

APPROVED

**APPROVED
VILLAGE OF MAMARONECK
PLANNING BOARD MEETING MINUTES
WEDNESDAY, SEPTEMBER 13, 2017, 7:30 PM
Court Room, 169 Mount Pleasant Ave. Mamaroneck, NY**

These are intended to be "Action Minutes", which primarily record the actions voted on by the Planning Board on September 13, 2017. The full public record of this Meeting is the audio/video recording made of this meeting and kept in the Planning Board's records.

PLEASE BE ADVISED, that the next Meeting of the Planning Board of the Village of Mamaroneck is scheduled for Wednesday, September 27, 2017 at 7:00 P.M. in the Courtroom in Village Hall, 169 Mt. Pleasant Ave., entrance located on Prospect Avenue, in the Village of Mamaroneck.

PRESENT: LEE WEXLER, CHAIRMAN
 JOHN VERNI
 RICHARD LITMAN
 INGEMAR SJUNNEMARK

HUGH GREECHAN, VILLAGE CONSULTING ENGINEER
LESTER STEINMAN, PLANNING BOARD ATTORNEY
GREG CUTLER, VILLAGE PLANNER
BOB GALVIN, PLANNING CONSULTANT
SUSAN FAVATE, PLANNING CONSULTANT
SUSAN OAKLEY, LANDSCAPE CONSULTANT

ABSENT: LOU MENDES

Call to Order

Chair Wexler called the meeting to order at 7:06 p.m.

APPROVAL OF MINUTES

- A. Approval of minutes from April 26, July 12 & July 26, 2017

On motion of Mr. Sjunneemark, seconded by Mr. Verni and carried, the Board approved the April 26, 2017 minutes

Ayes: Verni, Wexler, Litman, Sjunneemark

Nays: None

Absent: Mendes

On motion of Mr. Sjunneemark, seconded by Mr. Verni and carried, the Board approved the July 12, 2017 minutes

Ayes: Verni, Wexler, Litman, Sjunneemark

Nays: None

Absent: Mendes

On motion of Mr. Sjunnemark, seconded by Mr. Verni and carried, the Board approved the July 26, 2017 minutes

Ayes: Verni, Wexler, Litman, Sjunnemark

Nays: None

Absent: Mendes

OLD BUSINESS

- A. WORKSESSION: MAMARONECK BEACH & YACHT CLUB – Discuss FSEIS** submitted July 12, 2017.

Mr. Wexler stated that this FSEIS was received in July and was reviewed over the summer. Ms. Susan Favate of BFJ was in attendance to review her memo, which encompasses comments from not only her office, but also from counsel, landscape consultant and the engineer. The memorandum raises two main points – the description of a preferred FSEIS alternative regarding the location of the pipeline and the timing of construction of the sewer improvements. The Planning Board's position is that the sewer improvements should be constructed early on, in phase one of the project construction plan. Accordingly, the discussion of the timing of the sewer upgrade in the FSEIS needs to be revised. As to the location of the pipeline, it was agreed last summer that the option of hanging the pipeline from the bridge was feasible and would become the preferred alternative in the FSEIS. The FSEIS must be reorganized with an appropriate narrative to reflect this option as the preferred alternative and responses to comments must be addressed with this preferred alternative in mind. There may be questions on what the DEC will accept pertaining to this alternative. Mr. Wexler agreed that these two issues need to be addressed before moving forward. The memo follows for the record:

Mr. Ralph Peragine of Provident Engineering appeared for the applicant. They received Ms. Favate's memo and are in the process of reviewing it. He did clarify that the applicant intends to hang the force main from the bridge and the FSEIS will be modified to include a preferred alternative narrative as the Planning Board has requested. It will take some time to do that. The timing of the construction of the sewer line will be further evaluated.

Ms. Favate's Memo:

Subject: Completeness Review of Supplemental Final Environmental Impact Statement (FSEIS): Mamaroneck Beach and Yacht Club (555 South Barry Avenue)

Date: September 8, 2017

This memorandum provides our completeness review comments on the Final Supplemental Environmental Impact Statement (FSEIS) submitted by the Mamaroneck Beach and Yacht Club ("Applicant") in July 2017 for the proposed sanitary sewer system upgrade. The memo incorporates comments from BFJ as well as from Lester Steinman, counsel to the Planning Board, as well as landscaping consultant Susan Oakley. Prior to making a determination of completeness, the Planning Board should also request and receive comments on the FSEIS from

Village Engineer Hernane De Almeida. Except for organizational issues, the following comments follow the format of the FSEIS.

General/Organization of the FSEIS

- Title page: the word “draft” should be deleted and replaced with the word “final.” Also, the information on this page should be reformatted to include only the date of the FSEIS submission to the Planning Board.
- Rather than starting the document with the previously accepted DSEIS, there should be a narrative describing changes to the project between the DSEIS and FSEIS, and the revised proposed action with those changes (“FSEIS Proposed Action”). The DSEIS should be a separate appendix to the document.
- p. 56-71 are part of the DSEIS. However, the heading “Final Supplemental Environmental Impact Statement” appears at the top of each of those pages and should be deleted. No such heading appears on p. 1-55.
- With the DSEIS removed and relocated as an appendix, “XII” in front of Comments and Responses on p. i should be deleted.
- Throughout the Comments and Responses section, related comments should be grouped together and answered with a single response.
- There are several typos and misspellings in the document. For example, “Responses” is misspelled at the top of p. xi, and there are several references to “BFJ Planning” in which “BFJ” is left off.

Topic 1: Existing Sewer Line

In our SDEIS comments dated June 6, 2016, we suggested that the proposed sewer upgrade is required, and should occur as soon as practicable, due to the lack of an easement to allow for the existing force main, outstanding questions regarding the adequacy of the existing system, and additional demand to be placed on the existing system from proposed new buildings and uses on the site. The applicant’s response to these comments (and similar comments raised by others) is inadequate. In response 1B, the FSEIS states that “No easement is necessary as the project will not entail crossing 519 Alda Road.” While this is true for the proposed force main upgrade, the comment was related to the current force main, and the lack of any easement that would allow it to exist.

Under the “No Action” alternative, no additional development on the property would be undertaken and the new sewer line would not be built. The Planning Board would have no jurisdiction over the continued operation of the existing sewer line. If a problem subsequently occurred with the sewer line, it would be a matter of enforcement for the Building Department. Given the age of the existing sewer line, the potential for future leaks and the absence of an easement over the Alda Road property that the existing line passes under, the Planning Board may wish to take the position that the No Action alternative is not an acceptable alternative. We reiterate our previous position that the proposed sewer upgrade is required and should occur during Phase 1 of construction, prior to or concurrent with construction of the yacht club/dock master building.

- *Response 1.C and all other engineering-related responses should be reviewed by the Village Engineer and revised as appropriate.*
- *Response 1.D is not responsive to the comment. Text should be added regarding the determination as to what tests should be done and the results of those tests. A statement regarding the agreement to do testing on a semi-annual basis (see above) should be added. The FSEIS also references recent dye testing conducted since the SDEIS was accepted, and discusses the applicant's position that the other forms of testing (TV inspection and pressure testing) are adequate to confirm that the existing force main is functioning adequately. We note that, at a meeting of the Planning Board on March 22, 2017, the applicant agreed to conduct dye testing every six months, in the spring and fall (before and after the club's peak season). This commitment should be noted in the FSEIS.*
- *Response 1.E: suggest deleting "The line is adequate for the existing use." The response should address the applicability of the standards cited in the comment.*
- *Response 1.N should be changed to "Comment noted."*
- *Response 1.O: the reference to the commenter living "in the orient" should be corrected to living "in Orienta."*
- *Response 1.Q should provide the relevant documentation confirming that the Order to Remedy issued by former Village Building Inspector Bill Gerrety was "appropriately closed out by the Village of Mamaroneck." Please also note the correct spelling of Mr. Gerrety's name.*

Topic 2: Natural Features

Much of the discussion in the FSEIS centers on the potential impacts on tidal wetland habitats resulting from construction of a pipeline bridge, in particular comments made in the SDEIS regarding mitigation of the 10 square feet of permanent displacement of tidal wetland habitat, and 50 square feet of temporary construction-related displacement, from construction of the concrete piers required for the pipeline bridge. We note that the Planning Board has previously indicated a preference for a bridge alternative that would be supported by the existing Otter Creek Bridge, rather than a standalone pipeline bridge. The applicant confirmed at the Planning Board's July 27, 2017, work session that the existing bridge can support a new force main sewer line, and that the applicant would be amending its recommendation to support that alternative. In a March 22, 2017, appearance before the Planning Board, the applicant indicated that the FSEIS would provide additional details as to the location of the force main connection to the existing vehicular bridge. Yet the FSEIS does not provide any such details; it merely states at various points that the bridge suspension option has been determined feasible by the design engineers, information that was already confirmed in July 2016. If the bridge suspension alternative is feasible, we suggest that it become the applicant's proposed action, and that the FSEIS be revised accordingly. This alternative would appear to render moot much of the discussion of mitigation related to construction of the concrete piers. It is recognized, however, that there remains a question as to whether NYSDEC would approve suspension of the force main from the existing bridge structure, as the force main would be below the base flood elevation. Given this uncertainty, the applicant should provide additional information, as

described below, on potential impacts to tidal wetlands of the concrete piers. As it stands, the FSEIS does not provide sufficient information to allow the NYSDEC to consider the bridge suspension alternative.

- *Response 2.A is inadequate to respond to our concerns about whether information provided in the SDEIS is sufficient to fully understand the boundaries of the tidal wetlands along Otter Creek or to assert the applicant's contention that the proposed action will not adversely affect any vegetated tidal wetlands in the area. The FSEIS provides no documentation to support the assertion that no tidal wetland vegetation would be disturbed by the proposed crossing. We note that, although the FSEIS indicates there is no tidal wetland vegetation growing within Otter Creek in the area potentially affected by the concrete piers, this area is nonetheless a tidal wetland habitat. Any and all existing trees, shrub and any other plant material inside and outside of the NYS DEC tidal wetlands boundary and the MBYC property should be indicated on a dedicated Landscape Plan. The Limit of Disturbance should also be clearly marked on such a plan.*

- *Response 2.B: there is no mention of mitigation. Is mitigation feasible?*

- *Response 2.C does not adequately respond to the comment, which clearly requests a map showing the location of all tidal wetland and adjacent area boundaries. As Ms. Crist has stated, "until the location of the adjacent area is determined, it is not possible to say whether the project will require any variance" from NYSDEC's tidal wetland development restrictions. Without knowing whether such a variance would be required, it will be difficult for the Planning Board to make a determination of environmental significance.*

Thus, the applicant should provide a current map delineating the location of tidal wetlands and adjacent areas, as has been previously requested. It is not necessary to wait on final confirmation of the pipe alignment to prepare such a map.

▪*What will the applicant submit to NYSDEC to support the conclusions in this response? That information should be included in the FSEIS.*

- *Response 2.F should unequivocally state whether or not the proposed pump station is in the NYSDEC adjacent area.*

- *Response 2.G: the applicant previously agreed to recommend the bridge suspension alternative, and this response should be modified to make that clear (see discussion above).*

- *Response 2.H: there is reference to a resource discussion provided above but there is no page or other citation to that discussion.*

- *Response 2.I: on the second line, the word "stops" should be "stop."*

- *Response 2.K refers to the "preferred alternative alignment," and Responses 2.L and 2.M suggest that the applicant has modified the plan to support the force main with the existing Otter Creek bridge. However, this is not supported by any narrative or exhibit in the FSEIS. The document continues to read as if the applicant's proposed action is for the force main to be a*

separate structure, supported by concrete piers. The FSEIS should clearly indicate the bridge suspension alternative as the proposed action, as discussed above.

- *Response 2.P: the Archeological Determination should be included as part of the FSEIS.*

Topic 3: LWRP

▪ *Responses 3.A and 3.B: the prior discussion of the LWRP policies does not address the proposed sewer improvements; it only relates to the proposed new development on the property. A detailed analysis of LWRP policies as they relate to the construction of the proposed sewer improvements should be included in the FSEIS.*

▪ *Response 3.C: see earlier discussion on the bridge suspension alternative; this response indicates that the applicant's proposed action remains a standalone pipeline bridge.*

Topic 4: Landscaping

▪ *Responses 4.A: Protective measures should be taken during and before construction for the existing 18-inch Catalpa and 20-inch Silver Maple trees, using the Village's Tree Protection Standard (SD-II) as a guide.*

▪ *Response 4.B: The revised landscaping plans should be provided in the FSEIS, in a form and manner as previously indicated in Comment 4.B.*

In addition, Response 4.B reads, "Plans will be changed to reflect the size calcification change to 5'-6' ht. and all existing trees which require protection will be balled and burlapped." It is unclear what is meant by a "size calcification" as this is not a comment landscape industry term; is the term meant to be "size classification"? In addition existing trees are not protected on-site using "balled and burlapped" means. Balled and burlapped is a nursery term that describes transplants sold to a buyer after having been planted, dug up and wrapped in this manner. Again, the Village's Tree Protection Standard should be used as a guide for protecting existing trees and plants when in the vicinity of construction.

▪ *Response 4.C should be more specific regarding the steps that would be taken during construction to protect and preserve the existing trees. The Planning Board may consider whether a tree protection plan should be included in the FSEIS.*

▪ *Response 4.D: on the second line, change "Shall" to "shall." Remove the reference to the author at the end of the response.*

Topic 5: Flow Rate

▪ *Response 5.A should be changed to "Comment noted and agreed."*

▪ *Response 5.B: the text of Comment 5.A should be repeated here.*

▪ *Response 5C should be reviewed by the Village Engineer and revised as appropriate.*

Topic 6: Relocation of Water & Sewer Lines from Under Recreation Building

▪ Response 5.C is not relevant to Comment 6.A and should be corrected and re-written; the response does not address the routing issue raised in the comment. We note that the applicant agreed at the July 27, 2016, Planning Board work session to revise its plans so that the sewer lines do not run under any proposed buildings. The FSEIS should make this clear both in the narrative and in accompanying exhibits.

▪ Response 6.B: see above regarding the applicant's stated commitment not to run sewer lines under proposed buildings.

Topic 7: No Action Alternative

▪ Responses 7.A, 7.D and 7.E: see above discussion of the viability of the No Action alternative.

▪ Response 7.B should be re-written as it lacks substance and includes comments that are not appropriate in the document.

▪ Response 7.C should be expanded to more fully answer the comment and explain the benefits of the FSEIS Proposed Action.

Topic 8: Relocation from Proposed Pipe Bridge

▪ Response 8.D: the applicant needs to consult as soon as practicable with NYSDEC on the proposed elevation of the force main so that the Planning Board can determine, as part of SEQRA, whether suspending the pipeline from the existing bridge is a viable alternative. The information requested by NYSDEC should be included in this document (see also Responses 8.E and 8.F).

▪ Responses 8.G, 8.H, 8.I and 8.J are inadequate and/or not responsive to the comments.

▪ Response 8.K does not address the comment regarding the specific location of the force main. As it has been established since July 2016 that the bridge can support the force main, the applicant should make this alternative the proposed action and provide the requested information as to the exact position of the force main to minimize visual impacts and ensure storm resiliency (i.e., place the force main on the inland side of the bridge). Further, this response should also address how a standalone bridge would be sited to avoid visual impacts, in the event the proposed action (suspending the pipeline from the bridge) is not approved by NYSDEC.

▪ Responses 8.L, 8.M and 8.O are not responsive to the comments.

Topic 9: Evaluate Horizontal Auger Boring (HAB) and Horizontal Directional Drilling (HDD)

▪ Response 9.A does not address the HAB option raised in the comment.

Topic 10: Construction Phasing and Impacts

▪ We note that Response 10.A does not take into account the potential additional demand resulting from large special events possible with a substantially expanded yacht club, an issue that has been discussed previously by the Planning Board. In addition, the response references prior filings made by the applicant and a report of the Village Engineer stating that the upgraded

power of the pump station would not be available until Phase III of construction. Such documentation should be provided in the FSEIS.

- *Comment 10.F misquotes the comments made by the Village's Land Use Attorney. If the misquote was on the part of the commenter, that should be made clear in the response and the correct quote should be provided.*
- *Responses 10.H and 10.I do not adequately address the comments.*

Topic 11: Impacts on Neighbors

- *Response 11.A should make clear that any necessary reconstruction of the storm drain will be at the applicant's expense. The response does not address what happens in the interim if the storm drain has to be reconstructed.*
- *Response 11.B: again, protective measures to existing trees should be made using the Village's Tree Protection Standard as a guide. To avoid damage to this tree, in addition to the negative visual impact of the pipeline on the west side of the bridge, relocating the project to the east side of the bridge, where it would be more hidden from view, should be seriously considered.*

Tree disturbance is a reality during many suburban construction projects. In general, the response of severing tree roots is an option, but the first approach should always be to preserve the integrity of the tree roots by trenching and tunneling under them rather than digging across and/or cutting them. Also, if severing roots is the only alternative, the Certified Arborist should only use hand tools, instead of excavation machinery, to locate and preserve the roots of the vulnerable trees. In addition, the cut should always be made as far away from the tree as possible and the tree roots protected by cutting them cleanly with a hand saw and protecting them with a moist cloth until the area is backfilled. Since tree failure is not always evident until years after construction is complete, the Planning Board may consider requiring that, upon a tree's demise, replacement by the applicant of a 3" caliper tree should continue for a three-year period.

- *Response 11.C should make reference to responses elsewhere in the FSEIS that address the separation of the water mains and a sanitary sewer line, the Westchester Land Trust's property and the potential for rock removal.*
- *Response 11.D: suggest deleting" SEQR does not require the Lead Agency to consider hypothetical issues arising from other properties."*
- *Response 11.E does not adequately address the comment.*

Topic 12: Easements

- *Response 12.A discusses the easement from the Westchester Land Trust, but does not address the comment as to whether other easements are required. See also Responses 12.E, 12.F and 12.H.*
- *Response 12.D does not adequately address the comment.*

Topic 13: Permits and Approvals

- Response 13.B does not respond to the comment's request for an updated letter from Westchester County on sanitary sewer flows, or to the request for an evaluation that the proposed flows would not result in

sewage exceedances under County Law, or sanitary sewer overflows.

- Response 13.C should specifically address whether or not a marine structures permit is required.

Topic 14: Request for Onsite Wastewater Treatment Facility

- Response 14.A does not adequately respond to the comment, in particular the comment's request for an evaluation of the relevant provisions of the County Sanitary Code. See also Responses 14.B, 14.C, 14.D, 14.E and 14.F. In addition, Response 14.E does not appear to be relevant to the comment, and Response 14.F does not address the question of whether or not a private onsite wastewater treatment facility is allowed.

Topic 15: Process

- Response 15.A should be amended to state, "A public hearing on the FSEIS is not required under SEQRA. However, it is within the jurisdiction and discretion of the Lead Agency to hold such a public hearing."
- The Response to Comments 15.B and 15.G should be, "Comment noted."

Topic 16: Sewer System Improvements Monitoring

- Response 16.A should note that all future testing of the sanitary sewer system, and the emergency response plan, will be conducted in coordination with appropriate Village staff, and the testing results will be shared with the Village.

Topic 17: Miscellaneous

- Response 17.A: Both the current and proposed FEMA flood maps should be provided in the FSEIS, as requested.
- Response 17.C is not accurate and needs to be revised to include a point-by-point refutation or response to each of the matters in the comment.

Topic 18: Pump Station

- Response 18.A should note that the area around the pump station will be landscaped according to the plans submitted within the SEQR documentation.
- Responses 18.B and 18.C: the cited Responses 10.G and 11.F do not adequately respond to the comment.

On Motion by John Verni; second by Richard Litman the following resolution was adopted:

**Re: Mamaroneck Beach and Yacht Club — Resolution Determining
Incompleteness of Final Supplemental Environmental Impact Statement**

RESOLUTION

WHEREAS, on January 14, 2004, the Mamaroneck Beach and Yacht Club ("MBYC") submitted an application to the Planning Board to improve its existing Club facility, including alterations to the main clubhouse, the introduction of new seasonal residences within the renovated clubhouse and in two new seasonal residence buildings, a new yacht club/dock master's building, a new recreation building and pool complex, and associated parking and infrastructure modifications at its property located at 555 South Barry Avenue, Mamaroneck, New York ("Proposed Development"); and

WHEREAS, on June 22, 2006, the Planning Board adopted a positive declaration requiring the preparation of a Draft Environmental Impact Statement for the Proposed Development; and

WHEREAS, on January 25, 2007, the Planning Board accepted MBYC's Draft Environmental Impact Statement ("DEIS") as adequate for public review; and

WHEREAS, on July 26, 2007, the Planning Board accepted MBYC's Final Environmental Impact Statement ("FEIS"); and

WHEREAS, on October 26, 2007, the Planning Board adopted a Findings Statement for the Proposed Development; and

WHEREAS, on June 16, 2010, the Findings Statement was annulled per Order and Judgment from the New York State Supreme Court; and

WHEREAS, on September 17, 2010, MBYC submitted an Environmental Narrative and Amended Site Plan and Wetlands Permit application for the Proposed Development ("2010 Amended Site Plan") dated September 13, 2010, subsequently revised and resubmitted on October 21, 2010; and

WHEREAS, on November 29, 2010, the Planning Board adopted a Findings Statement for the 2010 Amended Site Plan; and

WHEREAS, on December 2, 2010, the Harbor and Coastal Zone Management Commission ("HCZMC") made a finding of consistency of the 2010 Amended Site Plan with the Village's Local Waterfront Revitalization Plan; ("LWRP"); and

WHEREAS, on December 9, 2010, the Planning Board adopted a resolution granting final site plan approval and a wetlands permit for the 2010 Amended Site Plan; and

WHEREAS, litigation was commenced challenging the Planning Board's December 9, 2010, Resolution approving the 2010 Amended Site Plan and the HCZMC's December 2, 2010, Resolution determining the consistency of the 2010 Amended Site Plan with the LWRP, and that proceeding and other related proceedings regarding the 2010 Amended Site Plan were subsequently discontinued; and

WHEREAS, on February 1, 2013, MBYC submitted an Environmental Narrative and Amended Site Plan and Wetland Permit Application dated January 29, 2013, for the Proposed Development ("2013 Amended Site Plan") to reflect changes in conditions since the 2010 approvals and accomplish changes to the 2010 Amended Site Plan including the elimination of five units and one story from the beach seasonal residence building, revisions to the proposed recreation building and a larger yacht club/dockmaster's building; and

WHEREAS, public hearings on the 2013 Amended Site Plan were held by the Planning Board on March 13, April 10, May 8, May 29, June 12, and June 26, 2013, at which latter date the public hearing was closed; and

WHEREAS, on July 18 and July 31, 2013, the Planning Board conducted further deliberations on the 2013 Amended Site Plan; and

WHEREAS, subsequent to the close of the public hearing, in August 2013, various issues arose regarding the existing sanitary sewer system on the MBYC property; and

WHEREAS, on November 13, 2013, the Planning Board received a memorandum from the Village Engineer and Building Inspector regarding the sanitary sewer system issues on the MBYC property ("Sewer System Issues Memorandum"); and

WHEREAS, on December 2, 2013, and December 31, 2013, MBYC submitted a revised Amended Site Plan, a draft Scoping Document ("Draft Scope") and a supplement to the Environmental Narrative dated February 2013 relating to the proposed replacement and new construction of a pumping station and sewer force main on the MBYC property ("Proposed Sewer Construction"); and

WHEREAS, the Planning Board, having reviewed MBYC's December 2 and December 31, 2013, submissions and the Sewer System Issues Memorandum and having received memoranda and other advice from staff, counsel and consultants, determined that the Proposed Sewer Construction constitutes a change in the project and is based upon newly discovered information that may include the potential for one or more significant adverse environmental impacts not addressed or inadequately addressed in the Draft or Final Environmental Impact Statements previously submitted to, reviewed and accepted by the Planning Board relating to the Proposed Development; and

WHEREAS, in view of these developments, the Planning Board, on January 8, 2014, adopted a Resolution (1) reopening the Public Hearing on the 2013 Amended Site Plan previously closed on June 26, 2013, and continuing that Public Hearing on January 8, 2014, for the limited purpose of reviewing and accepting public comment on the Proposed Sewer Construction; (2) adopting a Positive Declaration declaring as set forth therein that the Proposed Sewer Construction may result in one or more significant impacts on the environment not addressed or inadequately addressed in the Draft or Final Environmental Impact Statements previously submitted to, reviewed and accepted by the Planning Board relating to the Proposed Development necessitating the preparation of a Draft Supplemental Environmental Impact Statement; (3) authorizing the Chairman of the Planning Board, with the assistance of staff, counsel, and consultants to circulate, file and publish the Positive Declaration in accordance with NYS Department of Environmental Conservation Rule 617.12 (6 NYCRR §617.12) of the SEQRA regulations and to provide notice to involved and interested agencies and the public of the Draft Scope for the preparation of a Draft Supplemental Environmental Impact Statement

and the time for submission of written comments on the Draft Scope; and (4) providing that written comments on the Draft Scope may be submitted to the Planning Board through and including January 31, 2014; and

WHEREAS, on February 12, 2014, the Planning Board adopted a Resolution adopting a Final Scope dated February 12, 2014, for the MBYC Draft Supplemental Environmental Impact Statement for the Proposed Sewer Construction; and

WHEREAS, on March 11, 2015 the Planning Board received from MBYC a “Draft Supplemental Environmental Impact Statement Proposed Sanitary Sewer System Upgrade” dated February 2015 prepared by TRC Engineers, Inc. (“February 2015 Draft DSEIS”); and

WHEREAS, by Resolution adopted May 27, 2015, the Planning Board determined that the February 2015 DSEIS was incomplete and inadequate for public review; and

WHEREAS, on September 4, 2015, the Planning Board received from MBYC a “Draft Supplemental Environmental Impact Statement Proposed Sanitary Sewer System Upgrade” prepared by TRC Engineers, Inc., dated September 2015 (“September 2015 DSEIS”); and

WHEREAS, by Resolution adopted on October 14, 2015, the Planning Board determined that the September 2015 DSEIS was incomplete and inadequate for public review; and

WHEREAS, on April 1, 2016, the Planning Board received from MBYC a “Draft Supplemental Environmental Impact Statement Proposed Sanitary Sewer System Upgrade” prepared by TRC Engineers, Inc., dated April 2016 (“April 2016 DSEIS”); and

WHEREAS, by Resolution adopted on April 13, 2016, the Planning Board determined that the April 2016 SDEIS was adequate with respect to its scope and content for purposes of commencing public review under SEQRA and set a public hearing on the April 2016 DSEIS for May 25, 2016; and

WHEREAS, the Planning Board held a public hearing on the April 2016 SDEIS on May 25, 2016 and the public hearing was closed on that date and written comments from the public were accepted by the Planning Board after the close of the public hearing until June 8, 2016; and

WHEREAS, on June 13, 2016, the Planning Board adopted a memorandum prepared by BFJ Planning dated June 13, 2016 consolidating comments from the Planning Board, Planning Board staff, counsel and consultants on the April 2016 DSEIS to be responded to in the FSEIS (“June 13, 2016 Consolidated Comment Memorandum”) together with all other comments received from the public and involved or interested agencies on the April 2016 DSEIS; and

WHEREAS, on July 12, 2017, the Planning Board received from MBYC a “Final Supplemental Environmental Impact Statement Proposed Sanitary Sewer System Upgrade” prepared by Provident Design Engineering, LLC dated July 2017 (“July 2017 FSEIS”); and

WHEREAS, the Planning Board considered the July 2017 FSEIS at a work session held on September 13, 2017 and received a memorandum from BFJ Planning dated September 8,

2017 consolidating comments made by Planning Board staff, counsel and consultants on the July 2017 FSEIS specifying matters that were not addressed or inadequately addressed in the July 2017 FSEIS (September 8, 2017 Consolidated Comment Memorandum”) which memorandum is attached hereto and made apart hereof;

NOW THEREFORE BE IT:

RESOLVED, that the Planning Board accepts the contents and conclusions set forth in the September 8, 2017 Consolidated Comment Memorandum and determines that the July 2017 FSEIS is not complete; and be it further

RESOLVED, that MBYC is directed to revise the July 2017 FSEIS in response to the September 8, 2017 Consolidated Comment Memorandum and to resubmit a revised FSEIS for further completeness review by the Planning Board.

VOTE:

Ayes: Wexler, Verni, Sjunnemark, Litman

Nays: None

Abstain: Mendes

John Verni is recused from review of the Hampshire Country Club application.

B. HAMPSHIRE COUNTRY CLUB - DEIS

Acknowledgment of receipt of DEIS. The substance of this application will not be discussed.

A work session for this application was set for the September 27, 2017 Planning Board meeting.

C. THE RESIDENCES at LIBRARY LANE 145- 149 LIBRARY LANE SITE PLAN Continued discussion (Section 9, Block 50, Lot 6A) Site plan application for 145-149 Library Lane to remove the existing building and construct a 9 unit apartment building with parking on the ground level. (C-2 District)

&

5. PUBLIC HEARING

A. THE RESIDENCES at LIBRARY LANE 145- 149 LIBRARY LANE SUBDIVISION & SPECIAL PERMIT - Continued Public Hearing (Section 9, Block 50, Lot 6A) Subdivision & Special Permit application for 145-149 Library Lane to remove the existing building and construct a 9 unit apartment building with parking on the ground level. (C-2 District)

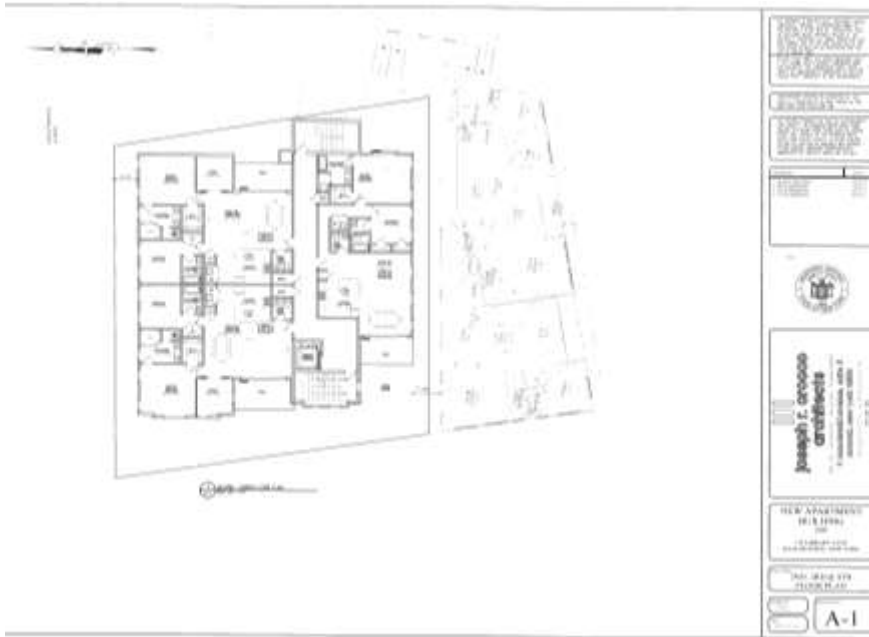
Ms. Christie Tomm Addona of Silverberg and Zalantis appeared on behalf of the applicant, along with the applicant’s architects and landscape architect. Ms. Tomm Addona summarized the application and the timeline of events. At their last appearance before the Board, the applicant received many comments from the Board, their consultants as well as members of the public. The comments were taken seriously and they have made changes to the application to reflect these comments. The changes were reviewed. The balconies and setback from the {00819442.doc.}Planning Board Meeting

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street were revised allowing for additional open space. More landscaping on the roof and rear of the building has been added. These changes have been sent to the adjacent property owner and they have not received any comments from him regarding these changes. The requisite parking was reviewed and because of the changes made to the building, the application is now short one parking space and therefore the applicant requests, in accordance with Chapter 342-61B to make a payment in lieu of parking for the one space so that they will be compliant with the requirements.

Mr. Crocco, architect appeared. He reviewed the changes in the floor plan, which included:



- pushing the building back
- changing the setback of the second floor
- The decks were moved from the side and placed on the front and back of the building.

Mr. Crocco stated that the FAR and footprint are the same except for changing the staircase in back so that the building could be pushed back. This is why the two parking spaces were lost. The overhang of the roofline was discussed. Mr. Crocco stated that this was done for aesthetic purposes to make the building look more contemporary. The size of the signage was addressed.

Mr. Verni believes that what has been done is a great improvement. The face of the building has some great articulation. Mr. Wexler also thinks this is a great improvement.

Concerns:

- The architecture went backward a bit and did not take the Board's comments into consideration
- The bulk of the elevator tower seems to have gotten larger and more bulky. The architect agreed to look at this. He reminded the Board



that the elevator does go to the roof, as the rooftop will be used.

Mr. Keith Beaver, landscape architect appeared and reviewed the changes to the plan, which includes added maple trees.



The rooftop design was reviewed as well.

- The materials used in front of the building will be used on the roof bringing the design together
- Mechanical units on the roof will be fenced and screened with plant material.
- Rooftop furniture will remain the same.
- Plant materials on the roof will be watered by irrigation.



Mr. Greechan asked if the engineer would take credit for the green area on the roof. Mr. Beaver stated that he is not sure.

Ms. Oakley noted:

- All the changes made are positive and that everything being done will be beneficial.
- Screening in back is minimal but will help screening for the neighbors.
- That there is also a live, green roof being used over the entrance portico.

The drainage of the roof systems was discussed. It will go into the drain system. Having these plantings will help clean the rainwater.

Mr. Beaver reviewed the plantings on the back of the building, which will help soften the look of the building. Mr. Galvin stated that there is also a large fir tree in the back on the neighboring property that would help with screening.

Mr. Sjunnemark is not in complete agreement with the overhangs especially the top one. He believes that it makes the building look much higher. Again, Mr. Crocco stated that this would be studied.

Mr. Greechan stated that there is no new SWPPP. The original SWPPP will be changed with the revisions to the architecture and landscaping noted. There are minor inconsistencies that he would like to see corrected. The test pits were discussed and may have to be a condition of the approval given that the applicant does not currently own the property and at least one of the test pits will be in the area of an existing building. Mr. Galvin stated that in terms of SEQRA, the SWPPP goes with the design. He suggested that SEQRA determination be discussed at the next meeting after the revised SWPPP is received. Mr. Steinman stated that the SWPPP would be needed for the Applicant to go before the Harbor and Coastal Zone Management Commission. The applicant would like to go before the HCZMC at their October meeting. The timing of the applicant's review by the BAR was discussed and how they do not have to have a SEQRA determination before going to the HCZMC, but do have to have the updated SWPPP.

The applicant is to

- revisit bulk of elevator architecturally
- modify overhang at the top of building
-

The timing of when the applicant will come back to the Planning Board was discussed. The applicant felt that coming back at the first meeting in October makes more sense.

There was no public comment on the application and it was adjourned to the October 11, 2017 meeting.

D. AVALON SITE PLAN AMENDMENT

746 Mamaroneck Avenue (Section 8, Block 19, Lots 144, 170 289, 301, 306, 316 and 336)
Application for Site Plan amendment to renovate and reconfigure the entryway on building A.
(C-1 District)

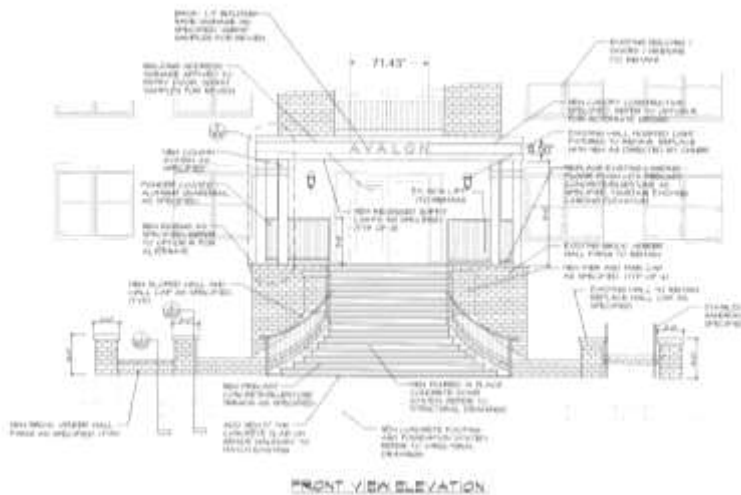
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7. RESOLUTION

A. AVALON SITE PLAN AMENDMENT

746 Mamaroneck Avenue (Section 8, Block 19, Lots 144, 170 289, 301, 306, 316 and 336)
Application for Site Plan amendment to renovate and reconfigure the entryway on building A.
(C-1 District)

Ms. Anne Kline and Mr. Ron Martin appeared for the applicant. Ms. Kline stated that since the last meeting, they have been before and gotten approval from the Board of Architectural Review and have submitted an updated lighting plan as requested and a minor modification was made to push the stairs out of the Village's right-of-way.



Mr. Martin, from Avalon Willow, appeared to review the signage and how it was lit. This was approved by the BAR.

Mr. Wexler stated that there was a memo submitted from Ms. Oakley. Mr. Galvin informed the Board that the Building Department discovered an error in the zoning map while reviewing this application. Mr. Cutler stated that there was an error made when the Board of Trustees last adopted the map. The Planning Department has made the Board of Trustees aware of this and they will be adopting an amended map.

RESOLUTION
VILLAGE OF MAMARONECK
PLANNING BOARD
746 Mamaroneck Avenue
Avalon Site Plan Amendment
(Adopted September 13, 2017)

After due discussion and deliberation, on motion by Mr. John Verni, seconded by Mr. Ingemar Sjunnekmark and carried, the following resolution was adopted:

WHEREAS, on July 26, 2017, Avalon Properties, Inc., the Applicant, (all references to which shall include and be binding upon the Applicant's successors and/or assigns) submitted to the Village of Mamaroneck Planning Board ("Planning Board") an Application with accompanying documentation seeking a minor site plan amendment to a previously approved site plan (July 11, 1996) to allow the renovation and reconfiguration of the entryway to Building A which is located at the northeast corner of the Property fronting on New Street ("Application"); and

WHEREAS, the Applicant's property is located at 746 Mamaroneck Avenue ("Property"), and the proposed entryway is situated within the RM-3 Multiple Residence District and C-1 General Commercial District; and

WHEREAS, the Planning Board is familiar with the Property and all aspects of the proposed action and has been satisfied that the site plan will conform to the requirements of the Village Code; and

WHEREAS, the Applicant has proposed minor changes to a previous site plan approved by the Planning Board on July 11, 1996. The Applicant is seeking to modify the entrance to Building A which fronts on New Street. The entrance to Building A is currently approached from two directions at a diagonal to the entry door. The Applicant is proposing to demolish the existing approach and to construct a new entryway approach to Building A which will be directly in front of the building entrance. The Applicant has provided a series of renderings showing the new entrance. Additionally, a landscape plan has been provided which show the retention of the existing deciduous trees flanking the new entrance. These include the small Cheery and Crabapple trees and large Oak and Linden trees. The landscaping plan includes new shrubs and groundcover which complements and enhances the more accessible entrance to the building. The Applicant has provided lighting plan that includes manufacturer specifications, photometric report for the proposed light bulb model, renderings of the proposed lighted sign and additional materials in a letter dated August 14, 2017 demonstrating the project's compliance with dark sky requirements. The Applicant has also revised the entryway stairs to move the front entrance stairs 6" so that it is not in the Village of Mamaroneck r-o-w. The Project is described and illustrated on the following set of plans and materials prepared by Studio Two Hundred LLC, Architecture Design dated June 14, 2017 unless otherwise noted below and as submitted by the Applicant which forms a part of the Application:

1. Drawing COV "Cover Sheet".
2. Drawing A0.0 "Existing/Demo Plan".
3. Drawing A1.0 "Entry Layout Plan" revised August 28, 2017.
4. Drawing A2.0 "Elevations".
5. Drawing A3.0 "Details".
6. Drawing A3.1 "Details".
7. Drawing LP1.0 "Landscape & Grading Plan" prepared by Milone & MacBroom dated June 12, 2017 and revised August 28, 2017.
8. Drawing E-001 "Electrical Coversheet" dated August 10, 2017
9. Drawing E-101 "Front Entry Layout Plan" dated August 10, 2017
10. Drawing E-611 "Existing Partial Riser & Schedule" dated August 10, 2017
11. Coastal Assessment Form ("CAF") dated June 13, 2017 and submitted pursuant to Local Law No. 30-1984
1. Short-Form Environmental Assessment Form (EAF) dated June 14, 2017.

WHEREAS, a duly noticed public meeting was held on the Application by the Planning Board on July 26, 2017 and September 13, 2017, at which time all those wishing to be heard were given the opportunity to be heard; and

WHEREAS, the Planning Board has carefully examined the Application and received comments and recommendations from the Village Planner in a Summary of Notes on Final Agenda dated July 11, 2017 and the Village Landscape Consultant in a memorandum dated July 11, 2017; and

WHEREAS, the Applicant has satisfactorily addressed those comments from the Village's Consultants and based on section 342-79, has modified the setback along New Street to accommodate the proposed reconfigured entryway; and

WHEREAS, the Planning Board determined on July 26, 2017 that the Project is a Type II Action pursuant to 6 NYCRR. § 617.5(c) (2); and

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The Planning Board hereby approves the amended site plan to allow the renovation and reconfiguration of the entryway to Building A which is located at the northeast corner of the Property fronting on New Street located at 746 Mamaroneck Avenue, subject to the following conditions:

(a) The Applicants shall pay all outstanding consultant review fees in connection with the Planning Board review of this Application.

(b) Prior to the issuance of a building permit, the Applicant shall submit a construction staging plan to the satisfaction of the Building Inspector.

2. When the above condition has been satisfied, three (3) sets of the above-referenced plans shall be submitted for the endorsement of the Planning Board Chairman. One (1) set of the endorsed plans will be returned to the Applicants, and one (1) set each will be provided to the Village Building Inspector and to the Planning Board Secretary. Prior to issuance of a certificate of occupancy, the Building Department will verify that the "as built" conditions conform to the final approved site plan.

VOTE:

Ayes: Wexler, Verni, Sjunnemark, Litman

Nays: None

Absent: Mendes

Abstained: None

4. WETLANDS PUBLIC HEARINGS

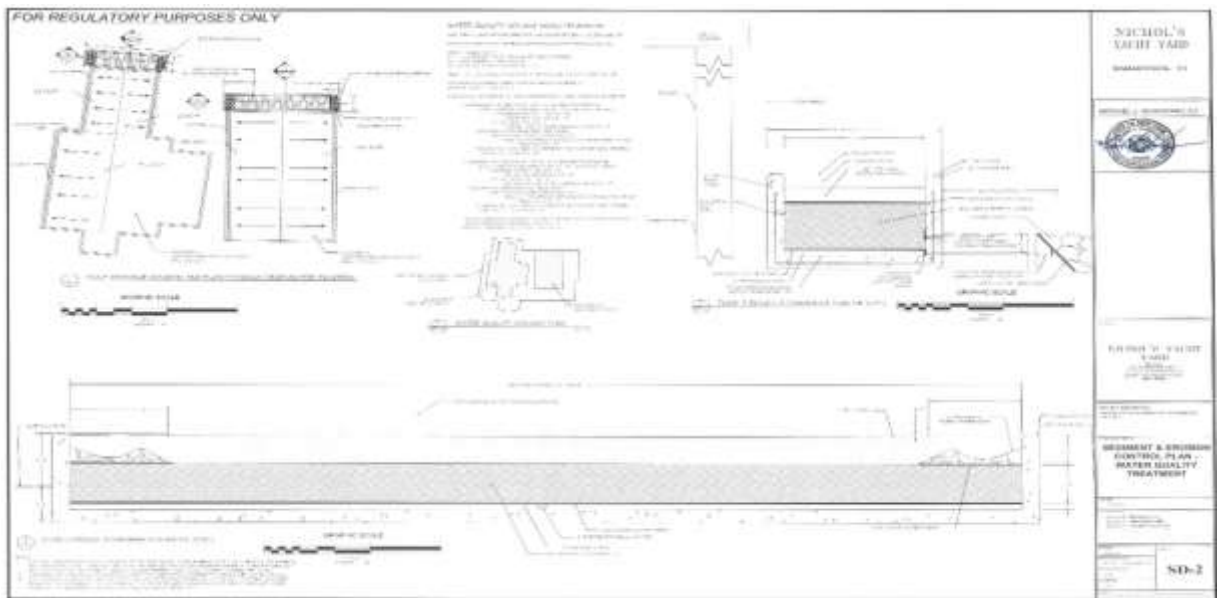
A. NICHOLS YACHT YARD WETLANDS PERMIT -Public Hearing

500 Rushmore Avenue (Section 9 Block 29/22, Lot 1, 4,235) Open Public Hearing for a Wetlands permit to structurally stabilize and repair a damaged building and for the elevation of two office buildings to meet FEMA Flood Plain BFE requirements. (MC-1 General Marine Commercial District)

Mr. Dan Natchez appeared for the applicant. There were open questions from the last meeting. These were reviewed. The Building Inspector made a determination that site plan approval is not required. The applicant has submitted parking and lighting plans even though they are not required. There will be a small reduction in impervious area. The storm water plan was redone in consultation with comments from the engineer. A question regarding plantings has been addressed. The applicant believes

that the drainage meets the requirements of the NYS storm water manual. Mr. Natchez stated that the plan is for the base elevation that FEMA may be adopting; their preliminary elevation map. Mr. Cutler stated FEMA has released Preliminary maps which may change somewhat. At this time they (FEMA) encourages the use of the preliminary maps, as it is the best available data for planning purposes. The Village requires that building be done two feet above FEMA's requirement.

Mr. Wexler believes that as these buildings will be visible from Harbor Island Park, they need to be aggressively landscaped. Mr. Natchez stated that this has been accommodated and reviewed with Ms. Oakley. It is a similar concept that was done by Shore Acres Club. Mr. Natchez had a revised landscape plan that was reviewed by the Board. Mr. Wexler believes that this plan does not make the case. Mr. Sjunnemark



asked about the visibility from the Rushmore Avenue side.

Mr. Wexler stated that there was a memo from Ms. Oakley where she agrees that there should be break away lattice added to the plan. Ms. Oakley appeared and reviewed her recommendations.

- A plan of what the planter boxes will look like against the building has not been shown.
- She also suggested that the boxes are wrapped around the building.
- The Board was not satisfied with the presentation of the planter boxes
- Mr. Natchez stated that the applicant will put lattice up and that a plan will be drawn showing the boxes and plants with the building.
- This building will be seen by Harbor Island and is to be aggressively landscaped
- Images of multiple sides of the buildings are to be submitted with satisfactory landscaping/ planter boxes and lattice

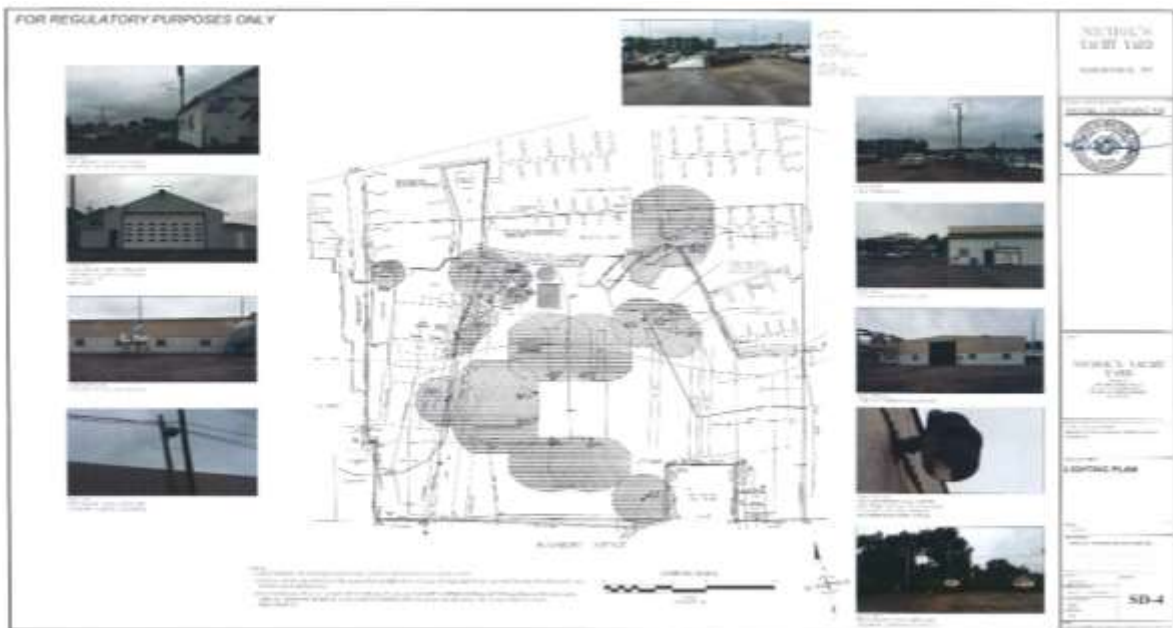
- Break away lattice is to be added to the plan

Mr. Sjunnemark asked about the issue with one of the neighbors. Mr. Galvin stated that the Board received a letter from the neighbor and the issue was resolved.

Mr. Phil Silver of Rushmore Avenue appeared. He contacted the Building Department regarding the lights shining in his windows and it was immediately corrected. His concern is the future and if the light will be turned around to shine in his window again. He asked if the Board could do something to assure that this doesn't happen. Mr. Galvin stated that this could be part of the Board's approval of the lighting plan. Mr. Sjunnemark stated that the lights in question are on a building that is not part of this application so cannot be addressed by this Board. Mr. Galvin believes that a condition that all lights on the property be down-lights can be required. Mr. Natchez stated that in all of the years that Nichols has been in existence, this was the first time that there was a complaint about the lighting and it was taken care of. Mr. Steinman stated that a provision could be put in the approval that all lighting on the site is in accordance with the Code.

Mr. Wexler asked that the lighting plan be reviewed.

Mr. Sam Thompson of Daniel S. Natchez and Associates appeared and reviewed the plan



for the Board.

Mr. Greechan's memo was reviewed. He has been trying to talk with the design engineer and has been having issue doing so. Mr. Natchez stated that was not relayed to him. If he had known, it would have been done. Mr. Natchez did review what has been done in response to Mr. Greechan's comments. Mr. Greechan understands what has been done, but would still like to speak with the design engineer before the next meeting.

The matter was adjourned to September 27, 2017.

The Board agreed to extend the deadline for the September 27th meeting to September 20th to allow the Applicant to submit additional information.

5. PUBLIC HEARINGS

B. WROBLEWSKI SUBDIVISION- Open Public Hearing

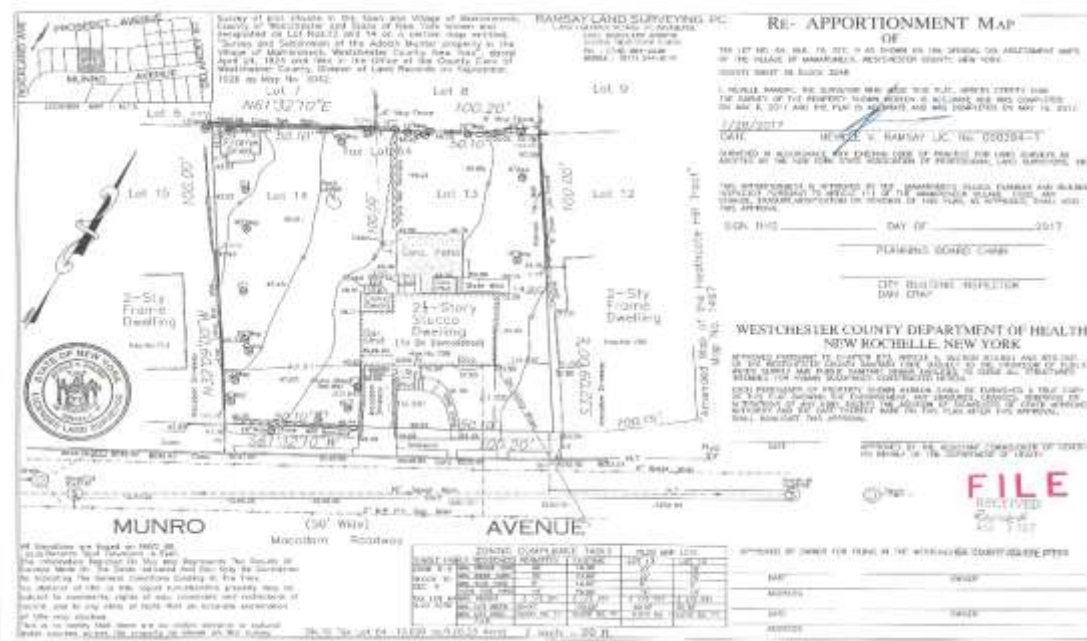
709 Munro Avenue (Section 9, Block 35, Lot 13) Application to subdivide one single family residential lot to create two lots each with a single family residence. (R-5 Zoning District)

On motion of Mr. Sjunnekmark, seconded by Mr. Verni and carried, the Board opened the Public Hearing for 709 Munro Avenue

Ayes: Verni, Wexler, Litman, Sjunnekmark

Nays: None

Absent: Mendes



Mr. Nick Cichanowski, one of the architects for the applicant appeared along with the Ken Okamoto, civil engineer. He stated that the proposal is for a 2 lot subdivision and they exceed the required square footage for R-5 and footprints and FAR are within the zoning requirements. Mr. Sjunnekmark confirmed that there is a structure on the property that will be demolished.

Corrections needed:

- there is a discrepancy on the FAR
- on one lot the Village Section Block and Lot is referenced and on another the Town Section Block and Lot are referenced
- the reapportionment map indicates that the neighboring property is something that it is not; the actual abutting property is 715 Munro.
- The application also states that development would not be considered for the site and that needs to be corrected

- the map should be titled preliminary plat not re apportionment
- side yards also need to be consistent between the plan and zoning analysis document.
- Stormwater comments from Mr. Greechan need to be addressed
- Revisions to the EAF are to be completed
- A full SWPPP is to be submitted

Mr. Galvin added that this application does have to go to the Harbor and Coastal Management Zone Commission for Consistency and that needs to be added to the application. .

Mr. Steinman stated that all of the above mentioned issues would have to be corrected before the application is circulated for the Planning Board to request Lead Agency for SEQRA.

Mr. Wexler stated that they have exactly the required depth and lot area needed. Mr. Cichanowski said that there is a bit more. Mr. Galvin noted that comments from residents need to be addressed. Mr. Steinman stated that there is the question of whether this is a complete application with all of the errors and that a SWPPP needs to be provided. Mr. Galvin suggested that this not be circulated at this time. The comments from the Village engineer also need to be added.

Mr. Okamoto appeared regarding the storm water. The entire flow will be detained for a 25-year storm. There will be no problem with the erosion control. Mr. Sjunnemark asked that the square footage of the neighboring homes be noted.

Ms. Sandy Merkitich from 702 Munro Avenue appeared. They have issue with the subdivision of this lot. This is a street where many high school students park to go to school. Parking is already at a premium. She is concerned about one more driveway cut as parking is difficult.

Ms. Stacy Sarver and Mr. Adam Dlugacz of 713 Munro Avenue appeared. They requested a denial of the application. Mr. Dlugacz stated that the applicant is trying to squeeze two houses right up against the property line. Ms. Sarver measured every other home on the block and the average is 31.5 feet between homes. They noted that there are many double lots in the area and no one else is doing this. Mr. Dlugacz is concerned that this will open a can of worms and will change the character of the neighborhood. A slide showing homes on Prospect Avenue that are the distance that the applicant is proposing was discussed. It is not about meeting minimum requirements; it is about the character of the neighborhood. Mr. Sjunnemark stated that there are several lots on this street that are the same size as what is being proposed.

Ms. Sharon Sawyer appeared. She lives directly across the street at 708 Munro Avenue. She reiterated that parking is an issue that becomes worse when it snows. She asked that if this were to move forward that the neighbors be considered so that they have accessibility during construction.

Ms. Maureen Shea of 705 Munro Avenue appeared. She is concerned about the close proximity as she is right next-door. She is concerned about the closeness of the home being built.

Mr. Riley appeared. He just sold 719 Munro. He reiterated that parking is an issue. This lot was a double lot and they never considered splitting it.

Ms. Terry LaRocco of 701 Munro Avenue appeared regarding the issue of parking. Putting two homes on this lot will ruin the character of the neighborhood. Also has no confidence in the builders as they can't even get their application right.

Mr. Wexler disclosed that he lives at 511 Munro, a block away from the proposed site. Mr. Steinman suggested that this be held over to the second meeting in October.

Mr. Okamoto appeared again. He appreciates the narrow street and parking situation. Perhaps the student parking can be addressed. Taking parking away from the front of these homes will help when there is snow and snow plowing. These homes will accommodate two cars, one in the garage and one in the driveway. The additional curb cut is smaller than a parallel parking space. The immediately adjacent lots are also 50x100; what they are proposing. He also stated that there are very few lots in the Village that are as of right for subdivision.

Mr. Verni asked that the applicant consider the character of the neighborhood as they will consider this. It is just not about the numbers. He would like to hear more about that in their next presentation. Mr. Okamoto agreed to have that at the October 25, 2017 meeting.

Hearing was adjourned to the October 25, 2017 meeting.

6. NEW BUSINESS

A. **1216 HENRY AVENUE** -Resolution and stipulation of settlement of litigation

Mr. Wexler stated that the Board would be considering the following stipulation that has been prepared by Mr. Steinman. This was an application that the Board worked very long and hard on. Mr. Steinman gave background on the application that was submitted in 2015. There were seven conditions that were part of the Conditional Negative Declaration adopted by this Board in June of 2016. In July of 2016 an Article 78 was filed challenging the validity of two of the conditions. The two conditions are the initial requirement to maintain a distance of 22 feet between the residences and limiting the two new residences to 2,500 square feet of FAR including the garage. On behalf of the Planning Board, he has moved to dismiss the Article 78 on the grounds that it is premature. The Court agreed that it was premature and dismissed. The judge never considered the validity of the two conditions. The applicant filed an appeal and that appeal is still pending. In November of 2016 on recommendation by this Board, the Board of Trustees enacted certain amendments to the Code that revised the Residential FAR in the entire Village and amended the definition of Floor Area Gross to eliminate the 400 square foot exemption from FAR for garages for single and two-family homes and redefined conditions relating to the development of corner lots. Because of these changes, the application filed in 2015 is no longer zoning compliant. Subsequent to the enactment of these zoning changes and the dismissal of the litigation on the grounds of

it being premature, as instructed by the Planning Board, Mr. Steinman began discussion with counsel for the applicant. A proposed settlement was reached. The applicant will submit a compliant plan. Mr. Steinman outlined the additional conditions of the stipulation.

The process going forward was discussed. After the applicant submits a compliant plan, the Planning Board would amend the conditional Negative Declaration with the conditions set forth in the Stipulation. There would be a 30-day waiting period where public comment would be taken. At that point, the Planning Board will confirm or revise the Conditional Negative Declaration. The applicant would then go before the Harbor and Coastal Zone Management Commission, ultimately returning to the Planning Board for subdivision approval. The Board hopes that these changes will address some of the neighbors' concerns. Mr. Wexler believes that this approach is pragmatic, but no perfect. The Board thanked Mr. Steinman for his work.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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In the Matter of the Application of

1216 HENRY AVENUE, LLC,

Petitioner,

For a Judgment Pursuant to Article 78 of the C.P.L.R.

- against -

THE VILLAGE OF MAMARONECK PLANNING BOARD
COMPRISED OF STEWART STERK, CHAIRMAN, LEE
WEXLER, LOU MENDES, INGEMAR SJUNNEMARK,
JOHN VERNI,

Respondents.

---X

**STIPULATION OF
SETTLEMENT**

Index No. 59508-2016

Assigned Justice:
Hon. Anne. E. Minihan,
A.J.S.C.

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned
counsel for 1216 HENRY AVENUE LLC ("Petitioner") and THE VILLAGE OF
MAMARONECK PLANNING BOARD COMPRISED OF STEWART STERK,

CHAIRMAN, LEE WEXLER, LOU MENDES, INGEMAR SJUNNEMARK, JOHN VERNI (“Planning Board”).

WHEREAS, on February 19, 2015, the Petitioner 1216 Henry Avenue, LLC (“Petitioner”) submitted a zoning compliant application to the Village of Mamaroneck Planning Board (“Planning Board”) to subdivide property that it owned at 1216 Henry Avenue into three residential building lots (the “Property”); and

WHEREAS, the property is located in an R-5 Residential District and is identified as Section 4, Block 49, Lot 9 on the Village of Mamaroneck Tax Map; and

WHEREAS, the proposed subdivision would create three residential lots including the construction of two new residences on Lots 1 and 3 and maintain the existing residence on Lot 2 in the middle of the Property; and

WHEREAS, the Planning Board, on February 25, 2015, determined the proposed subdivision to be an Unlisted Action in accordance with the New York State Environmental Quality Review Act (“SEQRA”) and circulated a Notice of Intent to be Lead Agency to the other involved agencies and, receiving no objection, became the Lead Agency thirty days after such circulation; and

WHEREAS, on April 13, 2016, the Planning Board made its determination of significance under SEQRA by adopting a Conditioned Negative Declaration (“April 2016 CND”) concluding that, if the conditions set forth in the April 2016 CND were met, the subdivision application as revised in accordance with those conditions, would not result in significant adverse environmental impacts and the preparation of an Environmental Impact Statement would not be required; and

WHEREAS, after the expiration of a thirty (30) day comment period on the April 2016 CND, the Planning Board, on June 8, 2016, adopted a resolution confirming the April 2016 CND with minor non-substantive changes (“June 2016 CND”); and

WHEREAS, the June 2016 CND contained seven (7) conditions relating to the impact of the subdivision on stormwater management, rock removal, and community character; and

WHEREAS, on July 11, 2016, Petitioner filed an Article 78 proceeding against the Planning Board challenging the validity of the following two conditions in the June 2016 CND relating to community character:

“F. Maintain a distance of 22 feet between the existing residence on Lot 2 and the proposed new residences on Lots 1 and 3. This is the neighborhood’s average existing setback between residences based on the *Village Planning Department’s Analysis of 1216 Henry Neighborhood Home Distances dated 10/16/15*.

G. The proposed two new single-family residences shall be limited to 2,500 square feet of FAR, including the garage, unless the garage does not count toward FAR because it is cellar or basement area excluded by subsection (2) of the definition of “floor area gross” in Section 342.3 of the Village Code. This restriction shall be incorporated into a Declaration, in a form acceptable to counsel to the Village to be recorded against the Property in the Westchester County Clerk’s office.” and

WHEREAS, the Planning Board moved to dismiss the Article 78 proceeding on the grounds that, absent a determination on the underlying subdivision application, Petitioner’s challenge to the June 2016 CND was not ripe for judicial review; and

WHEREAS, by Decision and Order dated February 7, 2017, the Supreme Court, Westchester County (Hon. Ann E. Minihan, Acting Supreme Court Justice) granted the

Planning Board's motion and dismissed the Article 78 proceeding as premature and not ripe for adjudication ("February 7, 2017 Decision and Order"); and

WHEREAS, on March 9, 2017, Petitioner filed a Notice of Appeal of the February 7, 2017 Decision and Order to the Appellate Division, Second Department ("Notice of Appeal"); and

WHEREAS, on November 28, 2016, upon recommendation of the Planning Board, the Village of Mamaroneck Board of Trustees enacted certain amendments to the Village Zoning Code (a) revising residential FAR throughout the Village; (b) amending the definition of "Floor Area Gross" to eliminate the 400 square foot exemption from FAR for garages in single and two family homes; and (c) redefining conditions relating to the development of corner lots; and

WHEREAS, as a result of these zoning amendments, the Petitioner's subdivision application is no longer zoning compliant; and

WHEREAS, these zoning amendments addressed some, but not all, of the concerns articulated by the Planning Board in the June 2016 CND as justifications for imposing the two conditions challenged by Petitioner in the Article 78 proceeding; and

WHEREAS, subsequent to the enactment of the zoning changes and the February 7, 2017 Decision and Order, counsel for the Planning Board and the Petitioner engaged in good faith negotiations to resolve the parties remaining differences; and

WHEREAS, as provided herein, (a) the Planning Board has agreed to adopt certain amendments to the June 2016 CND increasing the maximum permitted FAR for the new houses on lots 1 and 3 to 2750 square feet and reducing the minimum separation distances between the houses on lots 1 and 2 and lots 2 and 3 to twenty (20) feet and

sixteen (16) feet respectively (“Amended June 2016 CND”); and (b) the Petitioner has agreed to withdraw its pending appeal of the instant Article 78 proceeding subject to both the execution of this Agreement and the approval by the Planning Board of the Amended June 2016 CND, and to forego further litigation specifically regarding the terms and conditions of the Amended June 2016 CND; and

WHEREAS, the parties are desirous of memorializing their agreement in this Stipulation of Settlement:

NOW THEREFORE IT IS HEREBY STIPULATED AND AGREED, as follows:

1. Upon the full execution and filing of this Stipulation of Settlement in the Westchester County Clerk’s Office, the Petitioner shall submit a revised subdivision application to the Planning Board that is zoning compliant with the current Village Code and complies with the conditions of the Amended June 2016 CND (“Revised Subdivision Application”).

2. Upon Petitioner’s filing of the Revised Subdivision Application, the Planning Board, in accordance with the procedures required by the SEQRA regulations, shall adopt an Amended June 2016 CND which shall be identical to the June 2016 CND except that Conditions F and G of the June 2016 CND shall be revised to read as follows:

“F. Maintain a distance of [22] 20 feet between the existing residence on Lot 2 and the proposed new residence[s] on Lot[s] 1 [and 3] and maintain a distance of 16 feet between the existing residence on Lot 2 and the proposed new residence on Lot 3. This is consistent with the neighborhood’s average existing setback between residences based on the *Village Planning Department’s Analysis of 1216 Henry Neighborhood Home Distances dated 10/16/15*.

G. The proposed two new single-family residence shall be limited to [2,500] 2,750 square feet of FAR, including the garage, unless the garage does not count toward FAR

because it is cellar or basement area excluded by Subsection (2) of the definition of “Floor Area Gross” in Section 342-3 of the Village Code. This restriction shall be incorporated into a Declaration, in a form acceptable to counsel to the Village to be recorded against the Property in the Westchester County Clerk’s office.”

3. Upon the effective date of the Planning Board’s adoption of the Amended June 2016 CND as provided in the SEQRA regulations, the Petitioner shall withdraw the Notice of Appeal previously filed in the captioned matter.

4. Nothing in this Stipulation of Settlement shall be construed as directing any specific conclusion or determination by the Planning Board regarding whether to grant or deny subdivision approval for the Revised Subdivision Application. In the event that the Revised Subdivision Application receives subdivision approval from the Planning Board in accordance with the Amended June 2016 CND, Petitioner shall not file any further judicial challenge to the Amended June 2016 CND. In the event that the Revised Subdivision Application is disapproved by the Planning Board, the Petitioner may judicially challenge the revised conditions F and G of the Amended June 2016 CND. .

5. Any failure by either of the parties to insist upon the strict performance by another party of any of the provisions of this Stipulation of Settlement shall not be deemed a waiver of any of the provisions thereof, and such party, notwithstanding such failure, shall have the right thereafter to insist on such other party’s strict performance of any and all of the terms of this Stipulation of Settlement.

6. This Stipulation of Settlement contains the entire agreement between the undersigned parties in relation to the settlement of the captioned proceeding and replaces any and all prior negotiations, understandings, promises, representations, inducements

and discussions, whether written or oral, except to the extent that prior stipulations are referenced herein.

7. The undersigned counsel represent that they have the full authority necessary to execute this Stipulation of Settlement on behalf of the parties they represent.

8. This Stipulation of Settlement may be executed in one or more counterparts, each of which taken together shall constitute one and the same document. This Stipulation of Settlement may be executed via facsimile or electronic signature, which shall constitute original signatures.

Dated: _____, 2017
White Plains, New York

Dated: _____, 2017
White Plains, New York

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VILLAGE OF MAMARONECK PLANNING BOARD
(Adopted September 13, 2017)
RE: 1216 Henry Avenue – 3 Lot Subdivision
Resolution Adopting Stipulation of Settlement of Pending Litigation

After due discussion and deliberation, on motion by Mr. Sjunnemark, seconded by Mr. Verni and carried, the following resolution was adopted:

WHEREAS, on February 19, 2015, the Petitioner 1216 Henry Avenue, LLC (“Petitioner”) submitted a zoning compliant application to the Village of Mamaroneck Planning Board (“Planning

Board”) to subdivide property that it owned at 1216 Henry Avenue into three residential building lots (the “Property”); and

WHEREAS, the property is located in an R-5 Residential District and is identified as Section 4, Block 49, Lot 9 on the Village of Mamaroneck Tax Map; and

WHEREAS, the proposed subdivision would create three residential lots including the construction of two new residences on Lots 1 and 3 and maintain the existing residence on Lot 2 in the middle of the Property; and

WHEREAS, on April 13, 2016, the Planning Board made its determination of significance under SEQRA by adopting a Conditioned Negative Declaration (“April 2016 CND”) concluding that, if the conditions set forth in the April 2016 CND were met, the subdivision application as revised in accordance with those conditions, would not result in significant adverse environmental impacts and the preparation of an Environmental Impact Statement would not be required; and

WHEREAS, after the expiration of a thirty (30) day comment period on the April 2016 CND, the Planning Board, on June 8, 2016, adopted a resolution confirming the April 2016 CND with minor non-substantive changes (“June 2016 CND”); and

WHEREAS, the June 2016 CND contained seven (7) conditions relating to the impact of the subdivision on stormwater management, rock removal, and community character; and

WHEREAS, on July 11, 2016, Petitioner filed an Article 78 proceeding against the Planning Board challenging the validity of the following two conditions in the June 2016 CND relating to community character:

“F. Maintain a distance of 22 feet between the existing residence on Lot 2 and the proposed new residences on Lots 1 and 3. This is the neighborhood’s average existing setback between residences based on the *Village Planning Department’s Analysis of 1216 Henry Neighborhood Home Distances dated 10/16/15*.

G. The proposed two new single-family residences shall be limited to 2,500 square feet of FAR, including the garage, unless the garage does not count toward FAR because it is cellar or basement area excluded by subsection (2) of the definition of “floor area gross” in Section 342.3 of the Village Code. This restriction shall be incorporated into a Declaration, in a form acceptable to counsel to the Village to be recorded against the Property in the Westchester County Clerk’s office.” and

WHEREAS, the Planning Board moved to dismiss the Article 78 proceeding on the grounds that, absent a determination on the underlying subdivision application, Petitioner’s challenge to the June 2016 CND was not ripe for judicial review; and

WHEREAS, by Decision and Order dated February 7, 2017, the Supreme Court, Westchester County (Hon. Ann E. Minihan, Acting Supreme Court Justice) granted the Planning Board’s motion and dismissed the Article 78 proceeding as premature and not ripe for adjudication (“February 7, 2017 Decision and Order”); and

WHEREAS, on March 9, 2017, Petitioner filed a Notice of Appeal of the February 7, 2017 Decision and Order to the Appellate Division, Second Department (“Notice of Appeal”); and

WHEREAS, on November 28, 2016, upon recommendation of the Planning Board, the Village of Mamaroneck Board of Trustees enacted certain amendments to the Village Zoning Code (a) revising residential FAR throughout the Village; (b) amending the definition of “Floor Area Gross” to eliminate the 400 square foot exemption from FAR for garages in single and two family homes; and (c) redefining conditions relating to the development of corner lots; and

WHEREAS, as a result of these zoning amendments, the Petitioner’s subdivision application is no longer zoning compliant; and

WHEREAS, these zoning amendments addressed some, but not all, of the concerns articulated by the Planning Board in the June 2016 CND as justifications for imposing the two conditions challenged by Petitioner in the Article 78 proceeding; and

WHEREAS, subsequent to the enactment of the zoning changes and the February 7, 2017 Decision and Order, counsel for the Planning Board and the Petitioner engaged in good faith negotiations to resolve the parties remaining differences; and

WHEREAS, counsel for the Planning Board and the Petitioner have memorialized the results of their negotiations in the attached Stipulation of Settlement; and

WHEREAS, as provided in the Stipulation of Settlement, (a) upon the Petitioner's submission to the Planning Board of a revised subdivision application that is zoning compliant with the current Village Code and, in addition, complies with the requirements of certain amendments to be adopted by the Planning Board to the June 2016 CND which are more restrictive than the requirements of the Village Code as detailed below, the Planning Board has agreed to amend the June 2016 CND to provide for a maximum permitted FAR for the new houses on lots 1 and 3 of 2750 square feet and minimum separation distances between the houses on lots 1 and 2 and lots 2 and 3 of twenty (20) feet and sixteen (16) feet respectively ("Amended June 2016 CND"); and (b) the Petitioner has agreed to withdraw its pending appeal of the instant Article 78 proceeding, subject to both the execution of the Stipulation of Settlement and the Planning Board's approval of the Amended June 2016 CND, and to forego further litigation specifically regarding the terms and conditions of the Amended June 2016 CND;

NOW THEREFORE BE IT

RESOLVED, that the Planning Board hereby approves the terms and conditions of the Stipulation of Settlement; and be it

FURTHER RESOLVED, that counsel to the Planning Board is hereby authorized to execute the Stipulation of Settlement on behalf of the Planning Board and to take such additional steps as may be required or appropriate for the filing and execution of the Stipulation.

VOTE:

Ayes: Wexler, Verni, Sjunneemark & Litman

Nays: None

Absent: Mendes

8. ADJOURN MEETING

On motion of Mr. Verni, seconded by Mr. Litman and carried, the meeting was adjourned at 10:04p.m.

Ayes: Wexler, Verni, Sjunneemark, Litman

Nays: None

Absent: Mendes

Respectfully submitted,

Betty-Ann Sherer

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