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PLANNING BOARD

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Michael Hale

Joel Koval

Eric Ophardt

Kim Paulsen

Tom Werner

(alternate) Eric Prescott

Planning Board Meeting
September 11, 2013

Those present at the September 11, 2013 Planning Board meeting were:

Planning Board: R. Ferraro, Chairman, E. Andarawis, M. Hale, J. Koval, E. Ophardt,
E. Prescott – Alternate Member

Those absent were: K. Paulsen
T. Werner arrived at the meeting at 8:34p.m.

Those also present were: J. Scavo, Director of Planning
J. Bianchi, M J Engineering and Land Surveying, P. C.
P. Pelagalli, Counsel
J. Dean, Secretary

Mr. Ferraro, Chairman, called the meeting to order at 7:00p.m. All in attendance stood for recitation of the Pledge of Allegiance. At Mr. Ferraro's request a moment of silence was observed in honor and remembrance of those who lost their lives in the terrorist attack on the Twin Towers in New York City twelve years ago. He announced that Mr. Prescott, Alternate Member would sit as a full voting member in Ms. Paulsen's absence.

Minutes Approval:

Mr. Ophardt moved, seconded by Mr. Hale, approval of the minutes of the meeting of August 13, 2013 as written. Ayes: Ophardt, Andarawis, Hale, Koval, Ferraro. Noes: None. Abstained: Prescott

Public Hearings:

[2013-018] **Park View Estates** – Proposed (4) lot subdivision, Longkill Road – Preliminary public hearing and possible determination. SBL: 250.-1-11.1

Mr. Ferraro explained the review and approval process to those present, stating that the Board was required to render a determination pursuant to SEQRA (State Environmental Quality Review Act) prior to conducting a public hearing on this application. He explained that the Planning Board would assume Lead Agency status for the project and issue a negative declaration as a “formality” which neither granted nor implied approval of the subdivision application.

Mr. Ophardt moved, seconded by Mr. Hale, to establish the Planning Board as Lead Agency for this application, an unlisted action, and to issue a negative declaration pursuant to SEQRA. The motion was unanimously carried.

Mr. Ferraro, Chairman, called the public hearing to order at 7:04p.m. The Secretary read the public notice as published in the Daily Gazette on September 2, 2013.

Mr. Andrew Schauffert, consultant for the applicant, presented this application that remains generally as presented at the July 9, 2013 meeting. Although the applicant proposes the transfer of property to the adjoining property owner at 9 Woodridge Court to resolve an encroachment issue on Lot #1, that property owner has not responded to correspondence - including a certified mailing – issued by Mr. Garry Heflin, applicant. The land transfer would result in the reduction in the area of Lot #1 by 536.50 SF: its size on the revised plan is 21,003.90 SF. The consultant explained that the applicant has been advised that approval from the owner of the Kain Terrace subdivision for driveway access to Kain Terrace for Lot #4 must be provided: such approval has not yet been obtained.

Mr. Scavo reported that comments from Mr. Myers, Director of Building and Development and Mr. Hartnett, representative of the Trails Subcommittee of the Open Space, Trails, and Riverfront Committee, have been forwarded to all Board members.

Mr. Scavo reported that, in a memo dated September 4, 2013, Ms. Reed, Chief of the Bureau of Fire Prevention, requested that the appropriate postal addresses as assigned by the Bureau and approved by the Post Office be included on the final subdivision plan.

Mr. Scavo reported that Mr. Myers, Director of Building and Development, provided the following comments regarding this application in a memo dated August 30, 2013. The project appears to meet all applicable zoning requirements. The location of the proposed trail should be clarified. A crosswalk at Parkside Trail would be “the better sight distance option.” The applicant/developer should be required to provide soil restoration on all sides of the proposed new homes. The Stormwater Pollution Prevention Plan is preliminary and incomplete.

Mr. Scavo provided the following comments issued by the Planning Department. The property encroachment from 9 Woodridge Court appears to have been addressed with the reconfiguration of the proposed lot line for Lot #1, though owner authorization from the property owner at 9 Woodridge Court should be provided to document that the property owner is in agreement with the land conveyance. The following standard note should be added to the plan:

Underground utility connections to a dwelling unit are not allowed to be constructed underneath a private driveway. Such utilities include, but are not

limited to, water laterals, sewer laterals, gas, electric, and storm/foundation drains. A Certificate of Occupancy will not be issued without all utilities complying with this requirement.

Mr. Scavo stated that Mr. Montague, Environmental Specialist, reported that the ECC offered no additional comments or recommendations on this application.

Mr. Bianchi reported that, after review of the preliminary subdivision plans and associated documents provided by the applicant, M J Engineering and Land Surveying, P.C. provided the following comments. Comment 6 of the July 5, 2013 review letter indicated that the plan submitted required revisions in order to meet the minimum bulk lot requirements or that the applicant needed to seek relief from the Zoning Board of Appeals: the current plan appears to meet the minimum bulk lot requirements. As noted in Comment 10 of the July 5, 2013 letter, it was suggested that there be a review of shared driveways for the project. The plan as submitted still shows four individual driveways: the Planning Board should provide the applicant direction as to whether or not shared driveways should be evaluated. As noted in Comment 11 of the July 5, 2013 review, all lot grading shall be such that drainage is directed away from the homes and toward lot lines and, ultimately, to an approved drainage course as required by Section 86-7(A)(5) of the Town Code. The submitted grading plan substantially conforms to this requirement with the exception of the grading between Lots #1 and 2. The grading between these lots must be modified such that surface runoff is substantially directed along lot lines and not onto an adjacent lot. As noted in Comment 12 of the July 5, 2013 review letter, should any basement sump pumps be deemed required under the criteria stated in Section 86-7(A)(6) of the Town Code, their end discharge locations must be noted on the plans. In addition, if a gravity discharge for foundation drainage is proposed, its discharge location must be shown. As noted in Comment 16 of the July 5, 2013 letter, a note shall be added to the plat indicating that no utilities shall be installed under proposed driveways. The submitted Grading Plan must show locations for all erosion and sediment control measures provided within the Stormwater Pollution Prevention Plan for use during construction. This includes silt fencing, concrete washout areas, and construction entrances. M J Engineering and Land Surveying, P. C. recommends that the means to accomplish this is by providing a standard individual lot sediment and erosion control plan similar to the NYSDEC Standard Specifications for Erosion and Sediment Control – Appendix E, Erosion and Sediment Control Plan for Small Homesite Control. Survey Note 8 indicates that the parcel does not include any mapped regulated wetlands. While there are no mapped wetlands, there should be an evaluation of the existence or absence of any unmapped regulated wetlands within the project site. Should any regulated wetlands be identified, their boundaries must be shown on the plat. During the applicant's last appearance before the Planning Board there was discussion regarding relocation of the proposed Town trail currently to be developed along the easterly side of Longkill Road to the project's frontage: there should be further discussion on this proposal. If the trail is to be relocated, it may impact how proposed utility extensions that would service this project would be installed. Town staff previously noted that Kain Terrace, while planned for conveyance to the Town as a public right of way, is still privately owned and that the applicant may have to secure an access easement for the proposed driveway accessing Lot #4. The applicant should provide the Town an update regarding discussions with the private land owner of Kain Terrace to ensure access is retained over the private roadway if not conveyed to the Town as a right-of-way in the near future. The associated

construction details submitted for the proposed public water and sewer systems have not been reviewed for conformance with the respective agency requirements. The final plans shall include any technical comments offered by these agencies with copies of correspondence received furnished to the Town.

The following comment provided by the Town Engineer regarded the Stormwater Pollution Prevention Plan. The project includes the construction of single family homes with less than 5 acres of total disturbance at project build-out. As such, it meets the requirements of only requiring a Stormwater Pollution Prevention Plan that would include erosion and sediment controls as identified in Appendix B, Table 1 of General Permit GP-0-10-001. The submitted Stormwater Pollution Prevention Plan provides the minimum requirements to satisfy permit eligibility.

Ms. Gayle Gendron, 85 Longkill Road (11 Kain Terrace), expressed her concerns regarding the installation of a driveway for Lot #4 from Kain Terrace since existing private gas, electric, cable, and telephone lines that service her property are located parallel to the Kain Terrace right-of-way. Reporting that her basement sump pump runs nearly 365 days a year and that her employment is dependent upon cable and telephone lines, she is fearful of interruption of those services and asked that the Planning Board require the addition of a note to the subdivision plan that states that it is imperative that her utility services remain undisturbed. Ms. Gendron stated that it is her understanding that the parcel is in close proximity to an identified Frosted Elfin Protected Area and asked that the area be identified on the plan and protected during site development. The speaker concluded her remarks by stating that she had not received notification of the project as required by the Town Code and she requested that the Board ensure that all neighbors are “given appropriate notice” before rendering a decision on the application.

[Author’s Note: Subsequent to the meeting, Mr. Scavo, Director of Planning, confirmed that the applicant’s consultant, Santo Associates, had submitted postal form PS3877 which certifies that notification regarding this application was mailed as required to Ms. Gayle Wassenaar, or Current Occupant, of 11 Kain Terrace as well as other property owners situated within 500’ of the Park View Estates property boundaries on August 29, 2013.]

Mr. Ronald Vanarnum, 67 Longkill Road, commented that the water retention areas currently being constructed within the Kain Subdivision located just north of the proposed development site appear to be deep ponds with no fencing creating, in his opinion, a hazardous situation. Although he speculated that the ponds were 10’ – 15’ deep, Mr. Scavo reported that the town has been monitoring the development and that siltation had caused the infiltration ponds to retain water to an approximately 3’ depth. Mr. VanArnum stated that although water lines exist along Longkill Road, his home is not connected to the public water supply. Mr. Scavo stated that he would investigate the possibility of connecting 67 Longkill Road to the system.

In response to Ms. Gendron’s concern that the proposed Lot #4 may cause Kain Terrace to exceed the number of allowable residences on a cul-de-sac, Mr. Koval explained that Lot #4, though accessed via Kain Terrace, has frontage on Longkill Road.

Mr. Bill Lorensen, 14 Hearthside Drive, was concerned about the management of water from the site since water has, at times, flowed across Longkill Road in the vicinity of the proposed subdivision. Mr. Schauffert explained that water from the site will be directed to the existing drainage corridor along Longkill Road and will flow northward from the site. Mr. Scavo explained that although drainage along Longkill has been interrupted to the north as a result of development on the Longkill Properties, LLC (T. Peterson) parcel, the builder has been working with the Highway Department to resolve the problem.

Mr. Dave Gibson, 107 Longkill Road, citing the cumulative impacts of inadequate stormwater management and increased traffic along Longkill Road that have resulted from recent development in the area, described the three (3) proposed curb cuts along the roadway as “out of line” and “hazardous.” Stating that the drainage problems existing on the Kain Subdivision site likely resulted from high groundwater levels rather than siltation as identified in the Town Engineer’s report, he asked the Board to “be conservative” when considering the health and safety impacts that may result from the construction of four additional homes. He recommended that the Board members require an “ecological review” of the parcel and encouraged them to consider the natural resources existing on the site during their deliberations.

There being no additional public comment, Mr. Ferraro moved, seconded by Mr. Koval, to close the public hearing at 7:30p.m. The motion was unanimously carried.

Mr. Koval commented that the backyard provided for Lot #4 was extremely limited. Mr. Schauffert explained that since the lot has frontage on Longkill Road as well as Kain Terrace, the lot is considered to have “two front yards:” the proposed setbacks respect the Town Code requirement for such a situation. He noted that the applicant would like to orient the residence toward Kain Terrace since this would allow for the construction of a front-load garage. He stated that the applicant is prepared to delay construction on Lot #4 until such time as Kain Terrace is conveyed to the Town. Mr. Koval noted that since Kain Terrace has not yet been conveyed to the Town, the Planning Board cannot approve a project that proposes the construction of a driveway with access to private property. He also commented that he finds the narrowness of the backyard area unacceptable. Mr. Ophardt expressed his concerns for the driveway location for Lot #1 that places the curb cut directly opposite Parkside Trail since the location increases the likelihood of conflicting traffic movements. In response to his comment that the applicant did not provide combined driveways as an alternative design plan as discussed by Board members at the previous meeting, Mr. Schauffert explained that potential homebuyers generally prefer individual driveways. Although Mr. Ferraro observed that driveways for Lots #2 and 3 could be quite easily combined, Mr. Koval stated that he is not a proponent of combined drives. Mr. Hale, too, stated that he was “not terribly concerned” about the driveway locations and remarked that multiple driveways often provide a calming effect on traffic. In response to Mr. Ferraro’s query regarding the presence of the Frosted Elfin butterfly or other protected species or habitats on or in close proximity to the proposed subdivision, Mr. Bianchi explained that information provided in the Stormwater Pollution Prevention Plan submitted by the applicant indicates that sign-offs regarding these environmental concerns have been provided by NYSDEC as well as the US Fish and Wildlife Service. Addressing the issue of trail location, Mr. Ferraro reported that it was the consensus of the Town Engineer as well as professional staff members that the trail be located, as previously approved, along the easterly side of Longkill

Road. In response to Mr. Schauffert's question concerning the failure of the property owner at 9 Woodridge Court to address the encroachment issue, Mr. Scavo explained that the Planning Board would be required to obtain an owner authorization form from that owner in order to proceed with the land transfer. He stated that since the garage has been constructed on Mr. Heflin's property in violation of Town Code, the Building Department could issue a notice of violation and require the owner to bring the site into compliance with town regulations should the property owner refuse to cooperate with the applicant. Board members will reconsider the application when the identified issues of concern are more clearly addressed.

Old Business:

[2012-030] **Crescent Woods** – Proposed (71) lot cluster subdivision, 1567 Crescent Road – Revised conceptual review. SBL: 283.-2-8

Mr. John Stevens, consultant for the applicant, presented this application that was last reviewed by the Planning Board at its June 25, 2013 meeting. The conventional subdivision plan has been revised to show a double ingress/egress onto Crescent Road and conformance with R1 zoning standards that require a minimum lot size of 20,000 SF. The lot yield is fifty-three (53) lots. The consultant notes that the conventional plan has limited common area, does not preserve an undisturbed treed buffer with adjacent homes, and does not allow for installation of a scenic trail system. After applying the cluster density calculations from Town Code Section 179-37, Mr. Stevens concludes that a total of seventy (70) lots plus the parent parcel could be reasonably accommodated on the site. Rationale for utilizing a cluster design included the following: the project is located between four (4) existing subdivisions; the parcel lies in close proximity to Okte Elementary School; interconnectivity between the elementary school, adjoining subdivisions, and the project site would be enhanced through development of an internal pathway system; residents of existing neighborhoods have expressed a desire to limit development of the parcel. In his opinion, "clustering" would provide a "deeded undisturbed rear buffer" between the proposed development and exiting neighborhoods. Mr. Stevens emphasized the fact that the plan no longer calls for a roadway connection to an existing subdivision. A clustered plan would provide for lot sizes that would range from 10,000 SF to 15,000 SF with a 60' minimum lot width at the building line, 20' minimum front yard setback, and 10' minimum side yard setback. A wetland mitigation area is proposed for a parcel of land located between the two proposed roadways with frontage on Crescent Road.

Mr. Scavo reported that Mr. Myers, Director of Building and Development, provided several comments regarding this application in a memo dated August 30, 2013. Mr. Myers notes that the project narrative refers to the proposed plan as a "cluster subdivision" and issues the following comments regarding the proposed bulk requirements: the applicant should consider increasing the lot sizes since 10,000 SF is a very small lot size; the proposed 60' lot width severely limits the home styles available to potential homeowners; approving a lot dimensions that will result in many variance requests seems like poor planning; a 20' front setback is an excessive reduction; other cluster subdivisions such as Southwick Meadows used a 30' front setback; the proposed 40' rear setback appears to be applied only to the perimeter lots. Mr. Myers amplified this comment by stating that varied setbacks "will be a problem." At a minimum, lots which back up to wetlands should have the 40' rear setback restriction as well

(this would likely make Lots #18, 19, 20, 21, 22, 51 – 56 unbuildable). The minimum allowable road width per the NYS Fire Code is 26': asphalt wing curbs are not included in the road width since they are utilized for drainage control rather than as drivable width. Several lots (Lots #6, 8, 9, 10, 13, 21, 22, 41, 59, 60, 64, 65, 66) would become "less that desirable and possibly unbuildable" if proper setbacks were applied. Mr. Myers recommends that a site plan showing the correct setbacks and wetland buffers be submitted prior to Planning Board approval. He notes that when applying setbacks correctly per R1 zoning and considering the viability of building on lots with wetlands, the conventional subdivision layout results in only 45 buildable lots: 4 others would be questionable. No easement or trail connection to the existing trail off Patriot Circle is shown on the plan. The narrative supplied with the application stated that the entrance roads are a little over 300' apart: this appears to be measured to the centerline of the entrances. The code requires entrance roadways to be "at least 300' apart." If the 25' buffer along the property lines were eliminated or at least reduced, the proposed roadways would be more compliant. There is no requirement for this buffer and the inside edges of the two rights-of-way are approximately 235' apart – less that the required 300'.

Mr. Scavo reported that Ms. Reed, Chief of the Bureau of Fire Prevention, offered comments regarding this application in a memo dated September 4, 2013. The ingress/egress roadways must be placed a minimum of 300 feet apart: the proposed roadways appear to closer together than 300 feet. A minimum roadway width of 26 feet is required for fire apparatus roads per the Fire Code of New York State. Postal addresses as assigned by the Bureau and approved by the Post Office must be included on the final subdivision plan.

Mr. Scavo reported that the Planning Department is in full agreement with the comments issued by M J Engineering and Land Surveying, P. C., the Town's Designated Engineer. Specific comments will be issued when a more code-compliant plan is submitted for review.

Mr. Scavo explained that Mr. Montague, Environmental Specialist, reported that the ECC offered no additional comments or recommendations on this application.

Mr. Bianchi reported that M J Engineering and Land Surveying, P.C. offered the following comments regarding this application. Though the engineering firm offered no additional comments pursuant to SEQRA at this time, if and when the number of lots is determined, the Full Environmental Assessment Form should be revised accordingly. The conventional subdivision as submitted for the purpose of establishing the lot count under the cluster subdivision continues to show lots that may not be viable as discussed at a workshop to review the plan. The issues that remain are as follows: Lots #1 through 4 and 35 through 40 show double frontage. Section 179-26(D) of the Town's Subdivision Regulations indicates that double frontage lots should be avoided except where they are essential to provide separation of residential development from arterial streets or other disadvantageous uses. It does not appear that the stated criteria is being met, warranting the double frontage lots. Lot #33 may not be buildable due to lands constrained from regulated wetlands. With the intent of the landowner to preserve the existing home, it may be necessary to exclude that area from the conventional subdivision layout as this lot effectively is encumbered for future development. At this stage, it may be appropriate for the Planning Board and/or Town staff to identify a maximum lot yield by eliminating some or all of the above lots, regardless of whether the project proceeds as a

conventional or cluster subdivision. As noted in Comment 5 or the June 21, 2013 review letter, the project proposes two access points off of Crescent Road. The eastern most entrance should attempt to align with the existing ingress/egress to the development across the street or discussion offered as to why it is not feasible. As noted in Comment 7 of our June 21, 2013 letter, there must be an assessment of the sight distance at each proposed intersection to ensure that there are clear lines of sight entering and exiting the project. The project narrative notes that the proposed right-of-way will be 50 feet in width and the roads will have a 22 foot wide paved surface. Section 86-6(B) of the Town's Code sets the minimum right-of-way width to 60 feet for all street types. Further, while the cluster subdivision standards allows for a 24 foot wide paved surface, there needs to be consideration of the minimum road width to satisfy the Fire Code of New York State, which calls for a 26 foot wide paved surface when fire hydrants are provided. Both the conventional and conservation layouts must be revised to provide for the minimum right-of-way width. M J Engineering and Land Surveying, P.C. would defer to the Town staff regarding the minimum paved surface, but at a minimum it must satisfy Section 86-6(B) of the Town's Code which requires a 24 foot wide paved surface. Given the current phase of the Town's review of the project, any further comments on the technical and utility design elements of the project will be withheld. Should the project proceed through the Town's regulatory review process, additional technical comments will be offered.

Mr. Ferraro expressed his "disappointment" with the plans submitted for review, noting that after the last meeting at which this application was discussed, he appointed a three-person committee to meet with the applicant's consultant to consider revisions to the plan to make it not only more code-compliant but also more reflective of the Board's recommendations. In his opinion, the subdivision plans presented for review were "worse than the first plan" since the conventional plan proposed many obviously "unbuildable" lots and the cluster subdivision did not include trail connections to adjoining subdivisions. Remarking that the applicant "had a long way to go," he stated that it is the conventional subdivision that provides the basis for calculating the number of lots that may be approved for a cluster subdivision. He noted that the Planning Board may require a reduction in that number to address environmental concerns or to provide benefits for the entire community. Mr. Hale stated that, he too, expected Mr. Stevens to present a plan with fewer lots that would be more in keeping with the Town Zoning Code. He reminded the consultant that ACOE policies generally require a 40' separation between proposed land disturbance and wetland areas: he recommended that the consultant consider this requirement in the design plan. Mr. Hale supported trail connections between the proposed development and existing neighborhoods, plans that illustrate the required roadway width necessary to accommodate emergency vehicles, and consistent front yard setbacks that would help to establish a "consistent theme" throughout the subdivision. Mr. Ophardt expressed his dismay that the applicant submitted a revised plan that was quite similar to the one previously submitted that the Board "had decided needed more innovative design." Instead of a "typical subdivision," Mr. Ophardt encouraged the applicant to design one with more open space that would be "beneficial to the residents of Clifton Park." Mr. Andarawis agreed, stating that he would like the applicant to provide a "larger community benefit" rather than larger stormwater management areas. Mr. Ophardt asked that the applicant consider development at The Vistas which "accentuated the natural beauty of the site." Mr. Koval cited the number of double frontage lots contained within the design, commenting that it appeared that the applicant attempted to "squeeze more lots than reasonable" onto the parcel. He advised the applicant to submit a more

reasonable conventional design plan with appropriate setbacks from designated wetlands and provided a substantial public benefit. Mr. Ferraro specifically noted that although the plan called for the preservation of a “homestead lot” within the subdivision, that lot did not provide a public benefit. He called on the applicant to submit “a good design plan” for the Board’s consideration. Although Mr. Stevens observed that the lot sizes proposed in the revised plan submitted for review at this evening’s meeting were similar to existing lots along Pico Road, he agreed to rework the subdivision plans to reflect the comments, concerns, and recommendations rendered by Planning Board members, the Town Engineer, and professional staff members.

New Business:

[2013-027] **Boni Builders, Inc. – Grooms Road** – Proposed (2) lot subdivision, 912-914 Grooms Road – Conceptual review. SBL: 271.-2-35.1

Mr. Duane Rabideau, consultant for the applicant, presented this application that calls for the subdivision of 24.28 acres of land located on the southwesterly line of Grooms Road approximately 1,600 feet southeast of its intersection with Appleton Road lying within the CR (Conservation Residential) zoning district. The applicant would create two (2) lots of 13.17 acres and 11.11 acres, respectively, for the construction of two single-family residences. The lots will be served by individual wells and septic systems and accessed by a common drive located within a 30’ wide ingress/egress and utility easement. Mr. Rabideau reported that he was in receipt of comments prepared by M J Engineering and Land Surveying, P.C. and that many of the comments have already been addressed.

Mr. Scavo reported that Mr. Myers, Director of Building and Development, offered the following comments in a memo dated August 30, 2013. A permanently deeded access for the shared driveway will be required. The required septic and well separation distance must be 200’ if the well is located down gradient from the septic system. Mr. Rabideau explained that the proposed wells were located uphill from the septic systems.

Mr. Scavo provided comments prepared by the Planning Department. A note should be added to the plans the following:

The Permanent Drainage Easement is an existing agreement recorded within the Saratoga County Clerk’s Office and is between private property owners for which the Town is not a party to.

An additional note must be added to the plan which states:

No disturbance or construction activities shall occur within the NYSDEC wetland unless permits are obtained from NYSDEC.

The mitigation fee for the Western Clifton Park GEIS preparation will be applicable: a payment of \$348.00 per each new dwelling unit will be required to be paid prior to the stamping of the final plan. A parkland fee of \$850.00 for the newly created lot will be due prior to the stamping of the final plan.

Mr. Scavo stated that Mr. Montague, Environmental Specialist, reported that the ECC offered no comments or recommendations on this application.

Mr. Bianchi reported that M J Engineering and Land Surveying, P.C. provided the following comments regarding this application. Initial comments related to SEQRA. Based upon review of Part 617 of NYS Environmental Conservation Law, the project appears to be an “Unlisted” action. If the Planning Board is to request Lead Agency status under SEQRA, the need to undergo a coordinated review is optional. Under a coordinated review, involved/interested agencies to be engaged may include, but are not necessarily limited to the following: Saratoga County Planning Board – 239m referral for projects located along a County highway; NYS Office of Parks, Recreation and Historic Preservation – potential identification of cultural or historic resources if determined to be subject to the NYSDEC Phase 2 Stormwater Regulations; NYS Department of Environmental Conservation – potential identification of threatened and endangered species if determined to be subject to the NYSDEC Phase 2 Stormwater Regulations. The plat indicates that the total site disturbance will be just under an acre of land at full build-out. As such, it would not be subject to the NYSDEC Phase 2 Stormwater Regulations and General Permit GP-0-10-001. Based on prior and proposed land disturbances, there is a potential that the project could be considered a “larger common plan” pursuant to GP-0-10-001, and a Stormwater Pollution Prevention Plan addressing sediment and erosion control may be required. The project is located within the Town’s Conservation Residential (CR) District. The proposal for single family homes is a permitted principal use within the CR District as noted in Section 208-16(D)(1)(b) of the Town Code. It appears the applicant is pursuing a development option consistent with Section 20816(E)(2)(b) of the Code. Review of the proposed lot configuration indicates that both lots appear to meet the minimum bulk lot requirements for the CR zone. The plat includes contours, believed to be at 5-foot USGS contour intervals, as required pursuant to Section 179-8(B)(1)(a) of the Town’s Subdivision Regulations; however, there are no elevation labels. Section 179-26(A) of the Town’s Subdivision Regulations requires that the owner shall offer to the Town, Class A, B, money in lieu of land or a combination of the three. The plan submitted suggests no land will be offered as part of the project. The Town will need to review the proposal for what appears to be an offer of payment in lieu of for public land to ensure it is acceptable. The plat shall note how the existing NYSDEC wetland boundary has been determined. This is of critical importance relative to the proposed septic system on 912 Grooms Road and its proximity to the 100-foot NYSDEC buffer. It is suggested that the existence of existing wetlands be identified in plot plans submitted for building permits as well as within deeds for disclosure purposes to future landowners. The shared driveway proposed should include a maintenance agreement. A draft agreement should be provided to the Planning Board attorney for review as to form and content. The driveway proposed must include the provided verses required turning sight distance based upon ASHTOO standards for the posted speed limit of Grooms Road. The plat indicates the total disturbance anticipated for the development will be less than 1 acre. The limits of disturbance are without actual proposed grading and must be validated based upon such information. In the event the net disturbance exceeds 1 acre, the project will be subject to the NYSDEC Phase 2 Stormwater Regulations and General Permit GP-0-10-001. In reviewing the plans, it appears that the common driveway has been excluded from the total land disturbance. A review of the most recent aerial imagery of the parcel from 2011 suggests that this driveway may have been constructed in the past year or two. If the driveway was constructed in the past two years, and the net disturbance including the driveway exceeds 1 acre, it may be considered a “larger common plan” pursuant to Part I.A.1 of GP-0-10-001, and a Stormwater Pollution Prevention Plan addressing sediment and erosion control would be required. The applicant shall

provide documentation as to when the driveway was constructed to resolve permit requirements with respect to stormwater. It is unclear from the plan submitted for each lot, the type of septic system being proposed (i.e. absorption, shallow absorption or engineered mound or raised bed). Septic Note 17 on the plans for each lot suggest both septic systems are mounds due to the prohibition of the removal of stumps (consistent with Appendix 75-A, Section 75-A.9(c)(4)(ii)), however there are no details specific to the required pressure distribution (Appendix 75-A, Section 75-A.9(c)(3)(vi)). Clarification as to the type of septic systems being proposed is required. Should a raised bed or mound systems be required, the noted grading plan discussed previously shall incorporate required septic system grading. It is assumed that the applicant has already obtained 911 emergency response numbers for the newly-created lots. The applicant shall confirm that the lot numbers shown are appropriate with the Town prior to filing the plat with the Saratoga County Clerk.

In response to Mr. Bianchi's comments, Mr. Rabideau explained that site development will require less than one acre of disturbance and Mr. Boni, applicant, reported that the Saratoga County Department of Public Works has approved the driveway location.

Mr. Hale observed that this was a "wide open site" and recommended that the applicant consider the installation of landscaping to create a "more aesthetically pleasing and visually appealing" site. In response to Mr. Ferraro's question regarding the applicability of the standard note regarding airport noise, Mr. Scavo stated that he would require that the note be added to the plan if it was relevant. Board members appeared to find the subdivision proposal generally acceptable.

[2013-028] **Siena Fence Company** – Proposed 1,500 SF storage building, 202 Ushers Road – Conceptual site plan review. SBL: 259.-2-30.21

Mr. Chris Litchfield, representative of the Siena Fence Company, presented this application for the Board's consideration. He explained that the applicant seeks approval to construct a 30' x 50' storage building with a 12' open air "lean to" on a 3.07 acre parcel located on the southeasterly quadrant of the intersection of US and NYS Route 9 and Ushers Road within the B3 zoning district. No water or septic services will be provided to the proposed building. He noted that the construction will result in a loss of 1% of the existing greenspace: the total greenspace remaining after construction will be 41%.

Mr. Scavo explained that Mr. Myers, Director of Building and Development, offered the following comments regarding this application in a memo dated August 30, 2013. The storage building must meet all the requirements of the Building Code of New York State. Mr. Myers believes that there are multiple occupants operating businesses on this property, that signage has been installed without proper approvals, and that product displays and signage have been located within the right-of-way of NYS Route 9. He recommends that no approvals be granted until these apparent violations have been corrected.

Mr. Scavo offered Planning Department comments. As part of the site plan approval, the Planning Board may wish to require the submission of a landscaping plan since a significant vegetative buffer along the Ushers Road would improve the site visually and aesthetically.

Outdoor display areas should be shown on the plan for the Planning Board's consideration since these areas were not previously reviewed and/or approved by the Board. Mr. Scavo explained that the previously approved site plan dated from 1994. When Siena Fence Company began its operation from the site, it was considered simply a change of tenancy that did not require site plan review by the Planning Board. The speaker supported a general "clean-up" of the site.

Mr. Scavo read the following comment provided by Mr. Montague, Environmental Specialist. It is the ECC's understanding that at the time of original approval of the site plan, a landscaping buffer was required along adjacent roadways. Thus, the applicant *should* restore landscaping and grading to provide visual buffering between the project and adjacent roadways or other properties per the approved site plan from a previous project.

Mr. Scavo also noted that Mr. Dan Hartnett, representative of the Trails Subcommittee of the Open Space, Trails, and Riverfront Committee, recommends that the applicant provide a bike rack near the entranceway to the business since it is located along the NYS Route 9 designated bike route. The location of the rack, installation details and bike rack specifications should be clearly shown on the site plan.

Mr. Bianchi explained that, after review of the project plan presented, M J Engineering and Land Surveying, P.C. provided the following comments in a letter dated September 5, 2013. Based upon review of Part 617 of NYS Environmental Conservation Law, the project appears to be an "Unlisted" action. If the Planning Board is to request Lead Agency status under SEQRA, the need to undergo a coordinated review is optional. Under a coordinated review, involved/interested agencies to be engaged may include, but is not necessarily limited to the following: Saratoga County Planning Board – 239m referral for projects located along a State highway. Additional agencies may be identified by the Town during its review of the project. The project is located within the Town's Neighborhood Business District (B3). The proposal for a storage building appears to be a permitted accessory use within the B3 district as noted in Section 208-130(A)(18) of the Zoning Code. It is noted that there is what appears to be a dual or secondary commercial/retail operation of the sale of play equipment on the parcel. Town staff should review whether the apparent secondary use is approved and/or permitted as it may be in violation of Section 208-32 (A)(1) of the Town's Zoning since this use may be considered "on-site sales of merchandise" and may not be considered "incidental to the approved use." M J Engineering and Land Surveying, P. C. would defer to Town staff on this matter. Based upon a review of the existing lot configuration and proposed building location, it appears the minimum bulk lot requirements as identified in Section 208-37 of the Code are satisfied, with the following exceptions: Section 208-38(C) of the Town Zoning requires a minimum front yard of 80 feet into which space there shall be no encroachments or structures other than a fence, a wall or a sign and no encroachment of commercial usage other than parking spaces. The proposed building is shown at 74.8 feet from the US Route 9 frontage. Further, there are existing retail displays within the stated front yard setback: this is not be permissible. The applicant will be required to apply for and obtain relief from the Zoning Board of Appeals or modify the lot prior to the Planning Board acting on the application. Subsequent plans should include architectural elevations of the building with a listing of the materials of construction for review by the Planning Board. Any proposed points of ingress and egress from the proposed building should be noted on the plans. The plan notes a construction entrance between the existing project entrance along Ushers Road

and the intersection of US Route 9. There should be consideration of utilizing the existing ingress and egress for construction access with continual sweeping of the roadway rather than an additional temporary access as its proposed location may be undesirable considering its proximity to the intersection. If a construction entrance is deemed necessary, the plans must include specifications and/or a detail for this sediment and erosion control measure. The submitted plan shows several encroachments from the subject parcel onto adjacent parcels. This includes a fence line encroachment along the eastern project boundary onto Lands of the Delaware and Hudson Railroad Corp and Lands of Fortune, a business sign encroachment onto the Town's right-of-way on the northern project boundary and a fenced enclosure and fence displays encroaching into the NYSDOT right-of-way on the western project boundary. While this application does not include any modifications to these encroachments, there should be a discussion with Town staff as to whether or not these encroachments should be remedied.

Mr. Koval encouraged the applicant to bring the site into compliance with the approved site plan. Both Mr. Ferraro and Mr. Hale agreed with Mr. Koval's comment, remarking that, in order to improve the visual aesthetics of the site, buffering and landscaping required by the original site plan must be installed and, if possible, enhanced.

[2013-028] **Creative Dance Arts** – Special Use Permit #80942 to permit the operation of a dance studio within an LI2 zone, 2037 Route 9 – Conceptual review. SBL: 259.-2-12.1

Mr. John Fry, Project Executive from the Jersen Construction Group, presented this request for approval of Special Use Permit #80942 to permit the operation of a dance studio in an existing 6,400SF building situated on a 1.39 acre parcel located at 2037 US Route 9 within the LI2 zoning district. The building has been previously utilized as a multi-tenant office building.

Mr. Scavo explained that Mr. Myers, Director of Building and Development, has referred this application to the Planning Board for consideration of Special Use Permit #80942 pursuant to Section 208-79 from Section 208-64(B) which lists allowable uses within an L2 zoning district. He points out that although dance studios are not specifically noted as an allowable use in an LI2 zone – or any zone listed in the Town Code - there are several such studios operating within the town's boundaries. He stated that “dancing schools are considered a commercially-oriented school and are not permitted in B1, B2, or B3 zones,” though there are several in operation within these zones. Per Section 208-79(a), Mr. Myers believes that the proposed use will be an acceptable use within the zone and meet Special Use Permit requirements. He commented that since the code is silent on this use in any zone, applications to operate such facilities must be considered on an individual basis.

Mr. Scavo offered comments prepared by the Planning Department. The Planning Department has no issues with the proposed use and recommends that a public hearing with possible determination per the Special Use Permit requirements be scheduled for the next Planning Board meeting. He commented that since the site is “an isolated site,” he foresees no traffic safety issues.

Mr. Scavo stated that Mr. Montague, Environmental Specialist, reported that the ECC found the project plan acceptable and offered no comment on this application.

Mr. Dan Hartnett, representative of the Trails Subcommittee of the Open Space, Trails, and Riverfront Committee, recommends that the applicant provide a bike rack near the entranceway to the business since it is located along the NYS Route 9 designated bike route. The location of the rack, installation details and bike rack specifications should be clearly shown on the site plan.

Mr. Koval believes, based on his daughter's 12-year association with this business, that the thirty-one (31) regular parking spaces and two (2) handicapped spaces will be sufficient to accommodate all clients. In response to Mr. Ferraro's question regarding identifying signage for the business, the applicant stated that it is likely that the framework for the existing sign will be used as a basis for installation of the new marker. Required permits will be obtained from the Building Department.

Discussion Item:

Boni Enterprises, LLC – Wood Dale Drive Access

Mr. Scavo reported that he is in receipt of a memo from Mr. Tom McCarthy, Town Attorney that concerns Town Board authorization to file a declaratory Judgment Action in the Saratoga County Supreme Court to determine the rights and responsibilities of all parties relative to the contested access area located between 157 Wood Dale Drive and 159 Wood Dale Drive. He explained that during Planning Board review of earlier applications for the development of duplexes and commercial uses submitted by Boni Enterprises, LLC, the Planning Board became aware of a dispute concerning the nature and extent of the Town's interest in the access into the Boni-owned parcel via an access from property located between Lots #157 and 159 Wood Dale Drive. The memo states that the Counsel representing the homeowner residing at 159 Wood Dale Drive has indicated that a law suit would be filed to prevent any approvals from the Planning Board that authorize access to the Boni property through the contested parcel. Mr. Boni has indicated that he believes that he has the right to access the property through this strip, based upon the configuration of Section 12 of the original 1968 map for Country Knolls. He has also indicated that he would file suit against the Planning Board if the Board denies the application for the cluster subdivision based upon a lack of access through this contested parcel. During its meeting of September 3, 2013, the Town Board met in Executive Session to discuss the possible litigation. After considering the circumstances surrounding the proposed subdivision and status of the "paper street" on Wood Dale Drive, members voted unanimously to authorize the Town Attorney to request a Declaratory of Relief Action from the Supreme Court in order to clarify the issue. The action has been filed "so that the issue can be determined in advance of further engineering and review, so that the Town can clearly determine the extent of any liability to any party prior to the Board's taking any action on the application."

Mr. Pelagalli explained that the legal procedure under way is "an action to quiet title" which is a lawsuit brought to the Supreme Court in order to establish a party's title to real property against those who may challenge ownership and, thus, "quiet" any challenges or claims to that title. He noted that Mr. Peller, Deputy Town Attorney, in a February, 2010 letter to the firm of DuCharme, Harp, and Clark, LLP regarding the matter concludes that "it is clear that the

Town of Clifton Park owns the stub street adjoining your client's property [Lot #159 Wood Dale Drive] and any claim for adverse possession would not prevail as a matter of law." Mr. DuCharme, attorney for the owner 159 Wood Dale Drive, has based his case on the belief that if areas reserved for future rights-of-way have not been used within a six year period and deemed to be abandoned, the property may be divided equally between adjoining property owners. Mr. Pelagalli noted that such situations occur more from "disuse" than "abandonment." Mr. Boni, speaking from the audience, pointed out that since the "stub street" provided on Wood Dale is the only way to access his property, he cannot be denied its use.

Mr. Koval moved, seconded by Mr. Werner, adjournment of the meeting at 8:50p.m. The motion was unanimously carried. The next meeting of the Planning Board will be held as scheduled on September 24, 2013.

Respectfully submitted,

Janis L. Dean,
Secretary

cc: Planning Board Members, Planning Department, Supervisor, Assessor, Zoning Board, Department of Building and Development, Town Clerk, Town Board Members, Highway Superintendent, Lou Renzi, Town Attorney, Tom McCarthy, Town Attorney, Paul Pelagalli, Town Attorney, ECC, Clifton Park Water Authority