going to make that connection. I think what we tried to do is to take the legitimate attempt to take stock of the situation we find ourselves in. To propose a legitimate earnest conservation subdivision we think that's a great benefit and although Mr. McGoeys has reported that upon additional reflection that certainly is true perhaps it's not a classic conservation subdivision. That's in part because of the configuration of this land does not lend itself. As the meeting went on and I think that's reflected in your planners report there are a number of different things. We're preserving the existing tree lines that was part of this earlier agricultural property. We're able to lay out the lots in a fashion that puts the lot lines along stone walls that preserve the land. There is minimal clearing involved and we have set aside twenty three acres in the back and some land in the front. Part of the process is to show you a yield map which is a map that shows what could be permitted with a conventional subdivision. Of course, that would be far more lots than we need so I don't know the level of detail you need to examine that. This is the only way we think we can develop this property economically feasible with the roadway issues and leave open the possibility of that future connection if the immediate land owner gets developed. All of the lots meet all of your requirements of the code. There had been a flag lot in one version. Mr. McGoeys mentions that in one of his reports. That has now been removed and all of the lots comply. I will now turn it over to Lorraine Potter to explain more.

L. Potter: Mr. Donley pretty well stated what was done for today. I will say that in the thirteen (13) lots the sizes range from one acre which is lot #6 to twenty six and a half acres being lot #7. The cul-de-sac length is approximately eighteen hundred feet. There are on the site just over nine acres of Federal wetlands and we are proposing to leave approximately 32.4 acres for conservation. In developing the yield map which is the one on the bottom we utilized the fact that if we go through and provide the road through our part and the adjoining parcel this is how we started to develop the yield map by providing that road. We were also able to work out a cul-de-sac at the end of that. With this yield plan we did come up with twenty (20) lots and met the criteria with the way we the yield lots were supposed to be developed. From that we did a layout. The lighter green represents the conservation area. The darker green would be where existing trees and wooded area are although there are a lot of them throughout the conservation area and then the lighter green would be where the open areas are. That's pretty much it.

G. Lake: Now, this came out of a work session, am I correct in assuming that?

L. Potter: Yes.

G. Lake: I think your planner was there.

L. Potter: Yes.

G. Lake: I just had to mention that. I want to make sure the whole Board understood where you were coming from at this point in time.

M. Donley: And she gave us a report that suggested the merits in the proposal of something worthy for your consideration.

L. Potter: We had worked very closely with the planners office throughout this development and prior to this when we had flag lots and we went back and re-worked it. We had fourteen (14) lots and now we are down to thirteen (13). This way we don't show any flag lots at all.

D. McGoey: Do you meet the frontage requirements?

L. Potter: Yes we do. We will need a waiver for the frontage requirement. The waiver would allow it to go down to one hundred ten feet and we're beyond one hundred ten feet in the conservation.

D. McGoey: Did it say in the conservation regulations it allows a waiver on the frontage?

L. Potter: Allows a waiver on the frontage, correct.

G. Lake: Let me go through the Board.

A. Dulgarian: I probably have a stupid question and I don't know if it is for Mr. McGoey or the applicant but on the plan that shows twenty. I mean I know you were just trying to show what you could do but if you can't do it without a cul-de-sac isn't that moot?

M. Donley: We can do it with a connecting road.

A. Dulgarian: Well, you don't have a connecting road.

M. Donley: We could build a connecting road. It's just not economically feasible but from

the point of view of whether it complies a connecting road would comply.

A. Dulgarian: Mr. McGoey, do you agree with that?

D. McGoey: I'm going to turn that one over to Mr. Bacon.

J. Bacon: On that project over by 8, I think what we said was that it was limited to the existing code. You have to bring the lot count according to the current code. If you can't do it, how is that feasible?

M. Donley: When we were here several months ago the proposal was that we would enter into an agreement that whoever went first would construct the roadway. That removed the need for the cul-de-sac length variance therefore it was an approve-able plan. However, when we examined into it (not clear). I think what the law required is that the plan can comply with the ordinance. You don't need a cul-de-sac length waiver if we build a connection road and this proposal shows the connection road. The only problem with it is an economic one for the applicant. It's not a compliance issue. It fully complies with the ordinance because the connection has been agreed and it avoids the non-compliance existing which was the cul-de-sac waiver. That was the reason why you sent us to the Zoning Board of Appeals. If the other developer were here and he built his road it would be economically feasible for us to build up to the property but that isn't going to happen. The cost to us simply cannot be absorbed because there would be no profit and the bonding that would be required if the Town would allow bonding for a number of years. It would be like a cluster. You have to show that it complies but not necessarily that the applicant would want to build and it was fully complying. We have seven lots to spare here but we showed twenty but we don't need twenty because we're only proposing to build thirteen.

R. Carr: But you show thirteen without a connecting road.

M. Donley: Not with our cul-de-sac length. I think that's simply the point. If you can't have a cul-de-sac length variance for the number of lots the traditional layout is limited by the length of the road allowed. It would take sixty percent of our property.

A. Dulgarian: You say it's limited but Mr. Carr's question was limited to how many?

M. Donley: How many? I don't really know, six or seven.

A. Dulgarian: I mean, with all due respect this Board can't be held responsible for the size of your lot with the limitations thereof.

M. Donley: If we were proposing the cul-de-sac and we didn't have a variance I would agree with your position. The conforming plan shows the connection.

A. Dulgarian: I have nothing else to add to that.

H. Ross: I think my question is to Mr. Bacon. Is the applicant correct in saying that it is in their right to project a plan they don't intend to actually build as the standard. My question is that is the applicant within his right is my only question?

J. Bacon: Mr. McGoey had brought up about getting something in writing from the owner next door. I don't think we had that question before.

L. Potter: If the property was approved as a conservation subdivision which is all of the land in the back. It's not something that, I mean they may be able to get one lot along the existing road but I don't believe that you can continue to develop in the back.

M. Donley: We showed the limits.

J. Bacon: In Scenic View (not clear).

M. Donley: That easement is dedicated where it is offered for dedication and it's placed on a filed map. That stays. It is offered for dedication. The agreement that we had shown to you would be an agreement that they would allow us to construct on their land but the connection roadway is there. That was one of the arguments that we didn't really need a cul-de-sac.

G. Lake: Let me get to the rest of the Board.

H. Ross: I'm a little concerned about the drain water runoff onto the County road. I consider it important.

L. Potter: We would have to meet the stormwater regulations.

R. Carr: What was approved? Was the one on the bottom, was that what was approved?

D. McGoey: No.

G. Lake: No, and I think . . .I don't really want to jump in on this but if everybody

remembers way back when this was one of three developers that came in and we had what I thought was good planning idea to connect all three. Those projects would have less traffic going out onto Scotchtown Collabar Road. Then we got caught in the moratorium and the latest zone changes and a lot of other things. At many work sessions it has been kicking around and I think at one time they were going to try and bond that road across the whole development to keep that intact because I thought the most of the Board members who worked on the original three projects kind of wanted to see and I would like to see it to this day because I think it makes sense. Are you asking the man to put up a bond up or I don't know how much or how long and the legal part of it all is holding anybody hostage just to have that kind of money up to who knows how long. I don't know the legal aspects of that. So, they did come back to us once or twice and we did have another work session. We did have Behan down. We did hash it out and that's where we are today. It's almost like in between two boulders right now because I think and forget this one project, but I think if you look at the Town map town wide this is a problem that we're going to be confronted with time and time again where we have these long pieces of land and what will we do with them. I know it sounds nice to say let's limit the cul-de-sac but that's why we want the connection but the connection isn't happening. So then we ask for a conservation subdivision and this is kind of where we're at now. I think it's going to be a nightmare issue. I don't know if that helps everybody to understand why we keep kicking ourselves back and forth on this.

M. Donley: One of the things I think just adds to that equation, not only is it a conservation subdivision but it's the only way to that we can preserve the possibility of that future connection. It does make sense because if we can't build a road for the required length to support this number of lots then we're going to have to maximize the up front portions of the land. I don't know where the Town stands. I know this Board seemed to have advanced forward by pushing for that connection and getting the legal papers if we propose that connection. You say you're between two boulders well we are also. We want to try and work with you. The plan still preserves the possibility of the connection and from the point of view of the Public this is a much better layout from the public roads than would be a straight shot, seven lot where we have to minimize the length of the road and it also preserves and makes available to the public a substantial piece of land for hiking and other activities. I really think though it doesn't make us real happy because of the number of lots. It doesn't make you real happy because it doesn't provide that connection road at this point. I think it's a win-win for everybody given the difficult situation.

G. Lake: I agree.

R. Carr: I agree. That was the whole idea with the connection. I do feel for you guys being stuck between two boards and the Town. I do like that it preserves the front of Scotchtown

Collabar Road. I do question about public access to the back.

M. Donley: There are roads that access and there are adjoining properties that are likely to be developed in some point of time all of which will then have a direct walk through and access into that land.

R. Carr: Again, it's getting the road dedicated. I just don't know why we can't (not clear).

G. Lake: This is just here for sketch. I'm not even sure the Town would want the back acreage. I don't know how they're going to handle that.

M. Donley: It doesn't have to be conveyed to anyone. You can offer it and have an instrument that would permit the public to come. The advantage of the conservation easement which wouldn't even be a conveyance but it would give either the Town or owner the ability to force. It's just a mechanism but that's a detail we can discuss.

G. Lake: Right.

W. Capozella: I like thirteen better than twenty. I do have a question like lot #7 it's down as the conservation subdivision. Don't we usually say that if that back lot is going to be part of the conservation subdivision, don't we allow all of the properties (not clear).

D. McGoey: We've been carrying the lot lines through the conservation areas.

W. Capozella: He's getting stuck with all of it.

D. McGoey: Yes.

M. Donley: Realistically from an assessment point of view with the reported restrictions that prohibits development the value of that land is very (not clear). We had this down in the Town of Woodbury where one hundred plus acres were set aside for rattlesnake protection and the assessor said when all was said and done the value of that land was zero because you're not allowed to enter or build upon it. It's owned by somebody but has no taxable status.

G. Lake: Anything else, Mr. Capozella?

W. Capozella: No.

C. Najac: Looking at what you've done I like the conservation subdivision. What could you do with that extra length?

M. Donley: Our position is and if I need to do legal research and give it to you in a letter because I have been through this before, this is the yield. What we're saying is if this roadway connects through, Scenic View to the other property then this is build-able.

C. Najac: You're telling us that you don't want to pay to build the road through so if you don't build the road through and you get your cul-de-sac length at one thousand feet . . .

M. Donley: There are two separate issues. Whether or not we are willing to build it and whether it makes sense economically for us to do so it's irrelevant to the issue as to whether it complies to the ordinance. This complies with the ordinance if we build the road through because no variance length for the cul-de-sac would be required now with a connecting street. It's obviously going to be subject to your technical consultants. Both comply with your traditional standard layout requirements and there are no waivers required. If we're wrong with what we've shown then I don't think it's going to result in the total count going down below the thirteen. I can see that it has to be examined but the fact that we're not willing to build it doesn't change the fact if it complies. That's really the focus of what the issue is about.

J. Bacon: It doesn't have a time limit on it. It doesn't say it has to be build-able lots. It does state that the applicant has show an approve-able plan so if the connection is approve-able at some point then it's a guarantee that . . . There is nothing in the code that states it has to be approve-able today. I know as you said Mr. Lake, on September 6, 2006 when the applicant was in before you recommended approval to the Zoning Board of Appeals but it was the applicant that wanted to go to the Zoning Board of Appeals. I just wanted for the record to clear up that when we were sued there was no action that we had taken that they were trying to defer us. That was determined at the statute of limitations. I feel like I'm defending myself but the lawsuit against us asked the Judge to make a decision for years instead of the Board making its own decision. This Board should be told by a Judge to make its own decision. It's a difference of opinion but that's the way I see it.

M. Donley: Just to make one correction. I can assure you at no time did my clients ever want to build a connection. We tried to accommodate the desires of this Board.

G. Lake: Okay, let's move on.

C. Najac: The conservation plan is headed in the right direction and if I were to have my choice I'm sure I would want to go for that connection road.

T. Hamilton: This plan looks much better and back on the road again. We were leaning towards that

G. Lake: Mr. Ross, do you have something else?

H. Ross: I just wanted to make sure I understood what Mr. Bacon was saying. We need a reason on the fact that the road could be extended and be approve-able.

J. Bacon: You would have to find that road connection is not approve-able.

M. Donley: I did agree with Mr. Bacon that was the logical way to approach it. It can also be done today. We have the permission. The map is filed. It's been offered for dedication. What we have to do is put asphalt in.

T. Hamilton: But, also we need the Town to say yes, I am going to accept that as a Town road.

M. Donley: You don't have to have the road accepted. There are a number of subdivisions where offers are made and the public is using it. What happens is you have to prepare yourself but there is no requirement of acceptance of the Town for its use. That's not at all unusual if the road is going to be used and for the Towns not to accept dedication sometimes for years, sometimes forever. It's still a road.

G. Lake: I'm not going to get into that

M. Donley: What we're looking at is whether this is worth pursuing?

G. Lake: You do preserve the connect to the end of the land. Some day I would like to see it come, if possible. It might never get done but.

M. Donley: It leaves the possibility.

D. McGoey: You have to take it out of the conservation easement.

G. Lake: I know at the work session, I know this was kind of where we left it. I don't know what you want to do. He's here for sketch. I think it's a step in the right direction for him.

D. McGoey: I have one thing. Were you told about a waiver or something for the lot frontage?

L. Potter: This is what we were told from Behan's office. They said that by reducing that to one hundred ten feet that would be their way of allowing room for frontage around, creating lots around the cul-de-sac.

M. Donley: That was her recommendation at our meeting. We didn't have it that way at first. We changed it based upon.

D. McGoey: The problem is that the waiver says it's a waiver for lot width and not lot frontage. There's a difference between lot frontage and lot width. The waivers don't give you the option between the two. Lot frontage is measured thirty five feet from the front line of the road.

L. Potter: Right. What you have to check is if you can somehow get one hundred fifty feet of lot frontage around that cul-de-sac and I'm not sure how you're going to do that with a cul-de-sac.

L. Potter: I will also speak to Behan's office because they were the ones that . . . I had questioned that myself and they were the ones that told me that this was the way to do it because if you had one hundred ten feet.

D. McGoey: Right.

L. Potter: There's no possible way.

D. McGoey: I don't disagree with you.

G. Lake: Anything else, Mr. McGoey?

D. McGoey: No.

G. Lake: Obviously we will check that.

D. McGoey: Yes we are going to have to.

C. Najac: A conservation subdivision I thought we could (not clear) on that cul-de-sac?

D. McGoey: No.

C. Najac: So, if looking at your conservation subdivision instead of having the cul-de-sac at eighteen hundred feet, how much more do you need to get to lot #7?

L. Potter: You can only approve up to twenty five hundred feet.

C. Najac: It's twenty five hundred feet?

L. Potter: Right. It would be about three hundred feet beyond. Unfortunately if I shorten it this area is all wetlands through here so if I shorten it you can't have an access through that area.

M. Donley: And, it wouldn't lead to the point that's on the filed map and we need to make the connection lead to what's already been put on the filed map so, it can't be done.

G. Lake: Anything else, Mr. Najac?

C. Najac: No.

MOTION for sketch only made by H. Ross and seconded by W. Capozella.

A. Dulgarian: Aye

H. Ross: Aye

R. Carr: Aye

W. Capozella: Aye

C. Najac: Abstain

T. Hamilton: Aye

G. Lake: Aye

MOTION CARRIED. 6 AYES/1 ABSTAIN

7. **SCHLEIER** - 6 LOT SUBDIVISION (Sketch) - Derby Road (21-1-44.32) #09-08

G. Lake: Your name for the record, please.

D. Yanosh: My name is Dan Yanosh representing the applicant.

G. Lake: Go ahead.

D. Yanosh: This is ninety two (92) acres left over from a previously approved subdivision. We did two lots along Derby Road in 2005, another lot in 2006 which are the "A", "B", and "C" along Derby Road. The first two lots were two and a half acres and lot "C" had to be three acres because of the zoning. We did an overall plan years ago not knowing what the limits of the wetlands were. The majority of the property is wet in the back. You can't use it at all. We're trying to get five lots out of it. Lots #4 and #6 will not meet the road frontage. Lot #6 which is the big lot has sixty eight acres remaining and will have a long driveway and crossing the wetlands. I still have some work to do on it with the soils and whatever. This is here for sketch.

G. Lake: Mr. Yanosh are these two roads going to be Town roads?

D. Yanosh: They will be Town roads.

G. Lake: Have you talked to Mr. Lippert about this?

D. Yanosh: I'll discuss it with him as we go along. He was approached by his neighbor to the West just recently of possibly buying lot #1. That would eliminate the proposed Town road that comes in parallel with Derby Road. We can figure lots #2 and #3 to have road frontage on the new road.

G. Lake: Are there houses up there?

D. Yanosh: Yes.

A. Dulgarian: Are they very small lots?

D. Yanosh: Yes. Again if we do that, if she does sell the lot to the neighbor that comes through we will get rid of that Town road that goes in the back.

G. Lake: I have to be honest Mr. Yanosh. I don't think way back when we did the other and we actually knew what was back there we would be sitting here today looking at this.

D. Yanosh: I might have configured the road differently maybe between "B" or "C".

G. Lake: You would have known that you had all that wetlands and would have configured the lots differently.

D. Yanosh: "A" and "B" meets the old zoning law. We only needed two acres back then. These are three acre lots.

G. Lake: Right. First off, I can't even begin to see the Town taking those roads. I will go through the Board.

A. Dulgarian: I don't like it. They sold all their lot frontage and now its hurt the rest of the property.

H. Ross: No.

R. Carr: No.

W. Capozella: I don't like it.

C. Najac: No thank you.

T. Hamilton: No.

G. Lake: I think you need to go back and define. I think you need to speak to Mr. Lippert to see what kind of road he will accept.

MOTION to TABLE for further review made by H. Ross and seconded by R. Carr.

A. Dulgarian: Aye

H. Ross: Aye

R. Carr: Aye

W. Capozella: Aye

C. Najac: Aye

T. Hamilton: Aye

MOTION CARRIED. 7 AYES

8. **CLARK** - 2 LOT SUBDIVISION - Belmont Avenue (76-6-2.2) #91-07

G. Lake: Your name for the record, please.

A. Fusco: My name is Al Fusco with Fusco Engineering representing the applicant on the two lot subdivision on Belmont Avenue. We came here several months ago. We were referred to the Zoning Board of Appeals. We went to a couple of meetings there and just maybe about a month ago we did receive variances for both lots as per the request. There were some requests by the Board that we continue to move forward with you with as well and that is the sheds and the two houses be removed. I have instructed the client to do that. I have reviewed the comments I received just recently from Mr. McGoey and I see no issues with any of those.

G. Lake: After you went to the Zoning Board of Appeals did you go back to another work session?

A. Fusco: We set one up and then we were told to come directly here.

A. Dulgarian: So, you don't have any variances?

A. Fusco: We have all of the variances.

G. Lake: If you notice on page 2 . . .

A. Fusco: We listed them on the second page because the first page is existing so we received all the variances required to proceed with the subdivision.

G. Lake: Mr. McGoey, your biggest concerns are that Behan's comments aren't done?

D. McGoey: Yes. There were things that I had asked for previously that haven't been shown on the map as well as the detail of the driveway.

A. Fusco: Obviously we didn't move forward with the details until we were done with the Zoning Board of Appeals. We are happy to comply with all the comments and have no issues with any of them.

G. Lake: I will go through the Board.

A. Dulgarian: Mr. Fusco, on lot #1 you got side yard from twenty (20) to seven (7)? The one that goes between one and two.

A. Fusco: Yes. Lot #2 where you have the existing dwelling, that's the one that received the most variances. The new lot we only had a couple of variances that being lot width and area. We will comply with all of the side yards, front yards, rear yards and a stipulation that we can't go back for the variances for the front yard, side yard or rear yards. To answer your question, yes. Lot #1 is the one that we went from twenty (20) feet to seven (7) feet and twenty (20) feet to sixteen (16) feet on the other side, both side yards from forty (40) feet to twenty three (23) feet.

A. Dulgarian: So, that other side yard is nine feet?

A. Fusco: One side yard is seven (7) and one is sixteen (16).

G. Lake: You know what, Mr. Dulgarian. Why don't we table you and get you back to another work session. It just doesn't make sense to me for you to have fifteen comments on a simple two lot subdivision. You're trying to explain the variances you received a couple of months ago. Get back to another work session and let's clean the map up and get it right. Then we will get you back on and then the Board will know what measurements we're looking at, what buildings are going to disappear and what will stay.

A. Fusco: I have no issues with that.

A. Dulgarian: I just want to bring a couple of things up so that they can be addressed before he gets back here. This chain link fence, normally a fence designates lot line or at least appears to the property owner that's where his lot ends. You got a variance on a side yard but you're showing a side yard but it's at least seven to ten feet off of the property line.

We're creating a situation if this property gets sold the home owner is not going to know where his property line is. The guy next to him that has a variance of what seven feet, that's sixteen feet off of his line. I think this fence either has to be taken out. This goes across the back and is way off the lot line.

A. Fusco: I believe that Mr. McGoey also had that in one of his comments in relationship to the fencing. I think it was just put up for a pool fence. That's what it appears to me.

A. Dulgarian: This is not the pool fence. The pool fence I agree with Mr. McGoey should come down. I'm talking about the one that appears to be marking the side yard and it really isn't.

A. Fusco: I see what you mean.

A. Dulgarian: In addition to that I'm not finding any iron pins or anything out there.

A. Fusco: I understand what you're saying.

G. Lake: Let me finish with the Board.

H. Ross: Nothing.

R. Carr: Nothing.

W. Capozella: Nothing.

C. Najac: I believed everything was covered.

T. Hamilton: Nothing.

MOTION to TABLE for further review made by T. Hamilton and seconded by H. Ross.

A. Dulgarian: Aye

H. Ross: Aye

R. Carr: Aye

W. Capozella: Aye

C. Najac: Aye

T. Hamilton: Aye

G. Lake: Aye

MOTION CARRIED. 7 AYES

9. **SMILEY'S** - INFORMATIONAL PUBLIC HEARING - Zone Change - Stage Road

Informational Public Hearing scheduled for May 7, 2008 made by R. Carr and seconded by W. Capozella.

A. Dulgarian: Aye

H. Ross: Aye

R. Carr: Aye

W. Capozella: Aye

C. Najac: Aye

T. Hamilton: Aye

G. Lake: Aye

MOTION CARRIED. 7 AYES

