

The Deerpark Planning Board met for their bi-monthly meeting on Wednesday, December 8, 2010 at 7:00 p.m. at Deerpark Town Hall, 420 Route 209, Huguenot N.Y. The following were present:

BOARD MEMBERS

Willard (Skip) Wilson, Chairman
Derek Wilson

Theresa Santiago
Willard Schadt

Dan Loeb
Noel Malsberg

Mike Breitenfeld
Mike Hunter- Alternate Board member

OTHERS

Mr. Glen Plotsky, Town Attorney
Mr. Ken Conklin, Applicant
Mr. Lou Rizzo, Applicant

Mr. Alfred A. Fusco Jr., Town Engineer
Mr. John Fuller, Civil Engineer
Mr. Damian Brady, Deerpark Village, Esq.

Mr. David Dean, Town Board Liaison
Mr. Daniel Laub, P.E. For Cingular

THE PLEDGE OF ALLEGIANCE

KEN CONKLIN - PRE-APPLICATION CONFERENCE

Represented by himself 856-2485
Owner/ Lillian Bowers estate

Applicant/ Ken Conklin wishes to purchase property from the neighboring estate and form a lot consolidation at location of Route 209, Huguenot, N.Y.

It is an HMU Zone.

Section – Block – Lot = 38 – 1 – 4.21 & 4.22

Mr. Conklin showed the maps to the Board members and explained the neighboring property lines and the existing lines to be removed.

Mr. Plotsky expressed a concern that at the end of the lot line process, the property should be conforming or non-conforming lots, and Mr. Conklin may have issues with the encroachment of the existing structure on the property.

He said however, that the Board can waive any issues, as it is a minor change.

Al Fusco said that a couple of dimensions needs to be added on the site plan, for lot #2, and the existing garage to the lot line, and the wells and septic also have to be added to the maps. He said that written descriptions have to be submitted, and also new deeds, which the town attorney will review.

Skip Wilson told the applicant that two escrow accounts need to be set up with the Town Supervisors' office, that is, \$500 for town attorney fees, and \$750 for town engineering fees.

CINGULAR WIRELESS CELL TOWER

Represented by Daniel Laub, Cuddy & Feder, LLP 845-896-2229
Owner/ Burnett Enterprises, Inc.

Applicant/ New Cingular Wireless PCS (AT&T) wishes to erect a 125' cell tower on property located at 19 Route 211, Cuddebackville, N.Y.

It is an HMU Zone

Section – Block – Lot = 22 – 1 – 90

Application received September 30, 2010
Visual Impact Assessment Report submitted.

Mr Laub said that his client had produced a balloon float, and a visual analysis this past fall. He said that it shows that there is very limited visibility of the tower, that is, off site views are very limited.

Al Fusco said that an on site inspection has to be done, either by his office or the Building Inspector .

He also said that the applicant needs to get in touch with Kim Henken, of the NYSDOT, so her department can be apprised of the application.

He said that the staging of the plan, needs to be added to the maps. He said that there is an issue of stormwater management, as the Cuddebackville Post Office is located adjacent to the property, and the applicant needs to present some kind of flood plan data.

Mr. Plotsky said that this application requires a “239 review”, so the public hearing should be put off for at least 30 days, which will give the other agencies time to submit their comments before the public hearing.

MOTION

Derek Wilson made a motion for the Deerpark Planning Board to designate for lead agency. Dan Loeb second. Roll call vote: Santiago, aye; Schadt, aye; Breitenfeld, aye; Malsberg, aye; Loeb, aye; D. Wilson, aye; W. Wilson, aye. Motion carried.

Willard Schadt asked if the photograph that the applicant submitted, that is, a rendering of the cell tower, is it exactly what the tower will look like?

Mr. Laub answered yes. He said that in the future, if more co-locators come on board, then there will be additional platforms going down the tower.

MOTION

Derek Wilson made a motion for a public hearing for the Cingular application to be scheduled on January 26, 2011. Theresa Santiago second. Roll call vote: Santiago, aye; Schadt, aye; Breitenfeld, aye; Malsberg, aye; Loeb, aye; D. Wilson, aye; W. Wilson, aye. Motion carried.

Several Board members expressed concerns that this will add a conforming use to an already existing non-conforming use.

Mr. Plotsky answered that the issue is, that a conforming use is being added to a non-conforming use, and the applicants' representative states that they are not expanding the non-conformity. He said that at this point, it may be at the applicants' risk, for the Board to go ahead and schedule a public hearing and he will research this issue of the permissibility of a dual use on the property, and whether adding a conforming use to a non-conforming

use is an expansion of the non-conforming use, and therefore, permitted or not permitted. He said that in his research, if he finds a problem, he will notify the applicant, so that they can come back before this Board on January 12, 2011 as well, and try to hash out the issue.

TRIPLET LLC

Represented by John Fuller, Civil Engineer 856-1536

Owner/ Applicant Arthur Trovei is seeking a special use permit to operate a vehicle/ equipment

sales yard at property located on the old Rowley Lumber property at 161 Route 6, Town of Deerpark, Orange County, N.Y.

It is an HMU Zone.

Section – Block – Lot = 57 – 1 – 96

Special Use Permit is required by this Planning Board, for this application.

Application received November 12, 2010

Mr. Fuller said that no major improvements will be made, and there is already an existing NYSDOT access, an existing gravel parking lot, and no additional impervious surfaces will be created, so this project will not affect the stormwater runoff.

Al Fusco said that a letter from NYSDOT was received, regarding this application, stating that they consent to the Deerpark Planning Board becoming lead agency, and that they will conduct a review of the project. He suggested that Mr. Fuller get in touch with Kim Henken and review with her that this is an existing approved access.

Al Fusco said that at the last meeting, the Board had asked about the fate of the old motel which is located on the property on Route 6. He said that the applicant has indicated that he will renovate the existing building and utilize it. He said that this issue can be transferred to the Town Building Department for future action. He said that the hours of operation have been added to the site plan, as previously requested. He said that any new signs need to be presented to the Town Building Department, and will be placed on the site plan.

John Fuller said that the “Vehicle and Equipment Sales” is listed as a special use in the HMU zone column, in the Town Zoning Law.

Derek Wilson clarified by saying that this is a modification to an existing site plan, and a special use permit.

Al Fusco said that the Board also got a letter from Orange County Planning Department stating that they are okay with this project.

Mr. Plotsky asked about the property across the street?

John Fuller answered that construction of a driveway was put in for the construction vehicles, and the property is cleared but undeveloped. He said that his client does plan to develop the property in the future.

MOTION

Skip Wilson made a motion for the Planning Board to declare lead agency. Theresa Santiago second. Roll call vote: Santiago, aye; Schadt, aye; Breitenfeld, aye; Malsberg, aye; Loeb, aye; D. Wilson, aye; W. Wilson, aye. Motion carried.

MOTION

Derek Wilson made a motion for a public hearing for the Triplet LLC application to be scheduled on January 12, 2011. Theresa Santiago second. Roll call vote: Santiago, aye; Schadt, aye; Breitenfeld, aye; Malsberg, aye; Loeb, aye; D. Wilson, aye; W. Wilson, aye. Motion carried.

LOUIS RIZZO

Represented by himself 845-283-4660

Owner/ Applicant Lou Rizzo wishes a 3 lot consolidation on property located at

11 3rd St., Myers Grove, Godeffroy, N.Y.

It is an NR zone.

Section – Block – Lots = 29 – 3 – 17 & 18 & 19

Application submitted November 22, 2010

Al Fusco said that he has reviewed this, and the site plan does show a new proposed well, but the existing septic and existing well still needs to be put on the plan.

Lou Rizzo said that the metes and bounds descriptions have already been drawn up.

MOTION

Derek Wilson made a motion for the Planning Board to waive any further action on the Rizzo lot consolidation, subject to the new plans being submitted for the town engineers' review, and the new deed being submitted for the town attorneys' review, and payment of all fees. Theresa Santiago second. Roll call vote: Santiago, aye; Schadt, aye; Breitenfeld, aye; Malsberg, aye; Loeb, aye; D. Wilson, aye; W. Wilson, aye. Motion carried.

Skip Wilson told the applicant that he still needs to set up escrow accounts with the Town Supervisors' office, that is, \$500. for town legal fees, and \$750. for town engineering fees.

DEERPARK VILLAGE - DISCUSSION

Represented by Mr. Damian Brady, Esq.

Willard Schadt asked a question about the FEIS, the cover sheet, VI, which states “participating consultant for applicant...legal, Cuddeback, Onofry and Schadt” He said that as of January 1, 2009, however, it has a new name. He said that since he is now a Planning Board member, he wants to make it clear that that partnership dissolved in 1993, and he was not involved at that time and since that time. He said that the law firm was known as Cuddeback and Onofry from 1993 to 2009. He said that he wants to make a full disclosure, and to make sure that this information doesn't come up, somewhere down the road, on the discussion of this application.

Both Mr. Brady and Mr. Plotsky said that they will be sure and make a note of what Mr. Schadt just revealed.

Mr. Plotsky said that at the last meeting, he had indicated to the Board that he was preparing a memorandum which would be jointly submitted, that to the extent, practical, would be approved by the applicant, before it came before this Board. He said that the wording of the stipulation says that the Board will do certain things, and then the applicant has additional input and final review. He said that what he and the other consultants (Joel Sachs lead attorney for the applicant, Nat Parish engineer for the applicant, Al Fusco town engineer) did, was that they agreed, if at all possible, that it would really be better if the applicants could review whatever the Planning Board would submit, so that there's no question that they accept what is being submitted. He said that that is basically for the reason that there is not any more back and forth between the consultants and the Planning Board. He said that at the last meeting he had a document where the wording was close, and then the consultants spoke, and then there were some changes, and then the charge was to have a document to the Planning Board members by December 1st, and have it reviewed, and hopefully to move forward with discussion tonight. He said that ultimately what happened was, that he had sent what was proposedly the draft, which was reviewed, and there were a number of changes that were requested.

Derek Wilson asked, were these changes sent to the Planning Board members?

Mr. Plotsky answered no, this was something that was sent to the applicant for their approval, before passing it along to the Planning Board members.

He continued to say that ultimately the consultants all met again on December 2nd, and the last of the revisions were made. He said that there was one aspect that they all agreed upon, that they were not actually able to do the verbal changes that Thursday afternoon in Middletown (N.Y.), so he said that he took it home, finished it up, sent it out by e-mail at 10:00 p.m. On that Thursday evening. He said that the applicants' consultants then reviewed it, and basically there was a very little back and forth, with regard to the one section, and ultimately by Friday, the was pretty much finished. He said that all of the language was resolved, so that at that point, the document that the Planning Board members have received, is essentially a joint memorandum from Mr. Sachs and himself, with all the terms of the stipulation basically saying that the two engineers drafted the document for review, the Planning Board proposes changes with Al Fusco's and Mr. Plotsky's assistance, and if there is a disagreement, then either the engineers or the attorneys, or all four consultants, try to put it in a language that they can agree upon. If they can come to an agreeable language, then it goes to the Board; and if they cannot agree upon the language, then it goes to the judge. He said that at the Thursday meeting, he said that Al Fusco and himself believed that all issues would be resolved, except for one. He said that he was insistent that that one issue would not be addressed, until the end of the meeting on Thursday, because he said that he did not want to get bogged down. He said that the procedure was followed and that issue was discussed last, and it was resolved. He said that it turned out that the applicant had made a proposal which Al Fusco and himself believed was fair, and therefore, it is now just a matter of cleaning up the language. He said that the process at this point is, that the Planning Board now has before them, and have had, at least for a few days, a joint memorandum proposed by Mr. Sachs and himself, as to essentially, the last revisions to the FEIS. He said that after this Board reviews this document tonight, and if the Board agrees, Al Fusco and himself will direct Mr. Parish to make those final revisions. He said that Mr. Parish will then generate a black line copy, which Al Fusco and himself will have an opportunity to review, and at that point, it will be presented to the Board, and adopted by the Board, and then distributed. He said that once the FEIS is accepted and disseminated, there is then a brief comment period, which is essentially comments directed at the FEIS, but in terms of what should be incorporated in the Boards' "findings statement." He said that the "findings statement" will be the next document to be drafted, and will be prepared by Al Fusco, for the Board. He said that that is the Boards' document. He said that ultimately the "findings statement" will be issued, and then depending upon how that works out, the applicant will commence their preparation of the first phase site plan.

Mr. Plotsky said that this evening, he suggests that the Board reviews these joint memorandums, and see if there's any discussion or difficulty, and try to figure out, more or less, where the Board is at, in terms of directing the finalization of the FEIS. He asked Mr. Brady if what he has just said, is a fairly accurate record of what had occurred?

Mr. Brady answered yes.

Al Fusco said that most of these "points" with the exception of a word, here or there, is what he had discussed with the Board at one meeting where Mr. Plotsky was absent. He said that the only "point" that is different, is the issue pertaining to Wilson Road. He said that Mr. Plotsky and himself had discussed this issue, prior to getting together with the other consultants, and then when they did meet with the other consultants, they had come up basically with the same ideas that he and Mr. Plotsky had had.

Al Fusco said that concerning the Wilson Road issue, that he had originally indicated that this Board had information from the Town Highway Superintendent, who had indicated that he wanted Wilson Road widened, and rebuilt. He said that the Board had taken exception to that, particularly the widening. He said that the Board then down played that, and indicated that it would be basically re-paved, that is, taken down, re-graded, leveled, and re-paved. He said that this Board had a proposal which would put a good portion of that burden onto the developer. He said that what was come up with, was a formula that goes through the Town Board, who would set up a "Highway Improvement" District. He said that after the road has representation of the construction vehicles on it for awhile, and on a regular basis, any damage done by the construction vehicles would be immediately repaired by the developer, at least by the developers' cost. He said that at a time, down the road, what he had indicated was that the Town Board would set up a "Highway Improvement" District, by virtue of the fact that this development would be a major significant factor in that. He said that the applicants' local share would be absolutely larger than all of the other shares put together. He gave the example of say, there's 100 house on the road now, and at one point there will be 300 houses, then the shares would be based on that. He said that later if an additional 200 houses were built, which would bring the amount up to 500 houses, then the applicants' share would be larger. He said that it would be done over a 20 year period, so that there would be no large capital outlay, by anyone, other than the Town. He said that many districts are set up for "drainage improvements" and a lot of districts in other areas are set up for water and sewer, but in this case, he said that a "Highway Improvement" District is not unusual. He said that the mechanism is not difficult, and it's a planned map and a report that gets submitted to the Town Board. He said that the Planning Board cannot create the District, they can only recommend it to the Town Board.

Willard Schadt said that the language, in this FEIS, is good in all of the issues, but for this one issue, of Wilson Road, the specification of the actual language still needs to be put into this draft.

Mr. Plotsky answered by quoting the "Summary Memorandum", dated December 3, 2010, page 4, #10, second paragraph... "After significant discussion between the attorneys and engineering consultants for the Town and the applicant, it has been agreed that the Planning Board should

encourage formation of a highway improvement district by the Deerpark Town Board for Wilson Road in accordance with the provisions of New York State Law. In this manner, the Deerpark Village property owners will, through the payment of annual district taxes, pay for their proportionate share of the district's annual costs for improvements to Wilson Road. Other property owners having access to Wilson Road will also pay their proportionate share of such annual improvement district costs. In addition, the consultants and attorneys have agreed that, during each construction stage, developer must address all damages caused to Wilson Road during that construction stage. In that manner, the applicant will be responsible for all improvement expenses of Wilson Road, in the proportion that they own property on said road."

Derek Wilson said that when the Town Attorney and Town Engineer first approached the applicants' consultants about the issue of Wilson Road, they requested that the road be re-based and re-claimed and widened to 22 feet, for its' entire length. He said that now, the way he understands it, is that the existing residents on Wilson Road, aside from this project, are now going to have an additional tax put on their tax bill, to pay for improvements to Wilson Road.

Mr. Plotsky answered Derek Wilsons' concern by saying, "improvements yes, anything caused by the applicants, no."

Noel Malsberg asked, how would that be determined?

Mr. Plotsky answered that any damage "wear and tear" would be the applicants' responsibility. He said that improvements would be, either widening or complete re-construction. He said that the "consultants agreed that it would be equitable for the applicants to be responsible for anything that they generate, or that they cause; but that to the extent to the road itself would be improved.....frankly, if the road were to be improved tomorrow, without the applicants' project being developed, the homeowners on that road, along with every other homeowners in the Town, would pay some proportionate share, based upon taxes." He said that what is being done by this language is, they're saying, for example, Skip doesn't live anywhere near Wilson Road, he certainly shouldn't have to pay for repairs there. He said that therefore, the Town creates a district, where essentially only the people who live on that road, and are only the people who are going to benefit from the improvement, contribute to the cost of improvement. He said that if there is damage or work that is required, directly attributable to the applicant and the construction of this project, the applicant pays for that.

Willard Schadt says that he travels Wilson Road a lot, and he benefits from Wilson Road, and why should I not have to pay? He asked, shouldn't the burden be borne by every resident in the Town?

Mr. Plotsky answered by saying that this Board can take out the language that says that improvements should be paid for by this district, and leave in the part that says that the applicant is responsible for repair of any damage that they cause. He said that the applicant would be thrilled if this Board decided to change this language.

Derek Wilson said that he had asked previously, what leeway does the Board have to request off-site improvements, and Al Fusco had given him a little feedback. He said that the applicant, depending upon how many units are built, is going to be responsible for 98% of the traffic on the road, if they build 1,500 units, for example. He said that the idea was, that at the building of 100 units, for example, that the applicant was to upgrade the road, that is, re-base it, and re-pave it, at least the travel part from the project site entrance to Route 42. He said that it's no different from any large site development plan that comes before this Board. He said if a developer comes before this Board and wants to build 300 houses, and they're going to be putting a lot of children into the school district, that developer might have to pay for part of the building of a new school, because that's the way that the planning process works. He also gave the example of a past applicant, Dragon Springs Buddhist, Inc. who the Board had suggested that they pay for a new fire station, so that the cost of that fire station wouldn't be other citizens responsibility those citizens who would never benefit from it. He expressed his concern that the creation of a "Highway Improvement" District would just be another added bureaucracy, another line on the citizens' tax bills.

Willard Schadt asked, what if the Town Board does not create a "Highway Improvement" District?

Mr. Plotsky answered then that all of the residents of the Town would be responsible for the improvement costs, and the applicants would be responsible for their direct damage costs.

Derek Wilson said that the Board has asked for a long time for a listing of the percentages, partly to assist the consultants now, so that they can say "at this point, this project will be generating 97% of the traffic on the road, so this is reasonable, even though other people will be using the road, that the applicant pay "x" amount of dollars to upgrade the road." He said that even if the money gets put into an escrow account, on a "per unit" basis, so that the Town Highway Superintendent has some trigger point to do the work. He said that it is a horrible idea to create another bureaucratic "district" and then to assess the people who already live in the area and use the road. He said that this applicant is actually changing the nature of the area, and they should pay for those changes.

Al Fusco said that one of the things that was in the last proposal, was that for a shorter section of the road, the applicant would pay 100%, and for the balance, the applicant would pay 90% and the Town would pay 10%. He said that basically, for example, if this Board were to approve 1,500 units, the development would pay 95% of all of the improvements, on a pro-rated share, of a highway improvement, and the Town portion would be 5%. He said that however, in a "Highway Improvement" District, that burden would not go to the entire town, but to those people who live on Wilson Road. He said that if the applicant builds 900 units, it would be 90% paid by the developer and 10% paid by the Town. He said that these are percentages of the improvements.

Derek Wilson asked about a "per unit" assessment, that is, deciding on what improvements are necessary in 2010 dollars, then coming up with a "per unit" assessment, that essentially goes into escrow, until the units are built. He said that that money is not to be used by the Town Highway Superintendent to re-pave the roads all of the Town, but for him to work only on Wilson Road, as needed. He said, for example, when the applicant puts in 65 units, or 110 units, or whatever is the Town Highway Superintendents' discretion. He said that to create a "Highway Improvement" District would entail much, much paperwork, and make additional lines on peoples' tax bills.

Al Fusco said that "Drainage Districts" are created in some areas.

Derek Wilson said that usually when "Drainage Districts" are created, a subdivision is created within that whole property, and the burden falls on that developer.

Noel Malsberg expressed his opinion that if he lived on Wilson Road, and would see a 20% expansion of the population on that road, and he was asked to pay for the improvements on that road for the developers, he said that that would literally make him gag, as a homeowner on that road.

Dan Loeb spoke for the public record, that there is an issue that Deerpark Village has brought up, of a possible conflict of interest that Derek Wilson and himself may have, because they are residents of Wilson Road.

Derek Wilson said that if the Board is not in agreement with the applicant on these points of the "Summary", then the decision will be left up to a judge. He said that there is no difference if one issue goes before the judge, than if five issues go before the judge.

Mr. Plotsky answered that he told Mr. Parish, that if he (Mr. Parish) is telling him (Mr. Plotsky) that any disagreement with any of these 20 identified factors, means that basically they all are not agreed upon, then let's not even talk about it. He said that Mr. Sachs had told him that that was not his position, however. He said that at that point, they all agreed that the issue of Wilson Road will be the most difficult to resolve, and the consultants went through all of the other issues first, before tackling the Wilson Road issue.

Derek Wilson gave the scenario that if this would have to go before a judge, would it be the entire document or just the one issue that the judge would have to decide?

He said that this would be a good reason to solve everything, so that nothing would have to go before a judge.

Mr. Plotsky said that if an agreement is reached that would be better, because if the decision is put into the hands of another individual, who doesn't know anything about the circumstances that are being talked about, that judge will make a decision based upon arguments, whether they be arguments of Mr. Parish, or Mr. Fusco or Mr. Sachs or himself. He said that his recommendation is that, since this is do-able, the Board is better off agreeing on something, because then the Board is in control. He said that if the disagreement is something that is going to make the Board gag, then the Board shouldn't agree to it, and come up with an alternate proposal. He said although he would like to go to Mr. Sachs tomorrow and say that the Board has agreed on everything, but if he can't tell that to Mr. Sachs, then he said that he would like to be in a position of saying, "hey, 18 out of 20 ain't bad." He said that there is an understanding that the road issue may need more discussion, may need more analysis. He said that all of the other issues have been discussed enough by all parties, that it is close enough to agree upon. He suggested that the Board go through this "Summary Memorandum" item by item, and the ones that refer to the Wilson Road improvement should be discussed toward the end of this meeting, and if the Board comes up with another proposal, so be it. He said that he does not want to go before a judge, until every proposal has been discussed and rejected by one side or the other. He said that he doesn't want a judge making the decision for this Board, he wants the Board to be part of the process.

The Board then reviewed the "Summary Memorandum" line by line:

#1- As to the language contained in the first paragraph of page iii, the language at issue had to do with the role of the Planning Board vs. that of the applicant in completion of the FEIS. The consultants for the parties ultimately agreed that the word "prepared" would be deleted and replaced by "reviewed, accepted" resulting in the first sentence reading:

"The Final Environmental Impact Statement (FEIS) for Deerpark Village in the Town of Deerpark, Orange County, New York has been reviewed and accepted by the Town of Deerpark Planning Board, acting as lead agency for SEQRA review purposed."

THE BOARD AGREED ON THE LANGUAGE FOR # 1.

#2- As to the language in the 7th paragraph, there was significant discussion regarding language about the review of alternatives and how to convey the basis for said review. The Planning Board suggested insertion of language stating, "The Planning Board also requested alternatives of less than 900 units (750 units, 500 units and 350 units). The applicant has stated that these alternatives were not economically feasible." The applicant responded proposing that the sentence read, "At the request of the Planning Board, a 900 unit alternative and its impacts are presented in the FEIS." Ultimately, the consultants have agreed and proposed that the language "At the request of the Planning Board" be deleted, and the statement read: "A 900 unit alternative and its impacts are presented in this F.E.I.S."

Derek Wilson said that the Board had requested alternatives of 750, 500 and 350 units, and that the applicant stated that they had no intention of building less than 900 units, because it was not economically feasible. He said that alternatives are an important part of the SEQRA process, and the Board just wants it documented that they had requested it, and the Board says that under SEQRA the applicant does not have to provide detail on alternatives that he has no intention of building.

Mr. Plotsky answered Derek Wilson by saying that the applicants' position is that all of those discussions occurred in executive session, and therefore, they are not part of the official record. He said that there is no place in any of the documentation, where those requests are specified, other than in executive session and in discussions among the consultants. He said that the wording in #2 is accurate. He said it appears that the discussions that the Board had concerning the numbers of 750, 500 and 350 units were not stated in a public session, and therefore, the applicants consultants are concerned about including that as part of the record.

Dan Loeb stated that he has a problem with that, because the language of the Boards' specific request of numbers, has been sliced, diced, emasculated, etc. He said that there is a reason why the Board said those numbers, and it's because the applicants' first response in the June 21, 2010 document, was where Mr. Sachs responds to this. He said that Mr. Sachs makes some very disturbing statements, such as, with respect to the 900 units, he said that no one on the Planning Board came up with the figure of 900 units. He said that that 900 number was arrived at, through discussions between Mr. Sachs and Mr. Parish, and then presented to this Board. He said that the Board, in turn, asked for the alternatives of 750, 500 and 350. He said that the words "business decision" was mentioned at a meeting, "purely a business decision." He said that when that issue was raised the applicant said, "we are in no way agreed such a plan is necessary." He said that that "plan" means the 900 units. He said that the applicant here is essentially saying that the 900 units, even though is proposed, they don't have to give it to the Board, they just essentially threw that number out there. He said that there was nothing concrete that arrived at the number of 900, it was just an arbitrary number, the applicant just threw it out there. Dan Loeb said that the number 900 does not represent a commitment to himself. He said that the Board, in turn, has not asked (even though the Board is empowered to ask), by the SEQRA process, for alternatives. He read from the "Summary Memorandum"... "The Planning Board also requested alternatives of less than 900 units (750, 500 & 350)." He asked, why does the applicant have a problem with the Board stating this (above sentence)? He expressed his doubt that even the 900 number is even a commitment from the applicant.

Mr. Plotsky told Dan Loeb that the applicant does not have a commitment, that they will be limited to 900 units, because it's not their job to set the limit. He said that it is the Boards' job to set the limit in the findings statement and in the ultimate approvals.

Al Fusco said that the applicants' consultants had indicated that the 1,500 units is their preference, and that as part of SEQRA, they do not have to look at alternatives that are not economically feasible. He said that in this document, the consultants tried to go through all of the questions that were raised during the DEIS and the EIS time, that is, answer all questions raised by the public, by the Board, by the consultants, etc.

Derek Wilson said that there were a lot of comments placed in the public record, of discussions of looking for alternatives.

Al Fusco said that the Board is in total control, because basically at this point, when the FEIS is completed, and a resolution is created, the Board is now between 0 and 1,500 units on the Boards' findings statement, and there is no commitment to 900 units anywhere.

Dan Loeb said that the Board cannot even ask for 750, 500, or 350. He said that he cannot feel that the Board is in control, when the Board can't even ask for 750 units, or 500 units, or 350 units.

Al Fusco said that that is because it was handed up, at this point, through a court agreement.

Noel Malsberg asked, in the findings statement, can't the Board just state that they prefer a lesser density?

Al Fusco answered that the Board can put anything they want in their findings statement.

Dan Loeb said that the applicant objects to the word "offered." He said that the text does not explain who made such an offer, the applicant does not make an offer, nor is it known that the Board made such an offer. He asked, would you sign a contract, if you didn't know who made an offer, or what that offer was?

Derek Wilson suggested that the Board members vote on the numbers.

After a straw vote, Mr. Plotsky suggested the wording, that in addition to the statement that a "900 unit alternative and its' impact are presented in the FEIS, the Planning Board requests alternatives to the lesser density than the 1,500 that was initially requested. "

THE BOARD AGREED THAT MR. PLOTSKY WOULD INCLUDE THIS WORDING, UNDER #2.

#3- As a Modification to Page I-7 Item 18, a tenth bulleted item shall be inserted reading: "The evaluation of impacts of previous stages."

THE BOARD AGREED ON THE LANGUAGE FOR #3.

#4 – As a Modification to Page I-61, the Planning Board suggested the addition of a sentence stating, "However the Board recommends that future traffic studies collate traffic counts during the summer and weekend periods." The applicant requested language stating, "However, the Board recommends that follow-up traffic studies to be performed for each site plan review stage shall include traffic counts for selected peak hours during the summer and weekend periods. The selected peak hours shall be based on available count data for nearby roads and as agreed upon by the lead agencies professional consultant." After discussion, the consultants agree that paragraph 12 will read: UPDATED TRAFFIC STUDIES: "After completion of 250 units and at the time of submittal of a site plan application for a subsequent stage of development, the application will be accompanied by a traffic survey which will examine existing conditions at sample study intersections (Route 42/97) intersection, Route 42/ Wilson Road intersection, and the main site/ Wilson Road intersection). Each site plan review stage shall include traffic counts for selected peak hours during the summer and weekend periods. Should the survey determine that there have been increases in traffic that are substantially greater than were projected in the EIS, the analysis of all intersections will be considered and if any improvements are necessary in order to mitigate the impacts of that stage of development, the developer will be responsible for installing those improvements as part of the construction of that development stage. The traffic studies shall be reviewed by the Town Engineers or Planning Board consultant."

Derek Wilson said that his problem with #4 is, that there are basically 250 units, and then in #11 of the "Summary Memorandum" its says "200 units." He said that the applicant is pretty much asking for the exact same thing, and the Board had asked for a lower number of units, because of the traffic. He said that his concern is that the traffic study needs to be updated, basically before the second phase of this project is started. He said that all of the figures for traffic were pulled out of a textbook, saying that a project of this size produces so many trips. He said that the applicant does need to do a new traffic study, before the second phase is built.

Mr. Plotsky said, referring to Derek Wilsons' comment, that the Board wants an insertion into #4 to read: "After the completion of the first phase, and at the time of submittal of site plan application for each subsequent phase, the application will be accompanied by a traffic study..."

The Board agreed that the above sentence should read the same under #11 of this "Summary Memorandum."

#5-As a Modification to Page I-49, 4th paragraph, 1st sentence, the Draft FEIS proposed "As mitigation the applicant will prepare a handout for all prospective purchasers and renters regarding te impact that cats can have..." The Planning Board requested that the Modification read, "As mitigation the applicant will insure all prospective purchasers and renters are aware of the impacts that cats can have..." The applicant then proposed "As mitigation, the applicant will make a best effort to insure all prospective purchasers are aware of the impact that cats can have...: Ultimately, the consultants have proposed and agreed that the Modification should read: "As mitigation, the applicant will make a best effort to insure all prospective occupants are aware of the impact that cats can have..."

THE BOARD MEMBERS AGREED TO THE LANGUAGE IN #5.

#6 -As a Modification to Page I-53 in the 2nd full paragraph of the section titled "1. IMPACT OF CHANGE IN LAND USE," the draft FEIS stated, "The retail services complex for the site will primarily service the Deerpark Village residents and will not substantially change the land use character of the area" The Planning Board proposed the removal of the qualifier such that the statement would read, "The retail services complex for the site will primarily service the Deerpark Village residents and will change the land use character of the area." After discussion, the consultants propose and agree that the provision should read: "The retail services complex for the site will primarily service the Deerpark Village residents. The remainder of the site will be residential and open spaces. The surrounding neighborhood is totally residential. Thus, the land use character of the area as a whole will remain residential, and the fact that there will be a very small retail/ services area which will largely service the local residents does not change that characterization."

Derek Wilson said that I-53 is referring to the impact of the change of the land use, and basically the commercial area, that the applicant is making a broad statement. He said that the applicant is proposing a 50,000 square foot retail area. He said that the average house on Wilson Road is approximately 2,000 square feet. He said that the size of the proposed retail area will be 25 times the size of the average house on the road. He said that the applicant is referring to the proposed retail area of 50,000 square feet as small, which is not small, as compared to 2,000 square foot homes.

David Dean said that it is fairly common practice in new residential developments with a commercial space, that the facade of that commercial space that faces the neighborhood, which in this case would be the view of Wilson Road, the commercial space is placed in proximity, or close to the road. He said that the reasoning behind that is that there will not be a lot of trucks driving through the whole complex to just deliver eggs or whatnot. He said that a lot of times the facade is built to resemble the surrounding homes, that is, it won't look like a grocery store or a Walmart, but would look more like a home.

Noel Malsberg stated that that could work, but the proposed lighting would have to be different, also the parking lot lights, etc.

Derek Wilson said, from the practical point of view, nothing is up there now, and if someone feels that the lights and traffic from the retail area will have a decided impact, why would you not use the actual units in the site, and the topography of the site, to place the retail building, rather than on the outer edge near Wilson Road?

Mr. Plotsky said that the other aspect is, do you want the residents to be able to access that commercial area?

Derek Wilson said that re-locating the commercial area internally, will have less of an impact, because there will be less traffic trips on Wilson Road,

Mr. Plotsky said that the Board is not approving the location of the commercial area now.

Derek Wilson disagreed and answered yes, because there's a commercial area proposed, and this is why the SEQRA process is dealt with before anything is built, because you want to try and mitigate the impacts. He said that you don't wait until half of the buildings are built, and then decide that there's no place to build the commercial area, except near Wilson Road. He said that the Planning Board wants the commercial area to be located internally. He said that this existing paragraph is fine, just interject "internally."

Willard Schadt asked Mr. Plotsky, that when the site plan comes before this Board, and a normal review is done, at that point, can a decision be made about where to place the commercial buildings?

Mr. Plotsky answered that that is his understanding.

Theresa Santiago expressed her opinion that she would have to see the plan.

Noel Malsberg expressed his opinion that he liked the idea of the internal location for the commercial buildings.

Mike Breitenfeld expressed his opinion that wherever you locate the commercial buildings, the same amount of trucks would be coming and going on Wilson Road. He said that the center wouldn't be a bad location, especially since it's a retirement community where a lot of people are not driving. He said that it shouldn't be right up next to Wilson Road.

Dan Loeb expressed his opinion that he would like to see the commercial buildings put more internally, on the property.

Willard Schadt stated that the site plan review process should address that issue, and he said that he has no problem with the language, as it is.

Skip Wilson agreed with Willard Schadt.

Derek Wilson said that the applicants have already submitted a concept site plan, which already shows the location of the commercial buildings, so this is the time, right now, to say whether the Board disagrees or not. He said that once the project starts to be built, then the Board is boxed in.

Willard Schadt said that the site plan process will determine where the buildings will go, as well as the screening of trees, lighting, etc.

Glen Plotsky said that he could take out the words "very" and "small."

Al Fusco agreed with Mr. Plotsky, about taking out those two words.

THE BOARD AGREED WITH THIS LANGUAGE FOR #6, TAKING OUT THE WORDS "...very small..."

#7- As a Modification to Page I-54, the Planning Board proposed that "The Planning Board wants the commercial area to be relocated internally to reduce the impact on surrounding existing land uses," added to the end of the first paragraph of the page. The Consultants have agreed and proposed that the following language be inserted as paragraph F-2:

“The Planning Board wants the commercial area to be located so as to reduce the impact on the surrounding existing land uses. The applicant understand that the visual impacts of the retail/ services complex building design and the buffer area design are important in terms of assuring that it will be compatible with and will protect the surrounding existing land uses. This should be a factor to be considered by the Board at the time of site plan review for the stage at which the development of this complex is proposed.”

Mr. Plotsky said that the above second paragraph, he will insert the word “internally” after the “...the commercial area to be located...”

THE BOARD AGREED WITH THE WORDING FOR #7, WITH THE ADDITION OF THE WORD “internally.”

#8- As a Modification to Page I-56, there were discussions, again regarding the size of the proposals evaluated. Ultimately, the consultants have proposed and agreed that the language that should be adopted is:

“The most significant mitigation that has been considered is the alternative of 900 units.”

THE BOARD AGREED THAT THIS IS THE SAME AS #2.

#9- The next consideration was Modification to Page I-59 regarding discharge alternatives. Ultimately, the consultants propose and agree that the pertinent language should read:

“After 450 units have been completed, the Planning Board can require a study to determine if in-ground discharge for 10% of the total anticipated sewage effluent is feasible as additional mitigation for groundwater recharge impacts.”

In addition, the following sentence shall be added at the end of the second paragraph after the words, “Sanitary Sewage System.”

“In as much as the system will fully meet requirements of the DRBC and the NYSDEC and NYSDOH, it will address the objectives of the protection of water quality in the John Woods Brook and the Delaware Area Ecosystem.”

Derek Wilson said that all the Board requested, was when the applicant filed the first site plan, that in ground discharge be considered. He read from a July 26, 2010 memo: “The Planning Board will determine if in ground discharge is the best way to mitigate impacts on John Woods Brook and the Delaware River ecosystem for treated sewage disposal.”

Mr. Plotsky said that whatever system design gets approval, it has to be approved under the requirements of the DRBC and the NYSDEC and the NYSDOH, and these agencies will address this Boards' objectives, which is the protection of the water quality and the ecosystem.

THE BOARD DECIDED TO ACCEPT THIS LANGUAGE FOR #9

#10- As to Modification of Page I-60, relative to improvements to Wilson Road, the Town consultants had suggested that the applicants be required to pay for the majority of costs for improvements requested by the Planning Board and/ or Superintendent of Highways for the Town of Deerpark. Specifically, the Town proposed that the applicant be responsible for 100% of all improvements to Wilson Road between the subject site and Route 42, and 90% of all improvements to Wilson Road between the subject site and Route 97. The applicants indicated that they should not be responsible for any improvements to Wilson Road and should only be required to make repairs needed as a direct result of applicants' construction of the site. The applicant will be solely responsible for all roads contained within the subject site.

After significant discussion between the attorneys and engineering consultants for the Town and the applicant, it has been agreed that the Planning Board should encourage formation of a highway improvement district by the Deerpark Town Board for Wilson Road, in accordance with the provisions of New York State Law. In this manner, the Deerpark Village property owners will, through the payment of annual district taxes, pay for their proportionate share of the district's annual costs for improvements to Wilson Road. Other property owners having access to Wilson Road will also pay their proportionate share of such annual improvement district costs.

In addition, the consultants and attorneys have agreed that, during each construction stage, the developer must address all damages caused to Wilson Road during that construction stage. In that manner, the applicant will be responsible for all improvement expenses of Wilson Road, in the proportion that they own property on said road.

THE BOARD AGREED THAT THIS ISSUE STILL NEEDS TO BE WORKED ON AMONG THE CONSULTANTS.

#11- As to Modification of Page I-61 regarding Updated Traffic Studies, the attorneys and consultants have agreed to “trigger” further traffic study at completion of 200 units. As indicated above, the consultants have proposed language and procedures relative to improvement to and traffic studies regarding Wilson Road.

THE BOARD AGREED WITH THE LANGUAGE IN #11

#12- As to modification of Page I-62, 2nd from last paragraph, the proposed and agreed upon modified language, as between consultants, is:

“...it is not expected that it would generate significant numbers, if any, of school age children for the public school system.”

THE BOARD AGREED WITH THE LANGUAGE IN #12.

#13- As a modification to page I-64, it is agreed between the consultants that the following language be deleted:

“The Boards' review consultant, Fusco Engineering, has recommended that the applicant be required to pay 100% of the cost. The Board will make a final decision as to what will be required at the time that it issues a Findings Statement.”

THE BOARD AGREED THAT THEY WILL MAKE A DECISION ON THIS ISSUE FOR THEIR FINDINGS STATEMENT

#14- As to a modification of page I-81, in the first paragraph, there is additional discussion regarding the alternatives reviewed during the course of this application. In order to remain consistent, the consultants propose and agree that the following language should be added to the 1st paragraph of this page (See #2 above).

“A 900 unit alternative and its impacts are presented in the F.E.I.S.”

THE BOARD AGREED WITH THE LANGUAGE IN #14.

#15- As to modification on pages II-41 and II-42, see discussion above in paragraph #10 regarding improvement requirements to Wilson Road.

THE BOARD AGREED WITH THE LANGUAGE IN #15.

#16- As to a modification of page II-59, to the 2nd full paragraph, there is additional discussion regarding the alternatives reviewed during the course of this application. In order to remain consistent, the consultants propose and agree that the following language should be added to the 2nd full paragraph of this page: (See #2 above).

“A 900 unit alternative and its impacts are presented in this F.E.I.S.>”

THE BOARD AGREED WITH THE LANGUAGE IN #16.

#17- As to modification to page II-62 regarding Noise. The consultants propose and agree that resolution of the impact of change can best be demonstrated by adding the following chart information to the last sentence of the last paragraph.

TABLE “X”- AVERAGE ABILITY TO PERCEIVE CHANGES IN NOISE LEVELS

<u>Change (dba)</u>	<u>Human Perception of Sound</u>
2-3	Barely perceptible
5	Readily noticeable
10	A doubling or halving of the loudness of sound
20	“Dramatic change”
40	Difference between a faintly audible sound and a very loud sound

THE BOARD AGREED WITH THE LANGUAGE IN #17.

#18- The consultants agree and propose the correction of a typographical error on page II-74 by replacing “61 miles” with “6.1 miles.”

THE BOARD AGREED WITH THE LANGUAGE IN #18

#19- As to modification to page II-103 relative to impacts upon homeowners' wells and water source, the consultants suggest and propose that the language be revised to state:

“...the homeowner would be given two years of free water service and would thereafter pay \$50 per year, adjusted by the average annual Consumer Price Index for the New York-Northern New Jersey Area.”

Dan Loeb expressed his opinion that he objects to the \$50 paid per year (after two years), because the homeowners have to go through a lengthy process just to get water to their homes. He said that it starts with the homeowners having problems with their individual wells, such as low pressure, and not enough water actually coming out of the faucets. He said that now the homeowners do not have the same amount of water at their disposal, that they have had in the past. He said that the homeowners water flow starts to deteriorate, and so they have to do something on their own, to remedy the situation, and gain relief. He said that Deerpark Village will definitely impact the surrounding wells. He said that the fact of the matter is, that if a homeowner really starts to have problems with his well, what is he going to do? He said that a homeowner has a whole infrastructure that he has invested in, he's invested in a well, at the cost of approximately \$10,000, or maybe more, and it's now rendered useless. He said that a homeowner may not even be able to do laundry, or they may have to only be able to do laundry at a certain, inconvenient time. He said that concerning drinking water, now a homeowner may have to purchase bottled water. He asked, how far must a homeowner live from the project, to not be impacted by this proposal?

Several Board members answered that any homeowner who lives on Wilson Road will be impacted, no matter how far their property is from Deerpark Village.

Noel Malsberg interjected by saying that hydrologists will have to weigh in on this issue, so that a report is submitted by a non-partisan professional.

Mr. Plotsky said that he believes that the applicant has addressed this issue by saying that any homeowner on Wilson Road, if he/ she starts to have trouble with their water, can question and approach the Board and/ or the applicant; and then an independent hydrologist will be brought in, to determine if the problem is created by Deerpark Village. He said that if the problem does appear to be caused by Deerpark Village, then the applicant will have to start mitigation.

Willard Schadt read from the FEIS; “...if it comes back before the Planning Board, that the individual well is not being affected by the Deerpark Village water supply, as determined by the Planning Board, upon recommendation by the consulting hydrologist.” He said that ultimately the Planning Board decides if a well is being affected.

Al Fusco said that the applicant has already monitored the neighboring wells, with the permission of the owners. He said that some homeowners did give permission, and some homeowners did not.

THE BOARD AGREED WITH THE LANGUAGE IN #19.

#20- As to modification of additional traffic studies, clarification and further review as between engineering consultants regarding tables to be used and explanation/ clarification to be provided has now been completed. It appears that both sources of information are using the same "facts" but are presenting the information in different manners. The applicant has proposed and prepared a table using "hard numbers." The Planning Board has proposed using percentages. After discussion, it appears that most analyses use hard numbers and that the use of percentages may distort the record. As a result the attorneys and consultants agree that the tables and information using "hard numbers" (rather than percentages) are more appropriate and should be used in the adoption of the FEIS.

STRAW VOTE

The Board took a straw vote on the language of #20, and members Santiago, Malsberg, Breitenfeld, Schadt and Skip Wilson agreed with the language. Dan Loeb said that he would like to see the applicants' engineer break down the numbers, and give the Board some percentages. He said that a few meetings ago, he had requested a study of the number of cars that would be lined up on Wilson Road (waiting to turn onto Route 42) during peak hours. Derek Wilson said that he believes that the applicant still needs to show percentages in this document, along with their hard data.

Derek Wilson said that he does not like the idea of creating a "highway improvement" district, and made a suggestion that instead, the Town comes up with a "per unit" assessment that would be put into an escrow account, that would be dedicated to whatever improvements the Town Highway Superintendent feels is warranted.

Al Fusco said that what the applicant objects to, is, for example, putting \$500,000 in an escrow account, for the Town Highway Superintendent to draw from, whenever he feels it's appropriate, because right or wrong, the applicant is going into this project, and money is at a premium. He said that the applicant has no objection to putting up a highway bond, where the money is borrowed by the Town, and it is repaid, over 20 years, by the Homeowners Association. He said that this way, it will not impact the applicant, who will have to borrow money at the beginning of this project, to get it started. He said that with that in mind, the Board is looking at a structure, that would be on a "per unit" basis, and if the Board could come up with something that fits that criteria, that would be workable.

Derek Wilson said that the Town already has a recreation fee of \$1,000 per lot, and asked Al Fusco and Glen Plotsky to make part of the agreement, that for each unit that is sold, that an assessment amount goes into the escrow account. He said that some improvements should be made to Wilson Road, when 200 units or 300 units are built.

Al Fusco answered that the Board can still keep this language, because it is accepted by both the applicant and the Board. He said that the long term improvements of paving and re-claiming Wilson Road is what the Town is looking to get assistance on.

Mr. Plotsky said that he will research the idea of a "Highway Improvement" district and a highway impact fee. He said that he will contact Mr. Sachs and apprise him of the discussion here tonight. He said that all of the consultants will then have to either meet or teleconference again, to hammer out the Wilson Road issue. He said that he will report back to the Board as soon as he gets anything.

NEXT MEETING DATE

Skip Wilson informed the Board that there will be no meeting on Wednesday, December 22, 2010, but that the next meeting will be on Wednesday, January 12, 2011.

ADJOURNMENT

Derek Wilson made a motion to adjourn. Theresa Santiago second. Roll call vote: Santiago, aye; Schadt, aye; Breitenfeld, aye; Malsberg, aye; Loeb, aye; D. Wilson, aye; W. Wilson, aye. Motion carried.

Meeting adjourned at 9:30 p.m.

Respectfully submitted,

Barbara Brollier, Secretary