

The Deerpark Planning Board met for their bi-monthly meeting on Wednesday, June 8, 2011 at 7:00 p.m at Deerpark Town Hall, 420 Route 209, Huguenot, N.Y. The following were present:

BOARD MEMBERS

Willard Schadt, Acting Chairman                      Dan Loeb                      Alan Schock                      Theresa Santiago                      Mike Hunter (alternate)

OTHERS

Mr. Glen A. Plotsky, Town Attorney                      Mr. Alfred A. Fusco, Jr., Town Engineer                      Mr. David Dean, Town Board Liaison  
Mr. Jim McMahon, Applicant                      Mr. John Thibodeau,, Applicant                      Mr. Timothy Gottlieb, Gottlieb Engineer  
Mr. Chun Feng, Applicant                      Ms. Lana Han, Esq.                      Mr. Kaijin Liang, P.E.  
Mr. Damian Brady, Esq.

THE PLEDGE OF ALLEGIANCE

JIM MCMAHON - PRE-APPLICATION CONFERENCE

Represented by himself 754-7908

Owner/ Applicant Jim McMahon wishes a lot line change on property located at 25 Graham Ave., on Guymard Lake, Cuddebackville, N.Y.

It is in the RR Zone.

Section – Block – Lot = 28 – 1 – 60

Mr. McMahon showed the Board on his map, the property he wishes to have the lot line change, and said that the one lot he does not own the deed for, although he has been maintaining it for years. He said that it is owned by the Guymard Lake Holding Corp. He said that the lot is on the lake, and cannot be reached by a road, that is, you have to access it, by going through the other lot.

The Board told Mr. McMahon that he would have to submit two deeds, with his application, that it, the deed that the Guymard Holding Corp. conveys to him for the lot, and then another deed with the combined description. He was also advised to get a new survey made for the whole new property lines.

Mr. Plotsky said that this will be a two part application, that is, a 2 lot subdivision, and then a consolidation, which encompasses the lot line change.

Al Fusco said that what the applicant wants to do is do-able, the Board just has to figure out the procedure. He gave his business card to Mr. McMahon and told him to telephone him, regarding the particulars.

The applicant was told that in addition to a \$225. Planning Board application fee, he would also have to send \$750 for the Town Engineering escrow and \$250. for the Town Attorney escrow to the Town Supervisors' office.

CUDDEBACKVILLE SERVICE CENTER - #11-0201

Represented by John E. Thibodeau 754-8640

Owner/ Applicant John E. Thibodeau wishes a special use permit to create a used car sales and service lot on property located at 989 Route 209, Cuddebackville, NY

It is an HMU Zone.

Section – Block – Lot = 22 – 1 – 38.

Application submitted February 8, 2011

Al Fusco referred to the comments from the Orange County Planning Department, and said that they do not want the signs to inhibit the sight distance, and that the lighting does not glare into the roadway.

Mr. Thibodeau answered that his lighting all shines onto the building.

Al Fusco said that he did speak with NYSDOT, who had indicated that they just wanted some signage changes on the entrance and exit driveways. He said that those changes need to be placed on the new maps.

Mr. Thibodeau gave his updated map to Mr. Fusco to review. Mr. Fusco said that the plan is adequate.

The Board reviewed the SEQRA form, part II, and answered “no” to all questions.

MOTION

Hunter made a motion for negative declaration. Santiago second. Roll call vote: Santiago, aye; Loeb, aye; Schadt, aye; Schock, aye; Hunter, aye. Motion carried.

MOTION

Loeb made a motion for conditional approval for the Cuddebackville Service Center, subject to the maps being duplicated to the map submitted to Mr. Fusco tonight and payment of all fees. Schock second. Roll call vote: Santiago, aye; Loeb, aye; Schadt, aye; Schock, aye; Hunter, aye. Motion carried.

Mr. Thibodeau said that he will get the maps to the secretary.

MARTEL HOLDINGS LLC - #03-0501

Applicant is asking for a six month extension of conditional approval.

Represented by Tim Gottlieb, Gottlieb Engineering

Owner/ Applicant Martel Holdings LLC wishes a 16 lot subdivision on property located off of Wilson Rd., and Hawk Mountain Dr., Sparrowbush, N.Y.

It is in the RRC Zone.

Section – Block – Lot = 21 – 1 – 62.32

Application submitted October 11, 2007

Al Fusco handed the Board members, his technical memo, dated June 8, 2011 for the Martel Holdings LLC application. He said that all previous comments have been satisfied, except for Orange County Health Department approval, which the applicant is still waiting for.

MOTION

Shock made a motion to grant a six month extension for conditional approval for the Martel Holdings LLC application. Hunter second. Roll call vote: Santiago, aye; Loeb, aye; Schadt, aye; Schock, aye; Hunter, aye. Motion carried.

CAMP DEERPARK, INC. - #08-0802

Represented by Timothy Gottlieb, Gottlieb Engineering

Owner/ Applicant Camp Deerpark proposes to expand their camp located on Brandt Rd., Cuddebackville, N.Y.

It is an RR zone.

Section – Block – Lot = 7-1-38

Application submitted March 4, 2010

Mr. Gottlieb just wanted the Board to know that he had made some minor changes to the site plan when he did the stormwater, such as the addition of the retention pond, and re-arranging a couple of parking spaces. He said that this application had received Planning Board preliminary approval in 2010.

Mr. Fusco said that the NYSDEC and Orange County Health Department approvals are all that is still needed.

DA TANG DEVELOPMENT, LLC - #11-0202

Represented by Timothy Gottlieb, Gottlieb Engineering 794-5506

Owner/ Applicant Da Tang Development wishes a lot line change and a site plan for a proposed Bed & Breakfast located on Galley Hill Rd., Cuddebackville, NY

It is in the Residential Settlement

Section – Block – Lots = 22-1-5.21, 5.221 & 5.222

Application received February 8, 2011

ZBA granted use variance on May 19, 2011

Mr. Gottlieb said that the applicant was granted variances from the Zoning Board of Appeals in May 2011, and the plans submitted tonight reflect those variances. He said that the variances

MOTION

Loeb made a motion to declare lead agency. Santiago second. Roll call vote: Santiago, aye; Loeb, aye; Schadt, aye; Schock, aye; Hunter, aye. Motion carried.

MOTION

Hunter made a motion to schedule a public hearing for the Camp Deerpark application on Wednesday, July 13, 2011. Santiago second. Roll call vote: Santiago, aye; Loeb, aye; Schadt, aye; Schock, aye; Hunter, aye. Motion carried.

DRAGON SPRINGS BUDDHIST, INC. - #10-0401

Represented by Ms. Lana Han, Esq. & Mr. Chun Feng, Architect & Mr. Kaijin Liang, PE 845-754-7400

Owner/ Applicant Dragon Springs Buddhist, Inc. wishes to enlarge the lake and build a new dam on property located at 140 Galley Hill Rd., Cuddebackville, N.Y.

It is an RR zone.

Section – Block – Lot = 31 – 1 – 21.22

Application received April 28, 2011

Ms. Han said that these new maps reflect Mr. Fuscos' latest comments, and her client is waiting to hear from the NYSDEC.

Al Fusco said that he did meet with the representatives concerning the dam, and they have furthered their application and answered his questions. He said that the Building Inspector and himself did do a site inspection, and a couple of construction issues and field changes have warranted a change on the site plan, and he said that they need to be added to the site plan alteration. He said that anything that is built, needs to have an "as built" labeled on it, so that when the NYSDEC approves the dam, the site plan will be conclusive and up to date. He said that a General Municipal Review 239 does need to be circulated for this application, and asked for three sets of everything submitted to him tomorrow.

MOTION

Loeb made a motion for the Planning Boards' intent to declare lead agency for the Dragon Springs Buddhist, Inc.. Schock second. Roll call vote: Santiago, aye; Loeb, aye; Schadt, aye; Schock, aye; Hunter, aye. Motion carried.

MOTION

Loeb made a motion to schedule a public hearing for July 13, 2011 for the Dragon Springs Buddhist, Inc. application. Hunter second. Roll call vote: Santiago, aye; Loeb, aye; Schadt, aye; Schock, aye; Hunter, aye. Motion carried.

THE HUB - # 08-0602

Represented by Mr. Dominick Alfieri, Applicant & Mr. John Fuller, Civil Engineer 856-1536

Owner/Applicant Dominick Alfieri wishes to modify the site plan for property on Route 6, Town of Deerpark, Orange County, New York.

It is in the IB Zone.

Section – Block – Lot = 57 – 2 - 14

New application submitted April 25, 2011

The applicant was not on the agenda, but the Board did hear him.

Al Fusco said that there was a site plan, and the Planning Board did approve the building, and the business "Planet Fitness" moved in, and at that time the Building Department had issued a temporary certificate of occupancy, but there were still some open issues. The open issues were 1) the completion of a water supply application; 2) final paving; 3) other things of that nature. He said that as the project progressed, it had such a great impact, that the parking was a little bit more than anticipated, and towards that end, the owner began to create some overflow parking without permission from this Board. He said that in addition, the owner had some other ideas for projects that the Planning Board had not yet approved. He said that this Board had approved "retail" but not specific "retails." He said that Mr. Alfieri did come back to the Board to rectify these errors, and one of the things that he did was to upgrade the parking, and he expressed his desire to put a karate studio in the basement of the building. He said that also on the proposed plans was a beauty parlor, an ice cream stand, and a computer repair business. He said that those site plans were sent out to the various agencies, under the 239-General Municipal Law, mailed on Thursday, June 2, 2011. He said that Mr. Alfieri had then requested that the proposed karate studio be moved forward, because of the commitment of the karate owners. He said that a major concern with the utilization of the basement, is the safety codes of the New York State Building Code. He said that the corridor leading away from the karate studio, needs to be as straight and direct as possible, and they need two means of egress, and one is immediately outside the karate studio door, and a remote exit is needed on the opposite side. He said that he had suggested a straight line, showing the line of travel, which would be within the limits of the New York State Building Code. He said that it appears at first glance, that that may have been accomplished on this map. He said one or two more exit signs might still need to be put on the maps, but generally the site plan is acceptable. He said that the only hesitance that he has, is based on the karate studio attendance, and the parking associated with it. He said that he had suggested at the last meeting, that if the Board allows Mr. Alfieri to move forward with the karate studio, and make application for a building permit now, then the Building Inspector may hold off any further certificates of occupancy for the upper floors, until Planning Board approval. He said that if the Planning Board does allow Mr. Alfieri to make application with the Building Department for a karate studio, then he would still have to take out a building permit, and still has to show natural light and ventilation, which obviously is not present in the basement. He said however, the applicant can upgrade the hbac with ventilation and the air conditioning system. He said that the application would have to submit architectural plans. He said that other certificate of occupancies can be held up until the Planning Board agrees to everything else, which would include some parking changes for the better, and other items that were mentioned in his last letter.

Willard Schadt asked, what is the Planning Board being asked to approve here?

Al Fusco answered that the applicant is asking for the Board to allow him to go to the Building Department for a building permit for a karate studio in the basement. He said that initially this Board had never approved any other use in the basement, except for storage. He said that in order for the applicant to use the basement space for a karate studio, it is allowed in the Building Code, but there must be access from two areas (which Mr. Fusco indicated on the proposed plans). He said further details, such as the walls, fresh air intake, the wiring plan, etc. still need to be shown to the Building Department. He said that basically the Planning Board would approve the basement use as a karate studio, subject to the Building Department reviews before granting a permit.

Dan Loeb asked where do the exits go to?

Mr. Alfieri answered, up to the first floor, and indicated the exit routes on the site plan.

Al Fusco said that if the applicant wants to do anything else, other than storage, he will have to come back before the Planning Board.

Willard Schadt asked, how does the applicant anticipate this to affect the existing parking situation?

Al Fusco said that the applicant had submitted new plans, that indicates a more permanency to the overflow parking. He said that the applicant needs to get everything that he had written in his last technical review letter, which included an extended lease on the adjoining piece of property, and the paving of that adjoining portion, either in tar & chip, oil and stone on the surface, and the changing of the interior parking that the applicant is utilizing right now, all of that still needs to be ironed out. He said that if the Planning Board does give the applicant the courtesy of this, that in return for that, the applicant can have no additional certificates of occupancy for the building, until the Planning Board does the final approval of all of the parking and everything else ( i.e. the ice cream parlot, beauty salon, etc.)

Mr. Plotsky expressed a problem that he has with the order in which the things are occurring for this applicant. He said that the applicant didn't tell the Planning Board that there was going to be a Planet Fitness, until there actually was a Planet Fitness already installed; and he didn't tell the Board that there was going to be a karate studio, until it's almost up and operating.

Dominick Alfieri answered that the Planet Fitness was in occupancy from the day that this building was approved, and that everyone knew about it. He

said that he, as a layman, doesn't know all of the correct steps to take, and in what order, and as things come up, he said that he will try to do better in the future at letting the Board know what is being proposed.

Dan Loeb expressed his concern about the basement, and said that emergency lighting needs to be installed, and exits very clearly marked, doors cannot be blocked, the storage area can become a hazard, and other safety precautions need to be put into place.

Willard Schadt asked if this is a new application?

Al Fusco answered that this proposal was included in the previous application, that is, the second application, or the re-application with the name of the project as the "Hub."

Dan Loeb asked about the anticipated attendance of the karate studio?

Mr. Alfieri estimated approximately 20 students per session per day, but said that he really cannot say, because he does not know the instructors' schedule, as to the number of students, or the number of days he will be instructing.

Al Fusco said that the karate studio will have an occupancy number on the new maps. He said that there will be a public hearing for this application in the future, for the changes for the parking, etc. He said that there are maps for that purpose, although, he said that he does not believe that they are final maps. He said that for now the Board can allow the karate studio, prior to the public hearing, because it is for a specific use in the building, and the site plan approval will be dealt with in 30 days.

#### MOTION

Schock made a motion for the Planning Boards to allow the Hub owner to have the use of a karate studio in the building, subject to the Building Department review, and with the condition that no further permits will be issued, until the Planning Boards' approval of the entire site plan. Santiago second. Roll call vote: Santiago, aye; Loeb, aye; Schadt, aye; Schock, aye; Hunter, aye. Motion carried.

Al Fusco told the applicant to have his engineer get a new set of plans, with all of the concerns that were expressed by the Board tonight listed, and get them to the Board, and then in two weeks a public hearing can be scheduled.

Al Fusco told Mr. Alfieri that his own office space would not be affected, but the extension of the Planet Fitness on the first floor is not allowed yet.

#### DEERPARK VILLAGE - #D-0012

Represented by Mr. Damian Brady, Esq.

Owner/ Applicant Deerpark Village Associates wishes to create Planned Residential Housing

Units on property located on Wilson Road, Sparrowbush, N.Y.

It is a Planned Rural Residential Development (PRRD) Zone.

Section – Block – Lot = 23 – 2 – 32.2 & 38.8

Mr. Plotsky said that as he understands it, with regards to the ethics matter, which the Planning Board has been advised of, he did receive a communication from Planning Board member Dan Loeb's attorney, which was not particularly clear, so he wrote back to that attorney asking for clarification. He said that based upon his discussions with Mr. Damian Brady and Mr. Joel Sachs, the applicants' attorneys, he believes that Mr. Brady will be able to tell the Board this evening, if he is in a position to go forward. He said that with regard to going forward, if that should be the desire, there is litigation, there is a stipulation of discontinuance, and there was a procedure that was set that essentially would be the scenario where the applicants' attorney and engineer met with Mr. Fusco and himself, and those four consultants attempted to formulate language to address certain concerns, on issues where the applicant wanted certain things in the FEIS, and the Board preferred different language. He said that after three or four such meetings, he prepared a correspondence and a memorandum, dated January 26, 2011, and with that memorandum there were certain proposed changes, which was based upon various notes and correspondence that went back and forth between the consultants. He said that this memorandum was presented to the Board and it was narrowed down to twenty separate items, although some of those items overlapped, where a response to one was also the same response to another. He said that if it is the applicants' desire that the Board move forward this evening, then he recommended the procedure of discussing each of these twenty items individually. He said that as a stipulation of settlement, if the Board essentially does not agree to adopt the proposal agreed upon by the four consultants, then the applicant has the right to request that the matter be brought back to the Westchester County Supreme Court, where the judge can determine what the appropriate language would be, pertaining to that particular section of the FEIS. He said that by reviewing these twenty items, item by item, then, for example, if the Board says everything's okay except for these two things, only those two items would have to go back to the Supreme Court Justice. He said that that is his understanding of where he thinks the Board is today.

Willard Schadt said that he remembers that at one previous meeting, there were twelve items that the Board and the applicant agreed to, and only eight items that still needed to be hammered out, and even of those eight, some of them overlapped.

Mr. Plotsky said that that could very well be, and he was just going by his own notes tonight.

Mr. Brady said that his notes reflected that there was some prior agreement, and he does agree with Mr. Plotsky to go over the items again tonight. He said that at this point the applicant is requesting that the Board go through the twenty items, and it would reduce the issues where the Board and applicant cannot agree upon. He said that he believes that both sides have worked through the stipulation of settlement as they were supposed to, and the summary memorandum provides agreeable language and also provides options. He said that he is not authorized by the applicant to make any changes tonight, so

it's either contained in the summary memorandum, or it's going to be considered, "not agreed to." He said that from that perspective, his client thinks that it is fair, and thinks that there has been significant time for the Board to review it and compare it to the FEIS, and if so needed, they will go back to court, if needed. He said that this needs to keep moving, as it has been delayed, with respect to the ethics issue. He said that there was a public released opinion from the Board of Ethics, which indicated that Mr. Loeb should not serve in a capacity on this Board, while doing this project. He said that with respect as to how that is going to be handled, it'll be Mr. Loeb's attorney and the Town Board. He said that at this point however, he is in front of this Board and had asked previously that Mr. Loeb recuse himself during the investigation, and he was not inclined to do that, and now he said that he is asking Mr. Loeb to recuse himself, while the Ethics opinion stands as it is. He said that it is the applicants' position that Mr. Loeb should not participate in these discussions, and should not comment and should not vote, considering that there is a standing ethics opinion, indicating that there is a conflict of interest. He said that he cannot control what is to be done, that is solely up to the Board member, but he said that he wants to make the applicants' position clear. He said that with respect to the process to review the remaining items, he said that he thinks the Board should start on these twenty items, and see where it goes.

Willard Schadt asked Mr. Plotsky if it is appropriate for him to ask Dan Loeb to respond or make a statement at this time?

Mr. Plotsky answered to Willard Schadt that he can if he wishes, or not.

Dan Loeb said that a response should be left to his attorney. He said also, for the record, it would be appropriate to go back to the audio tape, that the applicants' representative indicated that they needed some clarification from the Town Board.

Willard Schadt said, in reference to tonights' meeting, then you are sitting on the Board tonight?

Dan Loeb answered yes.

Mr. Plotsky suggested that the twenty items be identified, as to what they say, and then the Board can go through each item, one by one.

Dan Loeb said that the agenda was very vague, and it did not state specifically what would be discussed about the Deerpark Village application tonight.

Mr. Plotsky said that two meetings ago, it was indicated that a poll would be requested at the following meeting. He said that that following meeting was held two weeks ago, and there were only four members at that meeting, and one of those four members recused himself, meaning that no action could be taken at that meeting two weeks ago. He said that with the exception of Mr. Hunter, all of the people sitting at the table tonight, were here the night that the applicant had said that they wanted the Board to take a vote at the next meeting. He said however, the Board members have had this memorandum for at least five months.

Al Schock said that he has no desire to go through all of this again.

Mr. Brady said that he thinks everybody's perspective is, let everyone look at the memorandum again, and then Willard Schadt, Mr. Plotsky and himself can go through it, and say "yes, I remember that being agreed to," and then the process can move on. He said that that way, it will be clear as to what was agreed to, and what wasn't. He did agree with Al Schock that he didn't want to waste everyone's time tonight.

The Board then all received copies of the January 26, 2011 memorandum.

Willard Schadt said that the main issue was the language concerning the 900 unit alternative, and the proposal was, he read from the memo: "...the 900 unit alternative and its impacts representing an approximate 40% reduction from the basic plan, as initially presented in the SDEIS, are presented in the FEIS." He said that it is his understanding that that was language that was agreed upon by the conferences between the representatives for both sides. He said that his position on this is that he was not in attendance at that meeting, and he knows that there were discussions about this topic, and he said that it was stated that there is nothing in the minutes or the record to indicate the proposals of the 750, 500 and 350 unit alternative, although it was indicated that they had been requested. He said that he is relying on what he was told by the representative of the applicant, that that was never actually in the minutes. He said that personally, he is prepared to accept that language as proposed, and opened discussion for comments from other Board members. He read from the memo: "A 900 unit alternative and its impacts representing an approximately 40% reduction from the basic plan as initially presented in the SDEIS are presented in this FEIS." He said that this sentence is the proposed language to resolve that issue, that has been agreed to by the representatives of both sides. He said that either the Board approves this or doesn't tonight, and asked Mr. Brady if he is authorized to accept any changes to the language tonight?

Mr. Brady answered no, he is not authorized to accept any changes in this language.

Willard Schadt asked the other Board members for their comments.

Theresa Santiago said, so the least the applicant will build will be 900 units, correct?

Willard Schadt answered yes, that's correct.

Al Schock said that he had no comments.

Dan Loeb said that he had always wanted the language to reflect the discussions to say less than 900 units, and that 900 units was presented to the Board as

the least amount of what the applicant would consider, because anything less was economically unfeasible. He said that he wants it on the public record that the Board asked for alternatives less than 900 units.

Mike Hunter said that he would like to go lower than 900 units, but obviously the applicant is not willing to discuss it.

Dan Loeb said that he doesn't blame the applicant for not wanting to discuss it, but under the SEQRA law, the Board is permitted to ask for alternatives, the Board is empowered to do that. He said that the record should show that the Board asked for alternatives.

Willard Schadt said that Mike Hunter, Al Schock and himself were not at the meeting, and his problem is that he has not been shown any minutes where that was in fact stated, and Mr. Plotsky and Mr. Fusco claims that that was not the case, that it was never on the record. He said that he has to go by what is on the record, and he said that he has not seen any minutes, nothing has been produced to him to show that.

Dan Loeb said that it was discussed in executive session, but the Board is not longer in executive session. He said that he has not seen them, and said that quite frankly, the minutes of the prior meeting with Mr. Brady, and said that they are not reflected in the minutes. He said that he would feel better if they were reflected in the Planning Board minutes, but he said that if no public record exists, because the Board was in executive session all the time with this, then the discussions and deliberations are not in the public record. He said that litigation was discussed in executive session. He said that this is something that the Board is empowered to do, and if the Board has no record of asking for it, then he said it is his estimating that the Board has hamstrung themselves, as far as the SEQRA law is concerned, because if something happens, they can say, "well, you never asked for it." He said, well, we asked for it in executive session, show me some minutes, oh, non-existence, there's no record of that. He said that he knows that the Board talked about that, and asked the other Board members, did we ever discuss this? Yes, we discussed it. He said that his point is, it should be a matter of public record.

Willard Schadt asked was there a reason it wasn't brought up outside of executive session?

Dan Loeb said that he's never seen it reflected in the minutes, especially the last public meeting that was held here with Mr. Brady, concerning this, he said that he made specific reference to it, and he said that he does not see his statements in the minutes. He asked, will I see them in the minutes after, I certainly hope so.

Glen Plotsky then stated that he has a red-lined copy of the January 26, 2011 memorandum, which reflects what occurred, based upon earlier meetings and discussions. He said that he wanted to add to Willards' list, because wherever there was no change required, it basically indicates that the Board had accepted the language that was already in there, and the numbers are #1, #3, #5, #6,...

Willard Schadt said, why don't we just go through them in order.

Glen Plotsky agreed and said #1 has been agreed upon.

Al Fusco said, for the Board members who were not here before, this document is the FEIS, and he re-wrote it with the applicants' consultant, and these are the items that were not totally agreed upon. He said then Mr. Plotsky and himself and the developers' team came up with this memorandum. He said that there are twenty items, and it looks like ten items have been agreed upon, but there's ten more, which only represent four different items, because some of them were intertwined. He said that at some point, either through our own volition here, or through a court order, that document is going to be accepted. He said that after that is accepted, there is a notice period that goes out to the public. He said that then after the Board takes in any public input, either written or verbal, the Board absorbs all of the information and then a findings statement is created. He said that that findings statement says, that they agree to this, and we think that. He used the example, where he thought that the developer should pay for 100% of the drain pipe, and they feel that they should pay 90%, and then they agreed that the Planning Board should make that decision when the findings statement was made. He said that the Board can say 90%, or 100% or 92 1/2%. He said that the Board is always in the drivers seat. He said that the Board can say 900 units, or 1,500 units, or whatever number they want, but when the findings statement is made, the number is placed in there, what the majority of the Board agrees to.

Dan Loeb said that he thinks that that is an inaccurate statement.

Al Fusco continued to say that this is the procedure. He said that his point is, that he knows that the Board wanted the lower number in there, but apparently it's not in the public record, per se, in the minutes, but he said that this memorandum will at some point be in the public record, and this memorandum indicates that the Board did look for lower alternatives. He read: "The Planning Board also requested alternatives of less than 900 units, 750, 500, and 350." He said that at some point, the Board can refer back to this as a public record.

Glen Plotsky said that if someone moves this memorandum into the minutes, then it's in the minutes.

Al Fusco said that this memorandum is a document, and is in the public record.

Dan Loeb asked, with respect to the findings statement, the Board is subject to the same procedures, stipulations, as they are now subjected to. He said that with respect to being in the drivers seat, the Board will be in the drivers seat, to the degree that they are, at this point. He said that the suggestion that the Board perhaps modify or suggest changes, is disingenuous, in the sense that they might be suggested, but they would also be subjected to the stipulation of agreement. He said that with respect to the Boards' request for alternatives, he said that it is true that there is written record, with respect to the communications that have gone forth between the two parties. He said however, once the Board agrees to the language, that is the Boards' call, the Board concurs with it, is what the Board is saying. He said that he stands by the fact that he would like to go on record, pertaining to the discussions.

Mr. Brady said that the stipulation of settlement was agreed to by this Board, and the only member to vote against it, has now recused himself. He said

that he believes that Mr. Loeb voted in favor of the stipulation of settlement, which he is now subject to, and is now complaining about. He said that he thinks that the Board is operating in a framework that they had agreed to, and comments to the fact that, they don't like operating in that framework, are kind of a "that ship has sailed."

Dan Loeb said that he wasn't pleased with the language, and obviously the applicant is not pleased with the Boards' proposals, because this is about the fifth time that this language has come back before the Board, and it's just the same.

Mr. Brady agreed, and said if the Board now agrees to the language then the process moves on, and if the Board does not, then the Board and himself work through this resolution.

Willard Schadt said that this statement is true: "A 900 unit alternative and its impacts representing an approximately 40% reduction from the basic plan as initially presented in the SDEIS are presented in this FEIS." He said that this is a factual statement. He said that the fact that there may be other language that Dan Loeb might want included, does not affect the fact that this is a factual statement. He said that the Board has to vote on this, if they vote "yes", it's approved, if the Board votes "no", then it goes to the Court and will be resolved by the judges.

Willard Schadt took a straw vote on whether the Board will accept the following statement: "A 900 unit alternative and its impacts representing an approximately 40% reduction from the basic plan as initially presented in the SDEIS are presented in this FEIS." The vote is: Santiago, Schock, Schadt, Hunter vote "yes", and Loeb votes "no".

Glen Plotsky continued reviewing the memo by saying that paragraph #3 had been previously approved. Mr. Brady agreed with Mr. Plotsky.

Glen Plotsky said that concerning #4, the consultants all agreed that it would be "After completion of the first phase of development, but not before 200 units.." He explained by saying that if the first phase of development was 125 units, it wouldn't be at the end of the first phase, but it would be sometime or after the second phase. He said that some of the Board members believed it should be done after the first phase of development, regardless of the number of units contained within that. He said that the discussion was whether or not there could be a real viable impact to study, at less than 200 units, and that was the discussion that the consultants had, and the Board was not in on that discussion. He said, going back to the wording in #4-under Updated Traffic Studies, he said that basically the issue is, the number of "200."

Willard Schadt asked the Board members for any comments on #4, and they had none. He then said that his only comment is, pertaining to the last sentence: "...The traffic studies shall be reviewed by the Town Engineer or Planning Board consultants." He asked, who are the consultants?

Al Fusco answered that the Board may hire a special "traffic guy" or something of that nature.

Willard Schadt took a straw vote on #4, and all members present voted "yes" to accept it, except Dan Loeb who voted "no."

Glen Plotsky said that his notes reflect that both #5 and #6 were both agreed to.

Glen Plotsky said that #8 & #9 were both agreed to, and also #12 & #13. He said that #14 is the same as #2. He said that #15 goes with #10, so it hasn't actually been agreed to, but he knows how it will be resolved. He said that #16 is essentially identical to #2, and #17, #18, #19 & #20 were all agreed to.

The Board went back to item #7.

Willard Schadt referred to I-54, paragraph F2 in the FEIS, and said that he just wants to make it clear that in F1 is an insertion. He read further: "Furthermore, any possible any significant impacts, retail service complex would be mitigated by the following factors..." He said that that sentence will remain in the paragraph, and will not be replaced in its entirety by this proposed language in #7. He said that all of that existing mitigation language will remain in the paragraph.

Mr. Plotsky and Mr. Fusco and Mr Brady all agreed.

Willard Schadt asked Mr. Fusco, concerning #7, said that the alternative of willing to remove the retail aspect for additional units, he said that he would be hard pressed to agree upon that, because it changes the whole game, in terms of traffic and flow, and now everybody would go in there to go shopping, getting their bagels, getting their newspaper. He said that if you have 1,000 residential units, with no place to go shopping, he said that in his book, it's a whole new ballgame.

Al Fusco agreed and said that that would not be a viable alternative, in and of itself, without further study, and also because of the difficulty of creating a findings statement on that.

Willard Schadt said that this whole proposal, this whole idea is contingent upon the idea of a community with a commercial center.

Al Fusco agreed, and said that most of the Planned Residential Communities that other towns have, strongly recommend a commercial component, and a lot of them limit it (i.e. a restaurant with only 50 seats, etc.)

Willard Schadt said that the issue here was, there were proposals of locating it internally, as opposed to relocating the commercial area. He said that this proposed language in #7 has added a lot of mitigating language. He took a straw vote, and all members rejected this language.

Al Fusco explained #7 by saying that basically what it is saying, is that the Planning Board wants the commercial area to be located, to reduce the impact

on the surrounding land uses. He said that as such, the applicant agrees that there will be no signs of external illumination; internal illumination only permitted; no flashing signs; and no neon signs. He said that the sole entrance of the retail would be from the Deerpark Village access road, there will be no additional curb cut into Wilson Road, and that the retail building will be set no less than 10' from Wilson Road, and the applicant will preserve not less than forty natural vegetation between Wilson Road and the retail area including the parking area. He said in other words, you have 40' of vegetation and then another 60' before the buildings.

Willard Schadt said that this is all mitigating language, in addition to what is in the FEIS.

Dan Loeb said that the surrounding areas, setback 150', he said that he agreed with Skip Wilsons' previous comment, that if the component is closer, and said that he would not want all of that noise. He said that garbage trucks and delivery trucks would be coming in and out of this complex, and said that this would subject the surrounding area to traffic noise.

Willard Schadt said that whether it's at the center of the development or not, the garbage trucks are still going to have to come in.

Dan Loeb expressed his opinion that if it were located more within the complex, it might be a little less attractive to perhaps some ancillary traffic that might come up Wilson Road. He said that this is detracting from the proposal of HMO zones and commercial.

Mr. Brady said that he does hear these concerns, but if people are going to utilize the complex by car, the extra 200 yards internally is not going to change whether that person is either going to go there, or not going to go there. He said that whether it's 100' from the road, or an extra 200 yards inside of the complex, if that traffic is going to be there, it's going to be there regardless.

Glen Plotsky told Mr. Brady that unless a question is asked of him, that is, to provide clarification, that he would not argue.

Mr. Brady said, no problem, absolutely.

Al Schock asked, 100' is internal?

Glen Plotsky answered by saying that Dan Loeb said that if it were further in, it would reduce the likelihood of people from the surrounding areas to go in. He said that Mr. Bradys' comment was that it was another 200 yards in, it really wouldn't detract from those people who were going to go there anyway. He said that the complex is going to be entered from the Deerpark Village access road, not directly off of Wilson Road, and the buildings would be set back 100' and every 40' there will be trees and vegetation for the parking area. He said that it will be completely internal, and the discussions have been, "how internal should it be."

Dan Loeb said that the discussion has been that the setback will be 150' and now they're going to have a 50,000 square feet one hundred feet off of Wilson Road, and it's immediately adjacent to another piece of property where the house is setback, and it's basically in that persons' back yard. He said that that is out of character for the neighborhood.

Al Schock asked, is the road going into this complex a public road?

Al Fusco answered yes.

Willard Schadt said that the whole idea of the site plan is, that it is a use that is permitted there and the Planning Board cannot say, "well, you can't do it," but the Planning Board can mitigate the effect on the neighbors, with a significant amount of mitigation language, but he said that he doesn't think that the Board can say, "you can't do it."

Al Fusco agreed and said that the Board can mitigate it with natural screening, and/or by putting up a sound barrier, and also by other mitigations during the site plan process.

Glen Plotsky said again that #8 & #9 are both agreed to.

Willard Schadt expressed his opinion, concerning item #10, that he cannot agree to language that the Planning Board encouraged the formation of a highway department, and as far as he is concerned, this is an issue which needs to be settled in court, because he doesn't see where there is a solution to it. He said that he cannot vote for something that says that the Planning Board encouraged another Board to do something.

Willard Schadt asked Mr. Brady if he is satisfied with the language in #10?

Mr. Brady answered that he cannot anticipate what is going to happen, because it would be the encouragement of this Board, and then the ultimate approval of the Town Board. He said however, the applicant is comfortable with this language, as positive.

Theresa Santiago & Mike Hunter had no comments pertaining to #10.

Al Schock said that he believes that the applicant should fix the road, and another highway department should not be created.

Dan Loeb said that if a highway department was formed, then there would be a separate tax bill.

Al Fusco said that this item #10 has always been the biggest bone of contention, and it's always a difficult topic for the consultants. He said that one of the things that he had always encouraged was to get the developer to pay as much as possible, and as it's stated here, he should be responsible for 100% of the portion between the site and Route 42 and 90% of the portion between the site and Route 97, or upgrading it, because basically they would have at least 90% of the people using the road. He said that obviously that is money out of the developers' pocket, that he doesn't have, because starting a development is very difficult. He said that regardless of how this ends up, the developer is going to be responsible for any damage that they do to Wilson Road. He said that the idea of a "highway district" came up, because obviously if a "highway district" was formed there, then the applicant would pay 90% plus of the district costs. He said that it would help the developer because it wasn't coming out of his pocket, it would come out of the peoples' pocket that had purchased there. He said that that is why it seemed like an alternative that could work, because if the road got upgraded, it wouldn't cost the local citizens, and it had some closure to it. He said that this would be a total Town Board decision (to create a highway district), and it was mentioned here as just a recommendation to move the discussion of the application along, because the applicant and the Board seemingly were never agreeing on who is going to bear the cost. He said that basically this was a way to negotiate. He said that he does see Willard Schadts' point, and it's well taken, and there are alternatives to the "district" so that the people there, that live on Wilson Road, even though they are going to be part of that "district", the Town could absorb that, because they are there already. He said that there are mechanisms to do that, although they are a bit more convoluted, and that would be up to the Town Board and the Town attorneys.

Theresa Santiago asked, if the developer does damage to Wilson Road, who is going to enforce them to pay for the damages?

Al Fusco answered that that would be the Town Highway Superintendent, who has authority within the Town Ordinance and also, he said he believes, State Ordinance.

The Board took a straw vote, and all members voted "no," not to approve the language in #10.

The Board reviewed with Mr. Plotsky and Mr. Fusco that #11 is similar to #4.

Plotsky said that again, #11 is the same issue of whether it's at the end of the first phase, or is it after the development of at least 200 units.

Willard Schadt said that the Board had agreed earlier that it was after the development of at least 200 units.

The Board took a straw vote, and all voted "yes," except for Dan Loeb who voted "no."

Mr. Plotsky said that #12 & #13 were both agreed upon, and #14 is the same as #2.

The Board took a straw vote on #14, and all members voted "yes", except for Dan Loeb who voted "no."

Glen Plotsky said that #15 is the same as #10, which was just rejected by zero. He said that he is comfortable with that being enough.

Mr. Brady said that he was comfortable with that.

Glen Plotsky said that #16 is again the same as #2.

The Board took a verbal vote for #16, and all members voted "yes, except for Dan Loeb who voted "no."

Glen Plotsky said that #17, #18, #19 & #20 were previously approved.

Glen Plotsky said that the procedure now is that Mr. Brady will advise his client, and his engineering consultant of the results of this discussion, and the FEIS will be modified to contain these changes, and he said that he imagines that Mr. Sachs will write to the court and indicate the issues to be discussed with the judge, and he will attend that conference with the judge and the applicants' attorneys.

Willard Schadt asked if the Town Board has had any discussion about the feasibility of creating a "highway district?"

Glen Plotsky said that he would not object to contacting the Town Board, and it isn't a bad idea.

Mr. Brady said that he has no objection to that.

COMMUNICATION FROM BOARD MEMBERS

Willard Schadt asked for an update on Summit Research, as their property looks a lot different, from what he remembers from the site plan.

Al Fusco said that they are in compliance, and he and the Building Inspector have been doing the inspections. He said that they have been very accommodating, as he has been inspecting every step, as they have been putting some equipment in, as per their ZBA variance for the height.

Theresa Santiago asked about John's Mower Shop?

Al Fusco said that the Building Inspector did give him a Planning Board application, telling him that he had to fill it out, because he had expanded his lot there. He said that he will speak with the Building Inspector tomorrow and follow-up.

Mike Hunter asked about Deerpark Oil?

Al Fusco answered that the propane tanks issue has been resolved, and he has been doing inspections there. He said that Deerpark Oil's secondary proposal for an office building, nothing has become of that yet. He said that he is in conformance at the present time.

#### COMMUNICATION FROM THE TOWN BOARD LIAISON

David Dean said that he read the Orange County Planning Department's comments for the Cuddebackville Service Center application, and said that it's disgraceful to think that taxpayers are paying somebody to tell a citizen do to something. That he is already doing what is in the Town Code, i.e., putting signs where they're not going to impede visibility. He said that for an applicant to have to wait thirty days, keeping his application from moving forward, and then to receive those kind of comments is unbelievable and shameful.

#### ADJOURNMENT

Santiago made a motion to adjourn. Loeb second. Roll call vote: Santiago, aye; Loeb, aye; Schadt, aye; Schock, aye; Hunter, aye.  
Motion carried.

Meeting adjourned at 9:40 p.m.

Respectfully submitted,

Barbara Brollier, Secretary