

**TOWN OF WILTON**  
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MICHAEL G. DOBIS  
Planning Board Chairman

LUCY B. HARLOW  
Executive Secretary

## **PLANNING BOARD MEETING**

### **TOWN OF WILTON**

Wednesday, May 15, 2013

A meeting of the Wilton Planning Board (the "Board") occurred on Wednesday, May 15, 2013, at the Wilton Town Hall, 22 Traver Road, Wilton, New York. Chairman Michael Dobis called the meeting to order at 6:35 p.m.

#### **PLEDGE OF ALLEGIANCE**

#### **I. REGULAR MEETING:**

**PRESENT:** Chairman Michael Dobis, Erinn Kolligian, William Rice, Tony Mangini, Alternate and David Gabay, Alternate. Also present was Ryan Riper, P.E., Director of Planning and Engineering; Mark Schachner, Planning Board Attorney; Mark Mykins, Building Code Enforcement Officer; Andy Brick, Esq.; Jon Lapper, Esq., Counsel to Applicant, Gordon Residential Development; Steve Harran; Greg Beswick, P.E., Creighton Manning Engineering; Mark Nadolny, Project Engineer, Creighton Manning Engineering; James Zack; Dennis Towers; Connie Towers; Larry Liska; Patricia Tuz; Frank Tetz; Mark Harrison and Nancy Gatland.

**ABSENT:** Donald Needham, Sue Peterson, Ron Slone and Vice Chairman Harold VanEarden

**APPROVE PENDING MINUTES:** Chairman Dobis asks for questions or comments regarding the un-approved minutes from the meeting held on April 17, 2013. There were none and he asks for a motion and a second to approve the minutes. On a motion introduced by William Rice, the board adopted the following resolution:

**NOW, THEREFORE, BE IT RESOLVED,** that the minutes from the Planning Board meeting of April 17, 2013 are accepted. The resolution was seconded Erinn Kolligian and duly put to vote, all in favor, on this day, May 15, 2013.

**CORRESPONDENCE:** Determination of Zoning Enforcement Officer dated 5/1/13 re: Glens Falls Hospital ZBA Referral; Determination of Zoning Enforcement Officer dated 5/1/13 re: Hoffman Development Corporation; letter dated 5/15/2013 from Jim Zack re: traffic planning; letter dated 5/15/13 from Larry Liska re: Gordon Group Project; email dated 5/14/13 from Connie Towers re: SEQR on Gordon Residential Development Project; email dated 5/14/13 from Dennis Towers re: Gordon Development Public Hearing Inclusion; email dated 4/23/13 from Connie Towers re: Gordon Development; email dated 4/24/13 and letter from Lenny Fornabia re: Large Apts. On Route 9; email dated 5/3/13 from Dennis Towers re: Mega Building – Public Comment and post/youtube.com from Jim Zack; email dated 4/24/13 from Ben Niese re: mega building; email dated 4/23/13 from Lyn and Bernie

Lawton re: mega-building; letter from Andrew Brick, Esq. dated 5/8/13 re: Gordon Residential Development 663-667 Route 9; transmittal letter dated 4/30/13 from Greg Beswick P.E. of CME re: Gordon Residential Development 663-667 Route 9; copy of letter dated 5/8/13 to Kevin Novak of DOT from CME re: Sidewalk Evaluation Wilton Mixed Use US Route 9; letter dated 4/30/13 from Greg Beswick, P.E. of CME re: Gordon Development; letter dated 4/30/13 from Mike McNamara of EDP re Dairy Haus Ice Cream; *Towns & Topics*, Association of Towns of NYS, Vol. 27., No.2, Mar/Apr 2013.

## II. ZBA REFERRALS

**A. ZBA Appeal No. 2013-16.** The applicant, Glens Falls Hospital is requesting an area variance for an addition with an ambulance bay for the Medical Center at Wilton. The required side yard setback is 100 feet pursuant to Schedule J, zone C-3. A variance is required within the side yard setbacks. Applicant is requesting relief of 15 feet. Mr. Ryan Riper states that this is an addition to a previously approved building. A stairwell and elevator are being added as well as an ambulance canopy. Chairman Dobis in prior discussions with Mr. Riper had expressed his concern about traffic safety and fire access and he affirms there is no adverse impact. There are no outstanding issues and the following recommendation was made: On a motion introduced by David Gabay, the board adopted the following resolution:

**NOW, THEREFORE, BE IT RESOLVED**, the Planning Board makes a positive recommendation to the ZBA regarding Appeal No. 2013- for an area variance for the entrance of the Medical Center at Wilton, specifically for relief of 15 feet of side yard setback. William Rice seconds the motion which is duly put to vote, all in favor, this 15<sup>th</sup> day of May, 2013.

**B. ZBA Appeal No. 2013-17.** The applicant, Hoffman Development Corporation, is requesting an area variance for paving within the required setback to widen the existing pavement for the exit of the car wash facility. Pursuant to §129-52 G paved area side and rear yard setback shall be a minimum of 15 feet. Applicant is seeking relief of 10 feet. Tom Hoffman, Jr. states that the entrance and exit area of the Hoffman Car Wash has proved to be a little tight and he is requesting, on the behalf of the applicant, to widen the entrance and exit area of the driveway by 10 feet. A drainage structure across the exit will be added to help better control the excess water from the cars and the storm drain will be raised so it better captures the storm water runoff. Mr. Riper adds this extra concrete will improve the durability and improve the turning radius at the exit to the automatic car wash. On a motion introduced by Erinn Kolligian, the board adopted the following resolution:

**NOW, THEREFORE, BE IT RESOLVED**, the Planning Board makes a positive recommendation to the ZBA regarding Appeal No. 2013-17 for an area variance to widen the existing pavement at the exit to the Hoffman Car Wash. William Rice seconds the motion which is duly put to vote, all in favor, this 15<sup>th</sup> day of May, 2013.

## II. APPLICATIONS

**Dairy Haus Ice Cream:** Ethan Hall is representing Michael Goodspeed in his site plan application for 1568 SF of new construction for a seasonal ice cream business located at 697 Maple Avenue. In Mr. Riper's review letter, Mike McNamara of EDP has taken into account all the items listed. The drawings will be updated when the survey has been completed down to the manhole and

information on the right-of-way is included. The application to the Saratoga County Sewer District hasn't been sent in, although the connection details are complete and the location is right in front of the veterinary's parcel. The application to DOT is pending the completion of those plans regarding the force main and the right-of-way. Mr. Hall describes the on-site meeting with representatives NYS Department of Transportation. A sidewalk is a requirement in the CR-2 zone and a sidewalk in the DOT right-of-way is problematic. The DOT representatives said the terminus of the sidewalk should be at the driveway of the new Dairy Haus. Due to the location of the property line and the fact that Route 9 gets wider going north, DOT did not want to put the sidewalk in the DOT right-of-way unless the sidewalk extends north to Nove'. There are two single family residences and Nove' restaurant to the north. From the applicant's property to the property line of Nove' is about 300 feet. Nove's parking lot is in the DOT right-of-way and that would be the logical destination for the sidewalk. To the south there is no sidewalk until the beginning of the Farone development. Mr. Riper's opinion is that an allowed option is to escrow the sidewalk funds which would be in the amount of \$30 per linear foot. The full amount would be paid up front. The ordinance is written to include the frontage.'

The updated plans will include the parking space calculation, the zoning and the standard notes. The building size has changed: the modular building will be 28' x 56'. The footprint is smaller but the style and architecture remains the same. There will still be a covered canopy in front. The sight distances and stopping distances have been added per DOT and are well beyond what is required. A proposed future cross lot connection was added to the parcel to the rear and to the pet cemetery.

Mr. Riper mentions the layout of the street trees, landscaping and lighting. There is a discussion of this matter when it was before the zoning board and there was talk of a buffer for the property to the north. Ms. Kolligian recalls there was some confusion about the ZBA decision regarding this matter. Mr. Schachner relates there was considerable confusion about the way the ZBA minutes read. He doesn't think there is anything in the ZBA decision that talks about removal of trees. It talked about the trees being planted in the most convenient area for the applicant on the north side of the property . . . that did not discuss at what length or how far north. Mr. Hall talks about the other side of the retention area to place the trees as being the most logical place. Mr. Schachner states that the Board must go with the ZBA decision. The Zoning Board did get a letter from the homeowner who was concerned about noise and music and he wanted a protective buffer. The building is 160 feet to the property line and the house is another 100 feet plus beyond that.

Mr. Riper states that the application is deemed complete for preliminary review and a public hearing can be set.

**Chairman Dobis sets the public hearing for June 19, 2013 at 6:30 p.m.**

### **PUBLIC HEARING CONTINUED FROM APRIL 17, 2013:**

#### **GORDON RESIDENTIAL DEVELOPMENT LP**

Chairman Dobis comments about the fact that he did not close the public hearing on this project at the last meeting. He wanted to make sure that there was enough time for additional comments from the public, especially about issues that haven't already been addressed at the last Board meeting. He is going to reopen the public hearing for those who have not made any comments before. As a guideline, he would like to keep the comments to 3 minutes. He is looking for new information; anything that hasn't

already been brought out and discussed. He would like comments addressed to the applicant so the applicant be given a chance to respond to each comment at the time it's made.

Frank Tetz, 16 Donegal Way. In thinking about this project, he doesn't know a lot about it. He comments about the hamlet area at Ballard and Route 16 and that area. He doesn't understand why there are not grassy areas in front and why buildings are built right up to the sidewalks. He looks at CVS that has 3 times the asphalt that is needed and no landscaping and wants to know how this happened. He compares this to his trip to Plainsboro NJ just outside of Princeton where there are brick sidewalks, a hamlet with lovely lighting and walking areas and fountains and places for people to sit and plenty of parking spaces. He talks about the big businesses such as Johnson & Johnson coming in because of the aesthetics, because of the wonderful area. "Seems like in Wilton, we want to pave everything here. Why did we allow it at [Exit] 16 and Ballard? Have you noticed how close the buildings are to the road? Has anyone noticed? It's abominable what we're doing. Is nobody in charge – who is doing the planning in this township? He and his wife are very concerned. We're raping the place and this is an example of it. Just pave as much as you can and build as much as you can, take the property rights - all of us will have our property rights diminished." His property since purchasing it has gone down one third in value – it is not going up. He was just apprised it's gone down another \$15,000. "Is the Board not aware of what's going on here?"

Chairman Dobis comments about the current zoning ordinance for the hamlet areas. The buildings have to be a minimum of 15 feet back from the right-of-way but no more than 25 feet. That was done so that parking would be to the rear of the buildings, out-of-sight. He explains that most of what the Board does is because of the ordinances, rules and regulations. The parking at CVS is required parking based on the kind of business it is. Since the Comprehensive Plan ("Comp Plan") was given to the Town, there were different ordinances in place then, fire codes have changed – things change. Some of what has been built in some of the hamlet areas and some of what is being proposed is not what he envisioned. At the time of the Comp Plan committee, we were looking at what was allowed at the time, but what was also required by building codes. Some of this has changed because building codes have also changed.

Mr. Tetz asks if anyone is proud of that parking lot at CVS. The way it's landscaped and asphalted. "How did that happen? If that happened because that what our plan requires, then we need to do some better planning, because that is shameful. It has diminished all of our property values. He sees CVS in Princeton and Plainsboro and other places – they don't look like that. How did we allow that to happen?"

Chairman Dobis: "Places like CVS, McDonald's, and Dunkin Donuts – that's their corporate logo. Certain towns that have an architectural review committee have guidelines that must be met. Wilton doesn't have that. That is not a planning board decision – it is a Town Board decision. They pass the ordinances."

Mr. Tetz states that about 7 years ago, he and his wife heard a town board member say, "We are going to be under intense development in this Town. We don't need to do any planning." Mr. Tetz states, "By the way, we got rid of our town planner."

Mr. Gabay adds that it is a philosophical approach that some townships have. He make a reference to Hilton Head and states when there is development along a main road, there can be a 30-50 foot treed buffer zone with the storefronts behind, which mitigates the visual impact or insult. That is a

philosophical approach. “If that’s what the people of the town want, that’s something that has to be approached with the Town Board. People have to be proactive to make that change.”

Mr. Jon Lapper is representing Applicant Gordon Residential Development. He is familiar with Hilton Head where it is bermed so when you are driving on the main drag you don’t see the construction behind it. “But here in Wilton, this ordinance in the hamlet zone is more of a new urbanism zone where you are looking for pedestrian traffic; to have people interconnect and to be able to walk between different businesses. This is required to have a mixed use so we have residential along with the whole first floor of commercial uses and for that reason it’s built close to the road with a sidewalk and the applicant has agreed to put 200 feet of sidewalk to the north to help the connection in the future. “The goal here with the building to the front and the parking behind it and the landscaping on the sides to shield the parking. It is a philosophy for the hamlet zone.”

Mr. Gabay responds by reading from the Master Plan, “Public space is strongly encouraged to include plazas, courtyards, walkways, other amenities such as seating, ornamental fountains, lighting and gardens.” He doesn’t see any of that in the front section.

Mr. Lapper states that although the landscaped area is not a plaza, it is a very nicely landscaped area on the side which is an improvement to what is on Route 9 now. This is a public landscaped area. Mr. Ripper adds that there is seating such as benches.

Jennifer Dubois, 12 Peabody Place. She missed the last meeting. She is looking at her drive daily down Route 9 from the beginning to the end as you go out of Saratoga, home to Worth Road and as she counts the potential commercial lots that are available for development – there are currently 10 for sale, not counting the one they are talking about developing. The current apartment buildings going up on the east side a little closer to Worth Road, and the Dairy Haus. That makes 13 on a two lane road. In keeping this hamlet feel and understanding that development happens, she is curious how we’re looking at traffic flow with the potential for a significant difference in numbers of cars going down just from Worth Road. Not counting the numbers of potential developments past Worth Road, which also has a tremendous amount of property for sale. She is surprised at how little organization there appears to be to the flow ultimately down Route 9. It really looks scattered and in disarray, an eclectic collections of things and really not much of a unified feel or a pretty feel.

Chairman Dobis agrees to a point. “If one looks at the history of Route 9, a lot of that was residential housing and small businesses. What the Comp Plan tried to accomplish is to get away from the potential of more piecemeal development. Over time it was a mish-mash of zoning, but the Town has tried to at least have a section that would be for commercial/retail and then another section for commercial offices.”

Ms. Dubois says we are still talking about mostly commercial now and losing the one or two car households to more and more commercial on a very narrow two lane road.

He replies that the existing road may be narrow but by state standards that is a wide road with additional right-of-way space that if needed, can be expanded. He also explains that both Route 50 and Route 9 are state highways and the Town has no jurisdiction over them.

Ms. Dubois says if everybody is spending hours driving down the road, then you lose that quality of life. “It ruins it for his development as well as the group of people that are going up on the other side of

Worth Road. It's not fun and we're living in a relatively rural area so we have city traffic and that is uncomfortable. His development is pretty close to the road. We're letting these guys get really close to the road. If we expand this road we will have road right up against these buildings. There really is no green space. That is just unfortunate."

Chairman Dobis says, "One of the reasons the Town Board back when they passed this [Comp Plan] gave the Board a lot of leeway but what comes of that leeway is also more leeway for the developer to come in with bigger projects, closer to the road. There are ordinances that the Board must adhere to; the set back of a minimum of 15 feet or maximum of 25 feet." One of the biggest things he's heard at these hearings is the complaint of how close to the road this building is. There may be some room to move this around. That is why he's kept the hearing open to make sure everyone has the chance to comment.

Ms. Dubois returns to the traffic issue. She states, "There's really no serious discussion about the whole traffic thing right now. We're going to let it happen and then deal with it as a band aid."

Chairman Dobis states there was a traffic study done – it was required – and the State requires it and will also review it.

Mr. Lapper describes the history of Route 9; the Northway came in 1968. "Before that we had a hodge podge – there are still some mom and pop motels in the 40's and 50's. The used car lot that this project is replacing certainly doesn't conform to current zoning. This is a way to get rid of a non-conforming use over time it's been redeveloped in accordance with the new Code. But in terms of the traffic issue, we submitted a traffic report to DOT; we have a letter back from DOT saying that they agreed with the report and with the methodology. There was a meeting on site with Mr. Ripper and DOT to look and see if there was any mitigation they required. It's a state highway and we're complying with what the State wants, but they have reviewed this."

Chairman asks for an explanation of the different traffic levels.

Mark Nadolny is the traffic engineer with Creighton Manning. "There are different levels of service for facilities and for intersections. A facility such as Route 9 can handle up to and over 1000 vehicles in each direction operating at a Level of Service D or better. Right now during peak times the Route 9 experience is approximately 500 to 550 vehicles in a direction in the vicinity of this site per hour. That is quite a bit below that 1000 vehicle threshold for a Level of Service D. Anything over a Level Service D, we start to look at mitigation. As far as the capacity of this road, it is at about half-capacity and there is some reserve capacity that this development will take up but it's only going to take up on the order of maybe 40-50 cars in one direction. Even adding 40-50 cars, that is still under the threshold of that level of service. Route 9 has 12 foot lanes and 8 foot shoulders."

Mr. Gabay has the traffic study and he is curious how 114 units can generate less than 50 cars in the a.m. peak hour. There are typically two individuals working at a time that are renting a 2 BR apartment "You've got 114 apartments – even if half of those are two working households, they are both going to work, most of them are going south and running into that middle school problem again." He curious how it was determined that 50 – 55 cars at peak hour in the morning, it seems to him it should be double that, or 2 ½ times that.

Mr. Nadolny responds that it is a good question and one that is asked frequently. He lives in a home that has two cars. His wife works as a teacher and he works down in Albany. He leaves at 6:30 am to go to

work. His wife leaves at 8 am to go to work. His house is generating two cars but we're generating them an hour and a half outside each other. "When you look at a development, they don't all generate cars at one specific peak hour." What he is doing is looking at that peak hour, which is the worst case condition on this road. "Obviously Route 9 will handle traffic, it's kind of a bell curve and during the peak hour that's the most you are going to see, but at either side of the crest of that curve, this development will be generating traffic on either side of that. So when I say it's generating 50 or 100 cars, it during one peak hour. The whole development may be generating 100 cars but those 100 cars are spread across maybe 3 hours because people leave at different times of the day. As far as trip generation, the trip generation is based on national standards. The Institute of Traffic Engineers goes out and does hundreds of studies of similar land uses, apartment land uses and they count how many cars are coming out of apartments with different types and different levels of development and different unit sizes. They plot all these points to determine how much traffic each of these developments is generating. What you see is a trend. If you have 10 apartments you are going to generate maybe 6 trips during a peak hour. A building with up to 1000 apartments will generate 600 trips. No matter how many apartments you are generating it's going to generate approximately the same amount per unit during the peak hours. It's based on national standards that are used by the traffic engineering industry, they are reviewed by DOT. We've done this hundreds and hundreds of times and it is an accepted practice to generate trip generation numbers for an apartment complex."

Mr. Gabay believes it is difficult for the average citizen to understand Mr. Nadolny's analogy when heading south and hitting the Maple Avenue Middle School traffic, then to add this project and the cumulative impact of other potential projects. He has two calls into DOT to try and address this. The feedback he's gotten from a lot of the citizens is what are we doing for the future? Your comprehensive, your future growth and he quotes "for five years is . . . to provide worse case assessment for future design and account for future growth, with a growth rate of 1/2 percent per year applied for 5 years to the 2012 existing." That doesn't seem correct to him. For anybody who is dealing with that traffic in the morning – he's spoken to DOT, they tend to blame it on the Middle School, and it is a Middle School problem. His attitude is that it is a state highway problem. He'd love to get a traffic engineer, Chairman Dobis, some individuals from the Town Board to sit in the parking lot during that time to tell him that it is not a problem. At some point, with people going around with the turning lanes, somebody is going to get hurt or killed. Maybe this isn't the correct forum to do this, but he'd like to set this up to try and solve a future problem before someone gets hurt or killed. "I am going to send a letter out just so the folks in the audience know and if you want to get involved in this to try and solve this Maple Avenue Middle School problem. But we can't blame it on these individuals right here. We all know it's a problem up to this point. I have spoken to Ryan about it and Mike and what we're hearing is no, it can't be done because it's only during that short sequential period of time. So if this is something everybody feels strongly about, you have got to put pressure on the State and that's something that needs to be done. It's a problem that's got to be solved as far as a cumulative effect."

Mr. Lapper responds that the traffic report was submitted to DOT and they reviewed it and DOT is not requesting traffic mitigation measures.

Mr. Gabay says he understands that position.

Patricia Tuz, 2 Amanda Court. She asks for clarification regarding Mr. Nadolny's remark that the area has a capacity for 1000 cars? He states that a two lane road can handle approximately 1000 cars in each

direction in an hour. So in the peak hour, in the am or the pm, this road currently experiences about 500 to 550 cars in one direction. If you have a 1000 vehicle capacity during that peak hour right now we are at about 550. She asks about Ms. Dubois' comment that there were about 10 commercial areas for sale up and down Route 9 right now. "So if right now we're at half capacity and there are 10 areas available for commercial development and this has nothing to do with their building, but how are we going to accommodate all those buildings with a two lane road."

Mr. Lapper answers that is what the ½ percent per year compounded for five years – that just makes the traffic study more conservative because you are anticipating future background growth.

Mr. Gabay states that seems very low to him.

Mr. Nadolny explains the concept of progression analysis. "DOT does periodic counts on all their state roads and they have all these counts in a book and it says every year there was 10,000 vehicles this day in 2000 and in 2002, there was 12,000 and it gives you every year what their counts are, and what you can do is a progression analysis and say look it only increased one percent per year for the last ten years and for this road the progression analysis indicated that it was almost a flat increase of traffic. So that is why we used ½ percent per year because it was actually more than the historical counts were." He would respond to the other developments that are available, they will have to come in and do their own assessment of traffic when they develop, say a 50,000 SF office, they will have to come in and do an assessment of the road and that assessment will take into account the traffic associated with this development 3 or 4 years from now. "So it is progressive and you do have a limit of capacity but this development at this point is not tipping any sort of scale for any sort of mitigation based on the level of traffic that it's going to generate."

Mr. Gabay says he understands that but states its bad science to look backward or to look forward. "The concern is that we are hitting that critical point where in 2, 3, or 5 years it's going to increase significantly and the DOT statistics do not take that into account what is happening at certain point and how quickly things can expand.

Chairman Dobis states that even if the traffic study today wasn't as inaccurate for whatever reason, at some point as another development comes in and another one, at some point it will trip the next Level of Service. Who makes that determination – it is the State.

Mr. Gabay concludes that if the citizens want to get involved and put pressure on NY State that's the avenue that has to be used. "The Board can't do it – it's got to be pressure from the individuals." William Rice adds that if traffic in front of the school improved it would result in more parents driving their kids to school.

Steve Harran, Parkhurst Road: "It seems to me that by focusing on traffic and you're saying it is permitted under state regulations, if you do all the development being planned in this town, based incrementally as you're are doing now, someday you'll find out that all the incremental building is causing a major environmental problem. The size of that building, you want to get a feel as to what that will look like, go down Route 9 through Malta. I am sure they had great traffic studies. Before you get to the circle, it's like driving on a New York City street. Massive buildings – this will change the appearance of that area and that will then continue until the Board starts getting involved in planning. I sat on that board a long time ago. You are saying you are kind of trapped by what the zoning says and



what this says but that doesn't stop the Board from doing planning and initiating changes that should be done. Not relying on the people because if you are not sitting up there, you got the silly Town Board sitting up there. You have to start; you have got to be the engine. I know it's frustrating. I am asking you to be very careful here but if you allow this particular project go through; you are really going to start a change in Wilton that you are not to like.

Mr. Lapper states that he intent of the applicant here is to do something that's fancy, expensive and high-end. Replace a used car lot with this expensive building with masonry in front with really nice landscaping. "This is an attempt to do a really high quality project to replace a used car lot. People can have different tastes, but in terms of what is proposed here, 35 feet tall of living space; 55 feet to the roof, it's exactly what the Code calls for and it's not being done in an inexpensive way – it's being done in a very high quality way. We look at this as very good development for this site in complying with the Code. Obviously some people don't like change and we're here to explain it."

Jim Zack, 4 Woodland Drive: Mr. Zack distributes a set of photographs (exhibits) illustrating some of the current problems that are only going to get worse. He doesn't care what kind of traffic study has been done. He appreciates traffic studies. "I think science is great. I think flawed science can be horrible – science using the wrong numbers. I am a geographic information systems professional with over 25 years of professional experience. I'm not a traffic engineer but as a generalist and a scientist I am familiar with numerical and statistical methods and models. Especially those involved in engineering situations, traffic planning included. I have read and I understand this entire report by Creighton Manning's Engineering ("CME") Traffic Evaluation Impact Study dated 5/29/12. At the Board's last public hearing, I pointed out how the applicant had produced a set of beautiful renderings. However, I also commented that nothing outside of this site was presented. You don't see anything behind here; you don't see the mountain that's behind there. You might not see the mountain with 55 feet of frontage that is facing you. I also said that the proposed development was visualized from on-site and not from off-site. I presented a visualization from the Lake Elizabeth Plaza just south of the proposed development which showed before and after scenes of the proposed project. The project, if approved, however will not exist on its own floating out there, it will become part of the fabric of what's known as the Maple Avenue Hamlet. For this very reason that's why I showed you those photo simulations."

"I have been reviewing the traffic study conducted last year by Creighton Manning Engineering in Albany. What I found is the same reductionist approach to planning that the architectural renderings produced. Extract the project from its context and examine it in isolation from any other existing or proposed projects in development pipeline. I will concede the study did include the Farone Everglades project. But it did not consider two other residential project proposals that will further the burden on the strained Maple Avenue. He is speaking of the Smith Bridge Road project and the senior citizen center across from Lant's Auto. The studies' most salient finding is that the number of new vehicular trips generated during the peak am and pm hours is not sufficient to trigger the DOT's off-site mitigation requirements such as adding a left hand turn lane to northbound Maple Avenue. The threshold is a 100 new trips and this project was deemed by CME to generate only 99 new trips. I've worked for consulting firms in the past and I know that many of them survive and even thrive by providing the results their clients want rather than sound unbiased analysis based on facts and scientific rigor. Given the answer your client wants it's easy to work backward to tweak assumptions about future growth trends to make the model give you the sought after answer you are looking for. The 99 trips; one less than the threshold that would require costly off-site mitigation that would render the project probably render it unprofitable;

certainly cast doubt on this analysis, but that doubt is insufficient to prove that it is an ‘I’ll scratch your back if you’ll scratch mine’ symbiosis between CME and the developer, which I have seen in other projects where if you don’t give them the answer you like, they’ll never come back to you.”

“There is however a glaring oversight in the CME study that may be the result of using data that is no longer current. The traffic study states on its first page “the proposed project consists of the construction of 113 apartment units and 13,000 SF of commercial space.” Thanks to the action of the Town Council and championed by Councilman Pulsifer, we now know that the increased density in the Hamlet zone allowed the applicant to raise the number of apartments to 114 but also increase the commercial space to 16,357 SF. That’s an increase of 25% from what was used in the traffic evaluation impact study. An increase of 25% is going to generate one additional trip generation which would push it over the threshold of 100 that is DOT’s signification of appropriateness for off-site mitigation of the traffic problem. This alone should mandate a revision to the traffic evaluation study and a denial of the application until a revised study is presented using the same set of figures as in the applicant’s current proposal. While the CME traffic evaluation cites the traffic data report from NYSDOT as its source for the assertion, it says: ‘Traffic volume growth in the vicinity of the site has shown little to no growth over the last several years.’ It fails to point out that the last year of actual data in the TVR is 2006 and that the 2013 estimate is based on the estimated annual average daily traffic of the latest year for which the actual data count is available. Wilton residents will recall that the period from 2006 to 2012 saw several large residential and commercial projects on this stretch of Route 9. They got approval and have begun construction. CVS, Saratoga Heritage Phases II, III and IV, Home of the Good Shepherd, SUNY Adirondack, Moreau Medical Office, Farone Office and Self Storage, the Wilton Baptist Church and numerous other resident projects that will use US Route 9 for ingress and egress.”

“The CME evaluation goes on to state that in order to provide a worse case assessment of the future design year and the count for the potential for some future growth or redevelopment in the corridor a growth rate of ½ percent per year that we mentioned earlier, was applied for 5 years to the 2012 existing traffic volumes. They do not exist; first of all, they are estimated based on a projection of 2006, six years out. The estimate was based a priori data and not based on actual development that did in fact occur. Like David said, we don’t look backwards and extrapolate; we look at what is going on right now. This raises doubt that the projections for the 2017 build year estimates are considerably lower than what we’ll come to see. This assertion is supported by the 2009 update to the Traffic Planning Study prepared at the Town of Wilton’s behest by TDGA Consultants which examined some 29 road segments and predicted a projected annual growth rate on all of them in excess of 1 percent and many exceeding 5 percent and some even 10 percent increase in annual average daily traffic. The worse case growth is patently unrealistic given the scope and number of projects currently in the development pipeline for the town. The CME report also considered levels of service for the two driveways for the proposed project; it states that it is not recommended that US Route 9 be widened to provide a northbound left turn lane at either site driveway. This recommendation is supported by review of the SIM traffic simulation that indicates there are adequate gaps in southbound traffic on US 9 for northbound left turns to enter the development without unduly blocking northbound through vehicles.”

“If you look at the first photograph, granted that’s Maple Middle School but the same situation occurs further up at the Northern Pines intersection to some degree, we have all kinds of wild west traffic maneuvers to get around left turning vehicles going to Stewarts, left turning vehicles in the left hand turning and straight ahead lane. Yet if there’s a left hand turning car there and you want to go straight,

you go into the right turn lane only. You are not supposed to do that but that is what happens. SIM traffic however is a normative model that assumes drivers will obey the law and will not make bad judgments such as pulling out in front of a speeding car, driving illegally such as passing a left hand turning vehicle by driving on the shoulder to pass the vehicle. This brings me to a major point of contention. The hamlet is supposed to promote pedestrian mobility. The only mention of pedestrians or cyclists in this traffic evaluation is to acknowledge that pedestrian accommodation such as sidewalks are not provided in the project area which necessitates pedestrians and bicyclists to use the available wide shoulders. In fact that wide shoulder happens to be a designated NYS bike route so when I hear talk of taking it away to widen the road for more traffic I wonder where those bicycles are going to go. Are we going to construct a tunnel underneath for bicyclists to get through this narrow corridor? No other mitigation for the level of service for the non-car carried is provided which reflects an automobile centric mentality of traffic engineers and our own DOT. I have documented the accidents waiting to happen conditions at the intersections in front of Maple Avenue Middle School and the Lake Elizabeth Plaza intersection and I understand those have been forwarded to the Board. (Exhibit) Without facilities for northbound cyclists to turn left safely into the proposed project site, we can expect more ad hoc strategies to take root here, such as riding on the wrong side of the road so you don't have to pull out into the road to make that left turn and risk your life as a cyclist."

"Finally I close with the growth management goal as expressed in the Town's 2004 Comp Plan which is the document written to guide the development of the town in the near and long term future, to preserve the qualities of life that brought so many of us to settle in Wilton. I believe you, Chairman Dobis, were part of that 2004 Comp Plan. One of the goals in the Comp Plan is create a land use management system that protects and enhances the town's environmental quality, rural and suburban character, unique resources and features that directs growth in ways that benefits residents and the community overall. I don't see anything about benefitting developers, I see residents and the community overall. I also don't see anything about urban; it says rural and suburban character. What are we doing using urban design that's designed for places like Saratoga Springs or New York City or a place with a two or four lane highway? What are we doing importing that here into Wilton. Thank you for your time and I have also included in there the data that was used to generate this projection of only 1/2 percent growth from the NYSDOT Traffic Volume Report as well as the transportation plan update of 2009 which shows the traffic counts the projected growth and you don't see anywhere in there an annual growth of 1/2 percent."

Mr. Lapper: "It is not up to us, the board, the citizens or the applicant to debate the DOT standards for what has to happen to the road. DOT is an independent state agency. They have reviewed CME's numbers; they have come to the site. They are saying it is not close to the 1000 cars that would require mitigation; that the road functions properly. What I'm hearing is a philosophical discussion about people that aren't happy with the current zoning code. What we're trying to do is comply with the zoning code and in terms of the DOT study and the DOT numbers, DOT has reviewed that. They are comfortable with that. The pedestrian answer is that we are adding sidewalks here and along the site to the north to make a contribution and to make this more pedestrian friendly and as it gets redeveloped other people will do the same."

Jim Zack: and some additional traffic that comes out on Route 9 and left hand turning lanes or left hand turns off of Route 9 that cross the bicycle path the bicycle lane that is also a pedestrian lane that has traffic going in opposite directions. The pedestrians are supposed to walk on the left hand side.

Mr. Lapper: That's like any other road where you have pedestrians and cars and people have to watch out.

Mr. Zack: its 45 mph Jon, I know that isn't your responsibility.

Mr. Lapper: That is the speed limit on the state highways. Mr. Zack remarks that if you think it's safe to have people cross that on bicycles in one direction and walk in the other direction and have people that know that they've 2 seconds to get across and think that they're going to look all the time – that's an accident waiting to happen

Lapper: That's an emotional appeal. This is about science

Zack: The science is flawed. You used the wrong numbers.

Lapper: The difference is 3000 SF of retail that's changed which is de minimis in terms of this study.

Mr. Nadolny of CME: "The 100 trip threshold is not a threshold for the number of trips generated by the development; that is a threshold on an approach of an intersection. So if the intersection of Northern Pines experienced an increase of 100 vehicles going north bound that would trigger a harder look at this intersection. This development is generating 100 vehicles total so by the time you split some traffic going north and some going south, some traffic coming off of Northern Pines and some traffic going down Route 9, you are nowhere close to 100 vehicle threshold for an approach. You are quoting something for the entire development and it's actually just on an approach, so to say that we cooked the numbers to get just below the 100 vehicles is not right. I take offense to say that I cooked the numbers – I didn't cook the numbers. Adding a little bit of retail development is not going to increase trip generation for this site. It is not going to trip any additional threshold. The recommendations and conclusions in this study would not change by adding 3000 SF of commercial development on the bottom floor. 13 years of experience tells me that that won't change the results of this study. We could run it with the additional SF and I guarantee it would not change the results of this study."

Mr. Nadolny is asked to address the fact that some of the data is from 2006.

Mr. Schachner, the Planning Board attorney, feels very strongly that it's important to try maintaining a better sense of order in this proceeding for Lucy's benefit as she prepares the minutes after this meeting and for the benefit of anybody may ultimately review the outcome of this proceeding. He urges the audience in the strongest terms possible to try to have one person speak at a time, to have whoever have the floor be able to speak until they are done speaking and then to have you as Chairman of the Board recognize the next speaker. In my experience in matters of controversy, which is over 30 years now, it's very difficult to produce a good record of a proceeding when we have a free-for-all like we're having.

Mr. Nadolny states the next issue that was brought up was the time that the volumes were taken. "The DOT volumes were used to determine the growth rate but we actually went out there and installed an ETR last year in front of this site when we conducted the studies so the volumes included all the development from CVS - anything that was developed before April 2012 is in this study. We did not use old DOT volumes for existing volumes. They were used only to get a historical record of what traffic has typically done on this corridor. Our volumes are from 2012 not from 2006. They are current and existing volumes. With regard to the photo showing the condition in front of the Maple Avenue School, that shows a different condition than what we have here. The volumes out on Maple Avenue are

substantially higher than what they are on Northern Pines Road because you have other feeder roads that are feeding Route 9 going towards Route 50; so those conditions are not reflective of conditions adjacent to this site. We are providing a sidewalk adjacent to our property. The construction of this development is not going to impact the shoulders; they are going to remain so it's not going to impact what the bicyclists currently have but as Mr. Lapper indicated, this is a state facility at 45 mph and it's not going to change that. It's going to be consistent with all the other curb cuts along Route 9. It's not like we have a limited access highway. This is consistent with the character of this road; the access to this building is consistent with every other commercial and residential development all up and down Route 9. If there are other technical issues I can definitely address them as we move forward."

Mr. Zack: "In response to that if we look up and down Route 9 we see violations of the state law that says no driving on the shoulder."

Ms. Kolligian responds, "If you see a violation, call the sheriff, it's not these guys responsibility to make people abide by the rules. Go to the right source!"

Mr. Zack: "I went a trooper and asked him what to do about people that are passing on the right when I am stopped (inaudible).... This is the start of a 1000 paper cuts, and this is the first one and if they don't meet the threshold and the next project doesn't meet the threshold, pretty soon – he compares one piece of garbage to the accumulation of a garbage dump. We are not doing any cumulative comprehensive planning. Each project is viewed standing on its own, each will pass muster, without looking at the cumulative effects, and we are going to end up with the grey goo. We are going to be visible from space."

Dennis Towers, 92 Ernst Road: He sent a letter with links – one is the zoning and the comprehensive plan from the DOS. Ms. Kolligian asks if that is the 19 page document. Mr. Towers says it is.

Mr. Towers says the document speaks about comprehensive plans and how they came to be and it states in it that once a town has adopted a plan, the community's land use regulation must be consistent with it. The way the town law interprets that is "all town land use regulation must be in accordance with the comprehensive plan adopted pursuant to this section". He asks if that is true.

Chairman Dobis refers the question to Counsel for the Board, Mark Schachner.

Mr. Schachner states this is a public hearing. His advice is hear the public out. "That's not like some issues which are scientifically true or false; that is not a statement that is susceptible of saying is the DOS telling the truth or lying. That isn't what this is about. The DOS has issued a number of guidance documents. This is the zoning and the comprehensive plan that is one of a series of DOS guidance documents. I believe the gentleman is quoting correctly from the document."

Mr. Towers: It is New York Town Law 272 A.

Mr. Schachner is familiar with it. "I believe the gentleman is quoting correctly from the sources. Whether the statements in the sources are true or false is not something that I or, I believe, anyone else can determine."

Mr. Towers will assume that the Town of Wilton operates under New York Town Law. The other element that seems significant that may be an empowering tool for this board is the following. It states if

the agency determines that any action may include the potential for at least one significant adverse environmental impact, then it must require preparation of an EIS.

Mr. Schachner indicates that is a fairly accurate statement or accurate characterization of the requirements of the NY SEQRA. It's not a scientific statement capable of a true or false.

Mr. Towers lives on Ernst Road which backs up to Route 9. "You cannot see 9 from my house and vice versa. We built that house 10 years ago and I use to stand out back and listen to birds and have coffee. The only time the road noise ever bothered me was during Americaid. Now I barely hear the birds. There is a road noise issue. There has to be an air quality issue with that upgrade in travel as well."

He quotes from the Comp Plan under housing, "to provide a balance blend of quality housing opportunities including price ranges that are affordable to all income levels and housing types that consider the needs of a diverse population including older residents, young families, first time homebuyers, properly plan for and allocate housing based on density and to take full advantage of existing and future community services alternative transportation opportunities and recreational opportunities. That's the goal statement with the objectives. Under Town Character, No. 2 under Objectives is this: to establish guidelines to ensure that future residential commercial development is of scale and design that is appropriate from both a neighborhood and town wide perspective. On that same list, No. 7: ensure that new development does not result in adverse impacts such as excessive noise, odor, vibration or pollutants. The last one is: to preserve the topography of the town in recognition of its important role in the town's aesthetic character by requiring design with nature. They have an open government goal which he wishes he had known at the last Town Board meeting. "Specific to this area, under recommendations the second line is: residential development in this neighborhood should continue at densities similar to existing subdivisions."

Ms. Kolligian: "Is that under the Jones Road and Northern Pines corridor?"

Mr. Towers states that it is. "Section 3, page 16, Planning Area 2."

Ms. Kolligian says, "If you look two bullet points below that, what they are talking about is that between Jones Road and Northern Pines Road is the most densely populated area in the Town of Wilton. It has the most neighborhoods. That's where the majority of the residential housing occurs. In the first bullet point, they are talking about in between Jones and Northern Pines and two bullet points down it says establish a mixed use neighborhood or hamlet within that area. A potential location in the recommendation is the Maple Avenue Hamlet between Northern Pines and Route 9. It acknowledges that this area would require a significant amount of redevelopment and reinvestment in the extension of utilities. There's very little available land in that area – that it would be people selling their house or their business and that it would essentially have to be torn down and rebuilt to fit the standards that this Comp Plan was looking for in the hamlet."

Mr. Towers: "It was 2004, and they're saying at the densities of current subdivisions."

Ms. Kolligian: "Exclusive of created hamlet area."

Mr. Towers remarks that under the hamlet area it does say that provisions for safe movement of pedestrians across Route 9 and across Northern Pines and other than that, under that same section, under transporting mobility and planning roadway function and traffic movement in the entire neighborhood

are critical. Development along and/or projecting above ridgelines be prohibited and that the development at other visually prominent locations be discouraged. Mr. Towers indicates he wasn't sure if the Board had ever seen zoning in the Comp Plan. "I think it is pretty informative and he realized also that the Town Board has handed you ("the Planning Board") some crap as far as zoning changes go that are probably in violation of the Comp Plan." He doesn't know the full job description of the board members but does remember that "you guys are the ones that take care of community; you're the ones that are supposed to listen to us and put that heart back into it and plan for us. So I hope you guys will keep that in mind."

Jon Lapper reads, "Under the zoning code the hamlet (H-1) district: *descriptive purpose and permitted use: the H-1 is reserved to encourage increased pedestrian oriented residential commercial and retail activity and create a location where greater flexibility is permitted and encourage with the mixed use of retail, office and residential uses.* And that is what this project is."

Connie Towers, Ernst Road: "I sent you a 2-page letter as far as the impacts but I think what we're missing right now is the original intent of the hamlet and we're crowding so much into this project with mixed use. But the intent of the hamlet and the reason why we were supposed to put buildings 15-25 feet back from the road is to build a walkable hamlet where you have all your services right there, where you had first floor retail or offices and on the second floor of small 2-3 story buildings. Maybe that person lived up there and that person had an office space up there. You had density allowed in certain sections of it so that it was all set by courtyards and these areas and parks so that you took sections of it, made it denser to offset that there was going to be shared public space. So the whole intent is incorrect from the start. This is why we dealing with all this right now. You look back on the town map; your first four things are pedestrian scaled development. This is not. Traffic calming – this is not. Pedestrian links to adjacent residential areas – we just talked about all the bike paths. Sidewalks and landscaping – well there is some prominent. But if you go back to the intent – we would not be here right now discussing this. Because it didn't call for a building that is 600 feet long with apartments and 3 acres of parking surrounding it with some retail space that you decided was maybe the Town Board said 10 percent. All you have to do is push the scope of this project back. For some reason, no one has the hutzpah to do this. I can't figure it out. It doesn't make any sense. What about the aesthetic quality and how it's going to affect the character of the Town and the cumulative effect of it. I really went by the books and at least tried to give you some codes. If we go back and say that these variances and this density didn't affect this project and we say we are going backwards. We can't say that because the site plan was based upon these variances going through at the Town Board level and it was based on the difference of 8 to 15 units. It was even addressed in the public hearing document when it was cancelled. The letter by the attorney [Jon Lapper dated 3-20-13] said:

*The pending application was redesigned to eliminate the need for area variances, in part, based upon the Hamlet I Zoning District amendment which was approved by the Town Board last September. It has been determined that the Town Board will have to re-approve the Zoning Code amendment once it has been reviewed by the Saratoga County Planning Board.*

Everything is based on those, so you can't say it's not. You just can't. The height of the building – okay, you can go up to 55 feet. But it was done for spires and for these Victorian little buildings. I'm not

against planning; you can do it without filling up every single little piece of the property. You can do it correctly and work with the residents who have to drive by it every single day. You can work with them. You guys all take a caravan site to there and tried to really see the ramifications of what it's going to do before it goes up and goes any further. I did point out the traffic issues – I think someone is going to get hurt there. The mass of the building doesn't work with the original intent of the hamlet. Did everybody read all my points? I know it was fairly long. The DOS Comp Plan does say "the adoption of amendment of zoning laws are actions for purposes in SEQR" so if the site plan is based on those zoning amendments and those variances, you should use that as part of your SEQR. I don't think the hamlet was envisioned for putting in 3 acres of parking for us to look at. I went back to concerns that you all initially had on this project back in November 2011, now it's been tweaked, but really how much different was two buildings with 120 apartments and 6000 SF of retail. Everyone keeps saying this was scaled down but it really wasn't scaled down that much. I go to you about the character of the existing community and the impact on the neighborhood. I think it will create the demand for additional community services such as fire services and services it will have to have to make this happen. It's going to set a precedent for everything else that you do. You have to look at the whole cumulative effect such as the Everglades across the street and everything coming down the pike."

Mr. Lapper responds: "In terms of the character of the community, this is an innovative design, but this is nothing new. This is 116 apartments and 16,000 SF approximately of retail commercial. But there are hundreds of apartments in this vicinity that exist, that have cars and same impacts that are there. The difference is that this is designed to comply with the Hamlet I zone. So it's a different way of putting in apartments than this project or this project. There is this large courtyard in the middle so in terms of where people are going to be hanging out, in terms of any kind of noise impacts, there's a pool, landscaped. You have the design of what the courtyard will be inside. More open space for the residents inside of the building with the open courtyard. It's just another way of doing what's here. But it is not changing character, it is apartments. These are a little bit more expensive, a little bit fancier but these are apartments in the zone in the district of the town that already has apartments. There is nothing that's a change in terms of character other than it is a little bit more innovative in design."

Mr. Tony Mangini has a question about the commercial space. It is his understanding that the project in Malta – that they have had difficulty in filling the commercial space there. "I'd like to know what you anticipate as far as completion of the commercial space."

Mr. Lapper responds that coincidentally, he just completed several leases for one of the big buildings in Malta that is a mixed use, one of which is a restaurant downstairs. Gordon Development is a retail developer as well as offices. It is a big expense to build 16,000 SF but they are confident because the residents here and the residents in the other apartment complexes that there is going to be a draw for services, which is what this zone allows for. They are not going to sit there with 16,000 SF of available space and just pay for it. They have had discussions with a sports bar. It is not at a point where any lease has been signed because they don't have an approved project. They feel that this is going to be a hot area because of the residents.

Mr. Mangini asks about the layout of the commercial space and Mr. Lapper indicates that the space can be cut up in different ways depending upon the tenants.

Andy Brick, attorney representing the Farones. "When I was at your meeting last month, I gave you a laundry list of problems that existed with the various plans. I reviewed the resubmission of the plans and



vast majority of those mistakes were errors that we articulated to the Board, they have been corrected in the resubmitted plans but there are still a number of problems some of which have come up this evening. First, the new plans show added loading zones behind the commercial area, one loading zone is actually right in front of the firefighter access point which there was testimony last month that that was going to be an access point if there was a critical incident or some type of emergency in the pool area, for example. Probably the worst place to have a loading zone you have your truck there with a driver in stocking the cooler of the restaurant inside when there is an incident at the pool and that truck is going to be blocking that fire fighter access. That didn't appear on last month's plan.

The dumpster locations still need a variance. You don't have any authority in your code to waive the language that says now that it has been changed; dumpsters should be in rear of the building; it used to be "shall" now it says "should" which seems to be discretionary language but there's no specific express authority for you as the Board to determine that they don't have to be in the rear in this particular application. The location of the dumpsters has to go to the zoning board and that has not occurred. The fact that the word was changed to should isn't going to change that fact. The dumpster location i.e. now. If you have a very busy use inside, constant back and forth to the dumpster, it mentioned a sports bar and a restaurant, that's going to be a problematic area.

In terms of parking we pointed out last month that there was only 83 spots reserved for the commercial because the back area was restricted to residential only. The solution to that was to remove the restriction on where the commercial people could park so the residential people no longer have reserved access for them diminishes the value of the project, diminishes the value of the rents they are going to be obtaining and to borrow a phrase from Mr. Schachner, it's going to create a free-for-all in the parking context especially during the busy time of the commercial area and peak hours when the people are getting in, getting out, getting to their mailbox, it's going to be a haphazard mess. They have actually a bad situation where they had sufficient parking and made it worse by eliminating that restriction. In terms of parking, Mr. Lapper mentioned that there are discussions with a sports bar and restaurant. A sports bar and restaurant requires a different parking calculation under your code. Your code requires one parking space for every 2 and 1/2 seats in a restaurant; whereas for straight retail which is what the parking calculation was conducted for, it's 6 per 1,000 SF requiring 96 in this particular version. I went on the website of the Recovery Room Grill which is a chain, a corporation of restaurants and I believe there may be one in Ellsworth Commons in Malta that Mr. Lapper had mentioned. Their Queensbury location is a 7,000 SF bar/restaurant – sports bar – with 200 seats. Applying that into this project, you would need 401 parking spaces under your code. This plan shows 357. The Recovery Room in Guilderland is only 4,500 SF and has 190 seats – that would require 412 spaces. I think the analysis that's being provided to you where they are using retail 6 per 1000 SF as their parking calculation and then they admit there are in discussions with a restaurant which has a drastically different parking calculation forces the applicant to provide a worst case scenario of what is required under parking. The Queensbury Recovery Room takes 7,000 SF – it wouldn't even take up half the retail, but it would drive the parking space requirement under your code up to 401.

There is still no fence around the storm water basin in the area. That comment wasn't addressed at all in their comments. By my view of the topography it's going to be a somewhat deep pond and a fence would probably be warranted. We brought out a number of issues with units and particular problems that were listed as typographical errors or mistakes on actual floor plans submitted by the architect. There still are problems; I would urge you to look at Unit 203 there is a window issue as to whether they have

enough windows or ventilation in the state building code. Unit 207 where apparently the window would be a window to the elevator shaft which is behind the unit. Unit 301 has an issue, unit 305 it is difficult to even tell what is what in that proposed unit. Unit 211 the bedroom backs onto an elevator shaft and on the other side of it appears that there is a stairway is actually in the unit. It doesn't show the requirement of fire doors; it has a long hallway in the middle and it's not showing any automatically closing fire doors that would be required by state code."

Chairman Dobis reiterates what he said at the last meeting; "That will all be taken care by our building inspector fire marshal, Mark Mykins." Mr. Mykins states that he doesn't have firm engineered building plans yet for this structure. "When those building plans come in that's when we address all the fire codes, state building codes, mechanical, electrical and all that."

Mr. Brick is just pointing out what he was provided through the FOIL request he made. "In summary, this isn't even close to what's anticipated or envisioned for the hamlet in the Comp Plan. Mr. Lapper said that it doesn't change the character of the town. Well it absolutely does change the character of the hamlet. The size, the scope and the scale of this building doesn't fit with the existing apartment uses or any of the existing uses in the hamlet and it's too big; it needs to be scaled down and it's a detriment to the hamlet and it's in violation of the Comp Plan."

Mr. Lapper responds: "There is not an issue with the loading zone and the fire access. If there is a fire, someone will move the truck. That's not a conflict. We went through the dumpster location; that code was specifically changed to give you the authority, but beyond that, this [dumpster] is in the rear of the building in terms of the commercial building so there are two arguments there. That's just being practical. You want to have a dumpster near where that use is going to be. The issue of the commercial parking; we comply with all the parking in terms of where people will be. The residents are going to park near their units, so it's not that anyone's going to be incentivized to park near the commercial area. The site complies with the parking requirements. To the extent that that sign is misleading, we took it off. People will park by their units and there is extra parking in the front by the commercial which is the intention. Your code specifically says that it is up to the Board whether there should be a fence around the dumpster; what we have are plantings and large rocks."

Greg Beswick of CME: "I spoke with Ryan Riper about the storm water basin; that is going to be a dry basin; the only time it is going to have water in it is shortly after a rain storm because it is all sand. We have added two dry wells to help increase the infiltration rate as well. We have added extra trees and boulders to help to make it safer."

Chairman Dobis states that he's quite sure it is Town policy; the Town does not want a fence around a retention pond. It's an attractive nuisance says Mr. Beswick. Depending on what kind of fence it is someone could fall and nobody would see them. This has been discussed and the Town Board finally made that decision.

Mr. Lapper states with regard to parking for a potential sports bar which may or may never be a tenant, "I did the approvals for the Recovery Room in Queensbury as well as a number of others. No one is talking about a 200 seat restaurant here. Obviously the site couldn't handle it. But there is probably a way to do a small sports bar and in terms of all the parking for all the commercial together, it has to make sense so there may be other uses in the front that wouldn't be traffic generators. We don't even

have a proposal for that. We are complying with what the code requires. The building code issues will be worked out – this will be compliant. The architect is here. That is not a site plan issue.”

Mark Harrison who sold the Gordon Group the property in question states that he has heard Mr. Brick many times. Mr. Farone’s project for this site would have put 160 units and a lot more commercial.

Chairman Dobis thanks everyone for their comments. He states that this board understands that this is an emotional issue for some. It’s the Board’s job to sort through the emotional parts, the factual parts, from the Town’s point of view, the resident’s point of view, and the developer’s point of view. That’s why he ran the public hearing on two meeting dates to give everyone an opportunity to speak and express their views.

On a motion introduced by Erinn Kolligian, the board adopted the following resolution:

**NOW, THEREFORE, BE IT RESOLVED**, that the public hearing be closed. The resolution was seconded by David Gabay and duly put to vote, all in favor, on this day, May 15, 2013 at 8:30 pm.

At 8:40 pm Chairman Dobis restarts the meeting to address the State Environmental Quality Review Act (“SEQRA”) for this project. Mr. Schachner, the Planning Board attorney will go through and read the questions from Part II of the SEQRA Environmental Assessment Form (“EAF”) to the Board.

Mr. Schachner explains that the form is blank because it is the Board’s decision as the SEQRA reviewing agency to answer the questions in Part II. The SEQRA EAF Part I has been completed by the applicant, which is appropriate. That has been available and there has been adequate time to review it. Mr. Schachner addresses the Board: “you have all heard the comments by the applicant, by the members of the public; you have reviewed a whole series of submissions from the public as well. There are 20 question in Part II of the EAF form. The first 19 of the questions have bullet items underneath them, which are items that could potentially trigger positive responses to the overall question. The 20<sup>th</sup> question doesn’t have bullet items under; it is just a straight “yes” or “no” question. When I read the question, if it is an area that clearly in your opinions has absolutely no bearing on this project, question number 2 for example. The question is: Will there be an effect to any unique or unusual land forms found on the site?” Mr. Schachner hasn’t heard anybody suggest that there will be. He asks if the Board has an opinion on this. The members answer no. “So when it’s pretty clear cut, I am going to say just answer the question yes or no without going to the bullet items. In this particular one it just says, “specific land forms”. Don’t be tempted to give a knee-jerk yes/no reaction when I read the question, unless it’s clearly not relevant. If it’s potentially relevant, before you give the yes/no answer, look at the bullet items. Whenever an answer is “yes” we are going to identify which bullet item if any one of them is triggered and we are then going to ask the Board to characterize the magnitude of the impact as either small to moderate, or potentially large. If you have a reaction that there is an impact, but it is not one of the bullet items, each of the questions has at the end, “other impacts”, that can be filled in.”

Mr. Schachner emphasizes that he doesn’t make the decisions, nor does Mr. Riper. The Board can seek guidance from both of them. Mr. Schachner is going to facilitate this exercise, but he doesn’t make the decisions.

Mr. Schachner: “It is not necessary to take an actual vote on any of these, but you do need to have a consensus or if there is disagreement among you, you should discuss the disagreement and ultimately at least 4 of you have to feel one way or another. Whether there is or is not an impact triggered; whether the magnitude of that impact is small to moderate or potentially large, we need to have 4 people on the same side of each of these issues, since we only have 5 members present. If we can’t reach some sort of agreement among at least 4 of you on an issue, we won’t be able to complete the SEQRA review this evening. We’ll have to wait for the attendance of some of our missing board members.”

**Impact on Land**

Question 1: *Will the proposed action result in a physical change to the project site?*

Chairman Dobis states he has a *small to moderate* impact. Mr. Schachner interjects that he would urge the Board to not characterize the magnitude yet. First say, “do we identify an impact?”

Ms. Kolligian responds she identifies an impact stated in bullet #5 which states: *Construction that will continue for more than 1 year or involve more than one phase or stage.*

So the yes box is checked.

Mr. Mangini inquires of Mr. Riper who responds the project is in two phases.

The impact identified: *The construction that will continue for more than one year and will involve more than one phase or stage.*

Mr. Schachner asks if the Board feels it is a small to moderate impact or a potentially large impact.

The consensus of the Board is “small to moderate”.

Question 2: *Will there be an effect to any unique or unusual land forms found on the site?*

The Board has already answered “no”. The consensus of the Board is “no”.

**Impact on Water**

Question 3: *Will proposed action affect any water body designated as protected?*

The consensus of the Board is “no”.

Question 4: *Will proposed action affect any non-protected existing or new body of water?*

The consensus of the Board is “no”.

Question 5: *Will proposed action affect surface or groundwater quality or quantity*

The consensus of the Board is “no”.

Question 6: *Will proposed action alter drainage flow or patterns, or surface water runoff?*

The consensus of the Board is “no”.

**Impact on Air**

Question 7: *Will proposed action affect air quality?*

The consensus of the Board is “no”.

**Impact of Plants and Animals**

Question 8: *Will proposed action affect any threatened or endangered species?*

The consensus of the Board is “no”.

Question 9: *Will proposed action substantially affect non-threatened or non-endangered species?*

The consensus of the Board is “no”.

### **Impact of Agricultural Land Resources**

Question 10: *Will proposed action affect agricultural land resources?*

The consensus of the Board is “no”.

### **Impact on Aesthetic Resources**

Question 11: *Will proposed action affect aesthetic resources?*

Chairman Dobis identifies one bullet item: *Proposed land uses, or project components obviously different from or in sharp contrast to current surrounding land use patterns, whether man-made or natural.*

The consensus of the Board is “yes”.

Mr. Schachner asks if the Board feels it is a small to moderate impact or a potentially large impact.

Three board members agree that it has “small to moderate impact”.

Two board members agree that it has “potentially large impact”.

Mr. Schachner tells the Board they have two choices here: “You can debate this or continue and complete as much of the SEQRA review, EAF Part II as we can reach consensus on and then come back to this next month, or we can stop right now and resume next month when presumably we’ll have more board members in attendance. Keep in mind the public hearing has been closed and you have 62 days in which to make a decision on the application.”

Ms. Kolligian: “The reason I find the impact to be small or moderate, I know the project itself is new for that piece of property; but I would disagree that it is not necessarily a sharp contrast in the current surroundings because it is commercial and residential and that entire area is made up of commercial and residential. So the size of it compared to what’s around it, yes, but the use of the building is why I found it to be small or moderate.”

Mr. Gabay: “We’re dealing with aesthetics in this particular question as opposed to use. My feeling is the impact as far as aesthetics; the massiveness of the project does not fit in with the Master Plan’s interpretation of the hamlet zone and its cohesiveness as a community based compliance with what we have simply to the size of this. In the divergence from the present Master Plan that’s another question.”

Mr. Schachner: “That’s another question coming up in the EAF review. Debate of this sort is very appropriate. I’m going to urge Lucy that the debate is included in our minutes and the reason it’s very appropriate is because the legal mandate for this Board in exercising your SEQRA review responsibilities is to take a hard look at potential environmental impacts. In that respect, if you have honest disagreement in debate points among you that shows that you’re taking as a board a hard look at potential environmental impacts.”

Mr. Gabay adds: "I am quoting from last month's meeting. Some of this is philosophical as Mr. Lapper said at last month's meeting that this particular design is taking more of an urban approach which is a philosophical decision. But from what I've heard from the Town of Wilton, the reason that we moved to the Town of Wilton is to have a rural character so if there is a choice between an urban approach to pack more product into a smaller area that may be visually offensive to the residents as opposed to having a less compact project spread over a larger area with less visual impact that is something that can be mitigated and solved and doesn't necessarily have to trip the paper work and the review. So this is something I believe can be mitigated, but as Mr. Lapper said, this is a philosophical choice that they have made how to approach the project."

Mr. Schachner asks if Mr. Gabay is still on the first bullet item. Mr. Gabay replies he is still on the first bullet item as far as aesthetics.

Mr. Schachner understands Mr. Gabay is still on Question Eleven, but he heard Erinn [Ms. Kolligian] talk about the contrast aspect of, which to me is very much quoting appropriately from the first bullet item, and what he was trying to ask was if Mr. Gabay is he was still on that first bullet item or is he on the second or the third.

Mr. Schachner: "Why I ask that question is I understood Erinn's comment to be very clearly focused on first bullet item and very appropriately so. Maybe I missed this, but I didn't see yours as much focused on the first bullet item."

Mr. Gabay: "I still feel that it does focus as far as the aesthetics because there is a sharp contrast to the surrounding land use that is there now."

Ms. Kolligian respectfully disagrees somewhat: "I agree that the people of this town prefer the rural nature of everything but if you read the Comp Plan, the town does call for some density in areas and this is *the* area here on Northern Pines, which I may or may not agree with. Within the Comp Plan it does call for a few areas, three of them, to be more densely populated and this is one of them. It does recognize that the growth of this area just over time is residential and commercial that would need to be reinvested and a lot of redevelopment in that area. Reading the Comp Plan made me realize that this building actually fits in it more than I thought it did before."

Mr. Schachner: "Just so the Board knows you will eventually, whether this evening or some other time, have an obligation to also have a discussion/debate about the degree to which this does or doesn't meet the Comp Plan. I can predict that we're going to have some difficulty getting through Question 19 which has some very specific targeted things about this. What I just heard from Erinn was more appropriate for the Question 19 review than the Question 11 review. One thing that is often misunderstood about the first bullet item in Question 11 is – it's not talking about what land uses are allowed, it's actually talking about the existing land uses."

Chairman Dobis agrees with a small to moderate impact is because of exactly what it says, the proposed land uses - does it differ sharply to current surrounding land use patterns. "The fact that this particular one is on Route 9, which is been historically commercial area, although this is the first project in the hamlet area. Whoever is the first one in a new neighborhood or zone will be setting precedent. He's not saying this is good or bad precedent – it's a fact. Because this is a commercial corridor, and I believe this differs from the Gabryshak development which is in a more rural area. What exists here and all around,

although it's not in the hamlet area, it is still apartments and this is a mixed use of apartments and commercial use. I looked at it as a small to moderate impact."

William Rice: "This project is obviously a different form and in sharp contrast to the surrounding building areas. I believe it's a small to moderate impact. Even if you halve the size of it, chopped off the back of it, it is going to be in contrast, because this will be the first building in the hamlet zone to have the first floor commercial and the second and third floor residential. It's going to look different from everything else. This is exactly what was envisioned. I was at the meetings for the Comp Plan and when they talked about these sidewalks and buildings, you know the commercial on the first floor and the second two floors apartments. I didn't think it would ever happen, but this building is coming in and this could lead the way to just a beautiful area between Northern Pines and Worth Road. Obviously it's different from everything else but I believe it a small to moderate impact."

Tony Mangini: "I think it's actually a large impact. I think obviously it's a huge building; it's the first of its kind along that corridor. I can only think of Saratoga, Railroad Place which my wife and I call the "canyon" in Saratoga. I think we should remember, and I am not addressing whether it is in the Comp Plan, this is my opinion. You've got a two lane highway there and you are so close to the road. When you go to Malta, its four lanes. When you go to Broadway in Saratoga, its four lanes. Those monstrous buildings they are more appropriate there because you have that wider corridor. But I'm concerned this site building with 2 lanes of traffic like that, I think it's a poor precedent to set."

William Rice: "Those are six story buildings on Railroad Place and on Broadway."

Ryan Riper: "Just to clarify, the buildings referred to in Malta are five stories, probably 70 feet high; this building – the commercial rooftop is between 40 and 45 feet – it's not 55 feet. The top of the clock tower is 55 feet. Everybody's been saying its 55 feet; it's not. Within the frontage of the building its lower portion as you look at the frontage on that architectural rendering is around 40 feet, The parapets give it some of the architectural detail may go up to 44 feet."

Mr. Mangini: "Forty feet is 4 stories."

Mr. Rice: "The canyon that you are talking about double in height of this."

Mr. Riper has a picture of the Malta buildings.

Mr. Rice: "Franklin Square is 60 feet but the first floor is 15 to 20 feet in height."

Mr. Gabay: "We're on visual impact and I think the point being made is two lanes versus four lanes. On a two lane road, there is a larger visual impact to scale. That feeds with my feeling of aesthetics."

Mr. Rice: "How much different in height than Farone's apartments that are just north – 35 feet."

Mr. Gabay: "I think a large part has to do with setback."

Mr. Rice: "You bring up the setbacks, that's exactly what they wanted; they wanted the buildings close to the sidewalk where you can get out of buildings, walk down here or there. They didn't want it behind berms and trees like you have in Hilton Head where you drive by at 40 mph. They want people living down there; they want them walking from place to place. This is it."

Chairman Dobis: "That's what we are here for – a good discussion; you don't want everybody thinking the same way. This is how you get the creative juices flowing."

Mr. Schachner: "Remember that, first of all I agree strongly that debate is healthy. The exercise is right now the SEQRA review exercise is not the same as ultimately we approve the project, we deny the project, or we approve the application, we deny the application or we approve it with conditions. Right now it's reviewing potential environmental impact to make the critical decision of whether there needs to be an environmental impact statement or not. That's the context of this exercise. If a particular member feels that a particular impact is potentially large, it's triggered and we need further review, that doesn't necessarily mean that ultimately that member will vote against the project or vote to deny or anything like that. Potential environmental impact review is the step we're at."

Ms. Kolligian: "This conversation with the setback of project at 15 feet if we want to see it pushed back, this is not the time now that will come later."

Mr. Schachner: "That's a smart question; the answer is both because if you identify a potential environmental impact that's potentially large, if you characterize the magnitude as potentially large, then you have to answer the question in the third column, which is can the impact be mitigated by project change. You only need to reach that third column if you identify an impact as potentially large. For example, if all five of you identified this, "the sharp contrast question" as a potentially large impact, I would then have said to you, can this impact be mitigated by project change. One or more of you may feel that yes, it could be; that sharp contrast could be reduced if there was greater setback. In which case that is something we note in the EAF. The applicant might, or might not, be willing to increase the setback and that would be another debate. If you identify an impact as potentially large, you have an opportunity to discuss the potential mitigation feature. Remember if you identify an impact as potentially large, we will also at some point get to Part III evaluation and one of the items in Part III on the last page, page 21 of the EAF. Item number 2 says, 'describe if applicable how the impact could be mitigated or reduced to a small to moderate impact by project change or changes.' We would reach that again at that time. That is if you identify an impact as potentially large."

Chairman Dobis: "It sounds like nobody is looking to change an opinion, my question would be, this has to be a minimum of 15 feet or maximum of 25 feet, the most this project could be pushed back is 25 feet. Would anybody's opinion or vote change if this building was pushed back more than the 15 feet?"

Mr. Gabay: "That would help."

Mr. Rice: "It's hard to picture but that's a wide road, a wide shoulder, the building is 3 stories - it's not going to look like Franklin Square or Broadway. It's half the size. If there never is going to be one solid wall of buildings, there are side yard setbacks on all the properties – there is always going to be breaks between each project. It's not going to be a solid wall. Each property will have a side yard setback."

Ms. Kolligian refers to the buildings on Railroad Place in Saratoga, and asks what is the footage comparison from the middle of the road to the building frontage. "What's the difference if we're trying to get a visual perspective and we're comparing it to downtown on Railroad Place? You are kind of tunneled in."

Mr. Rice: "Two driving lanes, two parking lanes and a sidewalk." They're [proposed project] half the size."



Mr. Riper: "The proposed building would 46 feet from the center line of Route 9. On Railroad Place, approximately 25 feet versus 45 feet."

Ms. Kolligian: "So there is a 20 foot difference in setbacks." She is not talking about height; she is trying to visualize driving down that road where this building may sit in proximity to the road aesthetically.

Mr. Rice: "Between each project there are side yard setbacks; there are zero setbacks on all the building on Broadway and Franklin Square. Like Malta, maybe it's all one project, but there is zero side yard setbacks."

Ms. Kolligian asks, "What is that considered, just commercial?"

Mr. Schachner: "Are you talking about Malta - it is mixed use commercial, residential commercial."

Mr. Rice: "Between each property line on Route 9 there is going to be a side yard setback."

Ms. Kolligian: "We're on the aesthetic question and I'm just trying to get a perspective of the visual when you on the road and where that building sits."

Mr. Rice: "It's not going to look like Franklin Square."

Chairman Dobis: "We need to move on. As it stands right now, we have had some discussion. Are you looking to stay with your opinion?"

Mr. Gabay: "I feel that if we can go to the maximum setback that is allowable by code right now, that would mitigate my concern. He understands there is a limit. That seems to be one of the main issues that I've seen and heard from the Wilton residents. You can't change what can't be changed but if we can accommodate by asking for the maximum amount of setback, I'm compliant with that."

Mr. Mangini: "So now we're 46 feet from the center, so if in fact they move it back it would be 56 feet."

Chairman Dobis: "What I am looking at, its 15 feet to the property line and the maximum you could go is 25 feet."

Addressing Mr. Gabay, Chairman Dobis states: "If it's not moved then you're staying with potential large impact."

Addressing Mr. Mangini, Chairman Dobis asks, "Tony, if it is not moved you still looking to stay with potential large impact?" Mr. Mangini answers yes. "I will say it can be mitigated."

Ms. Kolligian: "I would agree, just on the record. That conversation did come up with a lot of people, that they understand that development is going to happen and pushing it off the road could be taken into consideration. The people who have voiced concern and I believe that some of their concerns would be mitigated if it were pushed a little bit off the road. I know in conversation we have talked and everyone wants to know that we are planning for the future. Perhaps if Route 9 should ever be widened it wouldn't give the perspective of the building being even closer."

Mr. Gabay: "I don't believe the developer wants to put or develop a building in the Town of Wilton where there is bad feelings. I can't see that."

Mr. Schachner: "You have to be careful and people may be offended about what I am about to say and I apologize in advance, but your decision making is not a popularity contest. In fact if you make decisions based solely on public opposition there are numerous court cases and they universally say you can't make decisions based merely on public opposition. Don't make a decision in which your basis for decision is because the public opposed the color purple, I'm going to say, let's not have purple."

Chairman Dobis: "At this point we're looking at [column] three as yes, 'can impact be mitigated by project change?' "

Mr. Schachner: "I don't think you are there yet. I don't think you have characterized the potential impact as small to moderate or potentially large. You can't change the application. If the applicant were to say okay we hereby tell you we'll make 25 foot setbacks then the Board could review that, but that is not what we have right now. We have 15 foot setbacks. That's what you are reviewing and you are not yet at column three because the Board as a group has not characterized the impact as small to moderate or potentially large."

Chairman Dobis: So until you do that, you can't go to three. So at this point, there are only five of us here, what's next?

Mr. Schachner: "You have three choices: we can stop and wait until we have more board members, we can go on and continue to fill out those questions we can fill out and see how far we get and still come back or maybe over the course of the debate, somebody else will be thinking we'll come back to Question 11."

Ms. Kolligian: "Do we have to redo the entire form though, once there are different board members here next month."

Mr. Schachner replies, "No. The Board has answered questions tonight. Those questions are answered."

Chairman Dobis: "Even though a couple of the other board members aren't here."

Mr. Schachner: "You are acting as a board."

Mr. Jon Lapper: "We can move it back it back 10 feet if that is what the Board wants. We were trying to keep it to 15 feet because of the zone – to try and meet what the zone is saying. Ryan asked me look into that in case that came up We could move it back ten feet if that is what the Board wants."

Mr. Rice: "I wanted to see it closer – that's what the discussion was during the planning of the hamlet area."

Chairman Dobis: "Let me ask Mark a question. Now what do we do?"

Mr. Schachner: "It depends. Is that an applicant's representation that the application will be modified to have a 25 foot setback?"

Mr. Lapper: "If the Board requests that condition we'll consent."

Mr. Schachner: "The applicant is leaving it up to the Board. You can make that request and from what I understanding is that the applicant is representing that the applicant will submit a revised plan showing a

setback of 25 feet instead of 15 feet. Applicant has made that representation on the record and you can accept that as a representation. That doesn't change the traffic count; does that change any other element that we would have to know about before we could continue our SEQRA review."

Mr. Riper: "I wanted to read one thing since you mentioned the Comp Plan, building out towards the street and that is one of the items within the Comp Plan, that 'commercial buildings built out to the sidewalk to create a continuous pedestrian environment with parking to the rear. They don't state any setbacks or any requirements or offsets but, that was the intention with the hamlet to bring the buildings toward the road."

Mr. Schachner: "So there is some irony in this, you may have more trouble completing Question 19 as far as consistency with the Comp Plan."

Ms. Kolligian: "But it said building to the sidewalk. Does that make the sidewalk now move back ten feet?"

Mr. Riper: "No, typically the sidewalk is at the right-of-way. In the Comp Plan are traffic calming techniques such as sidewalks, landscape medians and trees and other landscape providing safe streetscape for pedestrian movement throughout the town center. Bringing the building closer to the road causes a traffic calming effect – it is a visual restriction on the road. So people actually slow down."

Mr. Lapper: "We'd offer to move the building back, but not to move the landscaping back because it would mess up the parking lot. So we'd still have the traffic calming still have the rest of the planted area if we just move the building back 10 feet."

Mr. Mangini: "So the sidewalk would stay aside the road."

Mr. Lapper: "We could connect to the sidewalk with the sidewalk on site to get into the building."

Chairman Dobis: "The sidewalk would have stay because it's in the right of way."

Mr. Riper: "The sidewalk is going to remain at the edge of the right of way."

Chairman Dobis: "At this point, the applicant is willing to move the building, keep the sidewalk where it has to be. It has to be in DOT right of way."

Mr. Schachner: Is the applicant representing that the application will be modified. ...

Mr. Lapper: "Yes we agree to a condition of moving it back and then we'd submit that."

Mr. Schachner: "It's not a condition, you are either modifying the application or you are not."

Mr. Lapper: "I don't have it tonight."

Mr. Rice: "What if it's brought up during the site plan when there is a full board and they like it closer."

Ms. Kolligian: "Then we would need to revisit that whole SEQRA."

Mr. Schachner: "Exactly correct."

Mr. Rice: "So we just reopen SEQRA."

Mr. Schachner: "Correct."

Mr. Riper: "You are going from minimum to maximum on building setback"

Mr. Gabay: "I just want to point out to the other board members that commercial buildings built out to the sidewalk create a continuous pedestrian environment, however, this is not strictly commercial, this is a mixed use, there's commercial on the bottom and residential on the top. So I think that there is some wiggle room as far as interpretation is concerned."

Mr. Rice: "That is what the hamlet was: commercial on the bottom and residential on the top floors."

Mr. Gabay: "But the actual language is commercial buildings."

Mr. Schachner: "Where I think we are at is the applicant has stated that the application is modified to increase the setback by ten feet. Correct applicant?" Mr. Lapper states, yes. "The minutes will so reflect. That doesn't to me impede our ability to continue our SEQRA review with the application as modified because all we are talking about is moving the building 10 feet further back. I don't think it changes any other elements of SEQRA review. Does that sound reasonable?"

Mr. Riper: "That sounds reasonable; they would just have to look into other impacts within the site."

Mr. Lapper: "I think we are going to make the building 10 feet shorter."

Ms. Kolligian: "If we had the other four members who are not present, we still need four for a quorum."

Mr. Schachner: "This is one of the ways that the SEQRA process works. It leads to sometimes tweaking, modifying, and revising to accommodate concerns about potential environmental impacts. Do any of the board members feel that with the modified application, with the 10 foot further setback building, do we need to revisit any of the first ten questions?"

The consensus of the Board is no.

Mr. Schachner: "There is one that we checked as 'yes' and that was 'physical change to the project site' was small to moderate impact of more than one year phase or stage. That would not be impacted by setback. We can now look at Question 11 which we preliminarily had a 'yes' answer based on the first bullet "proposed land uses, or project components obviously different from or in sharp contrast etc. Do we still feel that the answer is 'yes' and if so on the first bullet are we characterizing that impact on the modified application as small to moderate or potentially large."

The consensus of the Board is "yes" and "small to moderate".

### **Impact on Historic and Archaeological Resources**

Question 12: *Will the proposed action impact any site or structure of historic, prehistoric or paleontological importance?*

The consensus of the Board is no.

Question 13: *Will the proposed action affect the quantity or quality of existing or future open spaces or recreational opportunities?*

The consensus of the Board: no.

### **Impact of Critical Environmental Areas**

Question 14: *Will proposed action impact the exceptional use or unique characteristics of a critical environmental area (CEA) established pursuant to subdivision 6NYCRR 617.14(g)?*

Mr. Schachner: "I will tell you that this is a reference to a legally designated CEA pursuant to a certain statute and regulation which I don't think we have any in Wilton." Mr. Riper states there are none.

Mr. Schachner: "Then the answer to Question 14 legally has to be 'no'."

### **Impact on Transportation**

Question 15: *Will there be an effect to existing transportation systems?*

*1<sup>st</sup> bullet: Alteration of present patterns of movement of people and/or goods.*

*2<sup>nd</sup> bullet: Proposed action will result in major traffic problems.*

Chairman Dobis: yes; Mr. Rice: no; Ms. Kolligian: no; Mr. Gabay: yes; Mr. Mangini: yes.

Chairman Dobis: "Small to moderate on first bullet."

Mr. Mangini: "I am debating whether it's one or two."

Mr. Schachner: "Do you mean 1<sup>st</sup> bullet or 2<sup>nd</sup> bullet? You can do both. It's not one or the other."

Ms. Kolligian: "I was looking at the 2<sup>nd</sup> bullet but I don't think the major traffic problems will occur outside the property. I understand and totally agree that it's further down the road. But I think it is outside the scope of the location of the project. And because we know through the studies that there is really only one child aged student attending school for every how many units? The number of school aged children. So I am not concerned that this project – it takes into consideration the Heritage, McGregor Village Apartments, that whole crew, the number of students per unit. It was ½ a child per. . ."

Chairman Dobis: "Are you looking at bullet 1 or 2?"

Ms. Kolligian: I was looking at bullet 2. I said "no" because I don't consider the major traffic problems to occur at this location even though I agree there is an issue at the Middle School. I don't think the impact is a mile and a half up the road.

Mr. Mangini: "What is the correct interpretation of that question; immediate or up the road?"

Mr. Schachner: "It doesn't have to be on-site but it is appropriate to look within what you consider the scope of the project. You are not limited to physically right there. It should be within a reasonable scope."

Mr. Riper: "The term 'major' is subjective too."

Chairman Dobis: “You can have precedent; it doesn’t have to be good or bad. This says alteration of present patterns of movement of people or goods. You are going to introduce “x” number of people and now there will be sidewalks. You are going to modify or alter the present patterns because there are no sidewalks there now. So people are going to move differently. Some of these have a negative impact, some have a positive impact. You don’t always check these because these have a negative, you can check something because it has a positive impact.”

Mr. Schachner: “The purpose of SEQRA exercise is to identify adverse environmental impacts. The most responsible way to handle a positive environmental impact is to note it as a positive impact but it is not appropriate to call a positive impact a potentially large impact. That triggers a different level of environmental review that’s specifically intended to deal with adverse impact. It is perfectly appropriate to identify an impact and call it positive and label it small to moderate if that is the Board’s feeling.”

Chairman Dobis: “We have two “no” votes and three “yes” votes but they are all small to moderate. It doesn’t trigger number [column] three.”

Mr. Schachner: “We still need to have four board members go one way or the other small to moderate or potentially large or wait until next month.”

Chairman Dobis: “If what you’re saying and I agree now that I understand it, the word adverse is not in here [the EAF]. I’ve always looked at these as both positive or negative then I would not check bullet one as anything. It’s not an adverse impact.”

Mr. Schachner: “To be honest I was suggesting that it’s sounded to be very responsible to identify that as an impact but to call it a positive impact and characterize it as small to moderate.”

Mr. Mangini: “I can see where it as a negative impact. You have people walking on a sidewalk along the roadside where you’ve got people traveling by legally at 45 mph – that’s legally – what about the people that go 50 and 55 mph. It’s an alteration and I don’t know that it is a positive one.”

Ms. Kolligian: “If we say small to moderate do we have to agree if it’s positive or negative?”

Mr. Schachner: “No. You don’t, I’ve never seen that split, but you don’t.”

Mr. Gabay: “As long as we have four members, a quorum, we can go ahead.”

Mr. Gabay: “I’m still small to moderate”

Chairman Dobis: “I am small to moderate.”

Ms. Kolligian: “I can go small to moderate.”

Mr. Schachner: “I am now putting the an ‘x’ in the box for small to moderate impact aside the 1<sup>st</sup> bullet item and answering Question 15, ‘yes’.”

### **Impact on Energy**

Question 16: *Will proposed action affect the community’s sources of fuel or energy supply?*

The consensus of the Board is “no”.

**Noise and Odor Impact**

Question 17 *Will there be objectionable odors, noise or vibration as a result of the Proposed Action*

The consensus of the Board is “no”.

**Impact on Public Health**

Question 18: *Will proposed action affect public health and safety?*

The consensus of the Board is “no”.

**Impact on Growth and Character of Community or Neighborhood**

Question 19: *Will proposed Action affect the character of the existing community?*

Chairman Dobis: He asks for clarification on bullet four: *proposed action will cause a change in density of land use.*

Mr. Schachner: “It doesn’t mean in the context of does it comply with zoning or not. It means what’s out there now, as lay people, how do you see the current density of land use now and will the proposed action cause a change in that density.”

Ms. Kolligian would put small to moderate. “Just because it is a change, not positive or negative.”

Chairman Dobis understands now that it doesn’t mean the zoning designation. He indicates the potential impact to be small to moderate.

Mr. Rice: He agrees [the answer is “yes” and the impact is small to moderate.]

Mr. Mangini agrees the answer is “yes” and the impact is small to moderate.

Mr. Schachner: “We have answered Question 19 ‘yes’ and at least so far we have identified the 4<sup>th</sup> bullet item as a small to moderate potential impact.”

Chairman Dobis in referencing the 6<sup>th</sup> bullet *Development will create a demand for additional community services.* He doesn’t know to what degree there will be a potential impact. “Did anyone else mark it?”

Ms. Kolligian did not.

Mr. Mangini: “Yes, I think you have to. It’s obvious that it will have some effect.”

Chairman Dobis: In his opinion the potential impact is going to be small in view of his research on other apartment complexes out there and based on all the other development in the town.

Ms. Kolligian would agree with small to moderate. “As long as we’re not pinpointing where we think or how much. The schools could have 20 new students who knows?”

Mr. Schachner: “I think I’m hearing consensus on: *Development will create a demand for additional community services.* Small to moderate impact.”

Mr. Gabay agrees.

Ms. Kolligian has a question regarding the 7<sup>th</sup> bullet: *Proposed action will set an important precedent for future projects*. “I think we addressed this back on Question 11. We had the small or moderate or potentially large debate. But the fact that applicant agreed to move the building back I believe has mitigated that precedent. I would consider it still an impact, but small to moderate.”

Chairman Dobis, Mr. Gabay and Mr. Mangini agree with that. Chairman Dobis asks if everyone agrees. The consensus across the Board is “yes”.

Mr. Schachner: “We’ve identified three small to moderate impacts in answering Question 19.”

Question 20: *Is there or is there likely to be, public controversy related to potential adverse environment impacts?*

The consensus of the Board is “yes”.

Mr. Schachner: “I think that’s the only responsible answer because we’ve had input from the public. I think there is public controversy.”

Mr. Schachner has heard that someone in the audience suggests that a question has been skipped.

Dennis Towers draws attention to Question 19, bullet 3: *Proposed action will conflict with officially adopted plans or goals*.

Mr. Schachner: “That’s one of the bullet items. We didn’t read every bullet item we skipped hundreds of them. We read every question.” He commends the Board for their debate. The Board has answered all 20 questions. He summarizes the Board’s decisions. “They identified 5 questions with yes answers and within the context of doing so you identified a total of 6 potential impacts all identified as small to moderate. Page one of the EAF will indicate the ultimate SEQRA determination: the determination of significance, for lead agency use only. Part I has been checked by applicant; Part II can be checked off as the Board has completed that. There are 3 choices, A, B & C. The Board can now make a motion.”

Ms. Kolligian: “Would the change in setback require the condition?”

Mr. Schachner says it doesn’t, because the applicant has modified the application and has made that representation on the record; that the application now pending before this Board is a modified application in which the building setback has been increased from 15 feet to 25 feet. Mr. Lapper, applicant’s counsel, agrees.

Chairman Dobis: “Do we do the motion or do we check box ‘A’ first?”

Mr. Schachner: “The motion would be to check box “A” by issuing a SEQRA negative declaration.”

On a motion introduced by Mr. Rice, the board adopted the following resolution:

**NOW, THEREFORE, BE IT RESOLVED**, that a determination of negative declaration on SEQRA has been made for the Gordon Residential Development LP project located at Route 9, north of the intersection Route 9 and Northern Pines on 9.68 acres. The resolution



was seconded Erinn Kolligian and duly put to vote, all in favor, on this day, May 15, 2013.

SEQRA review ends at 9:47 p.m.

Chairman Dobis asks for a motion for preliminary approval. Mr. Rice asks if they shouldn't wait to see modified plans with the setback. Chairman Dobis states the modification is on the record. Mr. Riper adds that that can be taken care of at final. Mr. Lapper is perusing Mr. Riper's letter and states that applicant agrees with everything that he said which includes when looking at Phase 2, whether or not to put in a right turn lane. "No one is asking for it now but we will look at it and you can tell us to do it."

Mr. Lapper describes the discussions with the neighbor, Mr. Liska who has agreed to a compromise regarding the fence. He asks that the white vinyl fence start 125 feet back, creating no sight distance issue, and then to go back to the edge of the garage and then to have a gate which will probably vinyl chain link, enabling access for maintenance of the landscaping, then no fence (indicating) and another gate back here and then the fence would go to 75 feet from the property line. It's a compromise, but this way the garage acts like a fence and it won't be necessary to put a fence behind the garage. Mr. Liska indicates his agreement.

Mr. Schachner did hear one comment from the public that one could argue is a legal issue, which is whether this Board has the authority to approve the location of the dumpsters. If he understands correctly, the law uses the word "should" not "shall" and this is confirmed by Mr. Riper, but there is a legal distinction in those two words. Shall is mandatory and absent an express waiver authority within the Planning Board rules and regulation, the Board would not have the authority to approve something that "shall" be done. Should is different, and those words have legally distinct meanings. Should is more aspirational. It is something the Board is not bound by.

Mr. Lapper states one dumpster that was located near Mr. Liska's residential home was moved and the one on the north side was kept for commercial uses.

Mr. Riper asks if there is anything that needs to be discussed before a motion for preliminary is made.

Mr. Lapper explains that applicant would like preliminary approval so that formal applications can be submitted to DOT, DEC and other state agencies which want to see preliminary before the application can be processed.

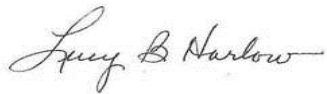
On a motion introduced by Mr. Gabay, the board adopted the following resolution:

**NOW, THEREFORE, BE IT RESOLVED**, that preliminary site plan approval of the application as revised is granted for the Gordon Residential Development LP project, a mixed use building containing 114 units and 16,357 SF of retail space, located on Route 9, north of the intersection Route 9 and Northern Pines on [9.86]\* acres. The resolution was seconded William Rice and duly put to vote, all in favor, on this day, May 15, 2013.

\*The motion states the property is 9.68 acres and is corrected to say 9.86 acres.

**ADJOURNMENT:** At 9:56 p.m., David Gabay moves to adjourn the meeting. William Rice seconds the motion and all board members are in favor on this day, May 14, 2013.

Approved: June 19, 2013

A handwritten signature in cursive script, reading "Lucy B. Harlow".

Executive Secretary