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Planning Board Members Present: Melanie Eggleston, Mary Beth McGarahan, Holly Rippon-Butler,
Vice Chair James Heber and Chair Susan Martindale

Members Absent: Brit Basinger, Jeff King and Lisa Black

Town Employees Present: Dave Brennan, Town Counsel, Richard Colozza, Code Enforcement Officer and
Tia Kilburn, Clerk

Chair Martindale opened the Public Hearing meeting and addressed all in attendance and asked them to stand and salute the flag at 7:00 pm. Quorum established.

First item on the agenda, Continuation of Public Hearing for Site Plan Review for Saratoga RV Park, 4894 Route 50, Application #: 0007-21 Representative Tom Hutchins, P.E. Hutchins Engineering Queensbury.

He gave a quick review and stated the property is part of a PUD that was approved as Phase I and II in 2002. He stated phase I was completed around 2005, his client acquired it in 2018 and at this point they would like to pursue the phase II expansion. It will be much as it was in the original PUD application of 2002 and they have been in front of the Board a couple times and he has addressed comments from the Town's Engineer, they have correspondence from the fire department and they have checked off most items on the list and he asked if there were any questions or comments. Chair Martindale stated it is a public hearing and asked if anyone from the public would like to make a statement, none were noted. She asked the Board if they had any comments or questions, Vice Chair Heber stated he missed the previous public hearings and asked if there were any comments or concerns then? Chair Martindale explained there were a few comments from the neighbors on Cardinal Lane regarding the views from their backyards. Mr. Hutchins said he can address that, they have created a 50' no cut buffer zone, stay away, for the 900' right of way, he said he walked it and explained in spots it is a little higher so there is a natural berm he stated they talked about a fence but that was not well received by some neighbors but the natural buffer was. Vice Chair Heber asked if there has been any consideration for a quiet zone along that side because there is a subdivision on that side? He said on weekends the neighbors are probably in their backyards and there could be noise from the park with people moving in and out, he asked if there were anything that said people who camp there cannot have loud music or hollering? Tim (& Mary) Rivers, park operators explained he personally spoke with some neighbors and they were ok with it, they were a little concerned about noise, his proposal is they put seasonal in that area, they will have a background of the people and if there is ever an issue, he told the neighbors to go to him or Mary and they will deal with it, he added they were ok with that. Ms. Rivers stated they have a quiet time it is 10 pm and there is absolutely no fuzzy line, it's 10 pm they have to be quiet and if they can't be quiet, they have to leave. She said they have never had a complaint about noise in the park, it is a very quiet park. She added they do not do entertainment in the park. Vice Chair Heber stated he was concerned about the campers, Ms. Rivers said they have employees that stay and live at the park, and it is their job to control. Vice Chair Heber requested it be put on the site plan, regarding the quiet time. Chair Martindale asked if it was anywhere in the documentation there is a quiet time? Mr. Colozza stated the Town's Noise Ordinance starts at 11 pm, those are park rules. Ms. Rivers said she could provide a copy of the park rules, Vice Chair Heber stated they should be submitted with the site plan. Mr. Hutchins said he can incorporate that 10 pm quiet time on the plan. Ms. Rippon-Butler asked if at the point the park ever changes hands will the Board have an opportunity to review it. Mr. Brennan said no, it runs with the land not the land owners. Ms. Eggleston asked regarding the buffer zone is there any idea of what kind of trees will be planted? Mr. Hutchins stated it is just going to be a wooded area, it is very wooded now with a mix of large and small natural trees and shrubbery, they are not planning on going in and cutting it then planting a bunch of trees. He said they are proposing a natural buffer and if in some areas it needs

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some enhancement they can do that, but they are not proposing to replant the area. Chair Martindale asked if there were a motion to close the public hearing,

Vice Chair Heber made a motion to close the public hearing,
Ms. Eggleston 2nd the motion,
All in attendance unanimously agreed.

Chair Martindale stated Mr. Baker, Town Engineers comments have been received and the plan is satisfactory per his review and he has no additional comments at this time. Vice Chair Heber asked if Mr. Baker would have additional review because it says at this time? Chair Martindale said the letter was from EDP's review dated October 12th, 2021 and Mr. Baker has no further comments. She stated they will resume the regular monthly meeting and instead of moving to the next application they will continue with this application. She asked the Board if they had any comments, none were noted, she then asked for the SEQRA form and stated it needed to be read out loud in its entirety. Ms. Rippon-Butler reviewed and read the SEQRA, State Environmental Quality Review Form aloud for discussion with the Board, all questions were reviewed and answered except for #4. Impact on Groundwater subsections (a) & (b), the Board determined they would like Mr. Baker to review and sign off on the water supply after discussion on increased water usage.

Next item on the agenda, Application # 0015-21, Lot line Adjustment and Subdivision Laura Fivel / Gary Sherman, 120 & 126 Austin Rd

Mr. Sherman introduced himself and stated his daughter Laura Fivel will be representing him on this application, there is 17.5 acres that will be split between his two daughters. Ms. Fivel addressed the Board and explained the proposed lot line adjustment between two existing lots from a previous subdivision, she then explained the proposed subdivision to create a 6th lot on the river side of West River Road. The Board reviewed the maps. Chair Martindale asked if they had a map that showed what it currently looks like? Discussion ensued on the location of the parcels, owners and the proposal. Ms. Fivel stated lots 1-4 were involved in the subdivision of 2014, today there are 5 lots and they are proposing going to 6 lots, the lot line adjustments are to square up the existing lots. Vice Chair Heber reiterated all the lots will be more than 5 acres and they will have to get a surveyed map. Ms. Fivel agreed. Ms. Rippon-Butler asked if the new lot would be buildable on the river? Mr. Sherman said they might possibly be able to build up on the hill, but probably not. Existing homes were discussed and the Board requested they be placed on the map along with the wells and septic systems. Ms. Fivel agreed. Vice Chair Heber stated "right to farm" needs to be on the map as well.

Application # 0017-21, Site Plan Review, John Knotek, 134 Thomas Rd, 47.3 acres, Agricultural District Dave Ingalls, P.E., Ingalls & Associates, LLP Engineering, Environmental, Surveying.

Vice Chair Heber asked if it was on the West side of Thomas Rd, the Clerk responded yes it was previously John Gallop's property. Mr. Ingalls explained the location of the property indicating where it was on Thomas Rd at the Town of Northumberland and Moreau line, the proposal is for a family farm including a single-family residence on the North end of the property, 3 bedrooms with an attached garage. He indicated where the septic system and driveway would be. The farming activities would consist of the barn, riding arena and paddocks, they would like to have equestrian activities including boarding horses, training and lessons. He explained the proposed driveway for that and the parking. The barn will have stalls as well as a tack shop/ area and office. An indoor and an outdoor arena, several paddocks throughout the fields, it is all open field currently back to the tree line. They have delineated Federal Wetlands that are confined to the forest area in the back so they are staying out of the wetland areas both NY DEC and Federal that are mapped. Mr. Ingalls asked if there were any questions?

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Ms. Rippon-Butler asked if the shaded areas on the map were impervious? Mr. Ingalls replied they are to be gravel; he didn't believe they are proposing paving. He indicated the septic system for the barn that will have a bathroom. Chair Martindale asked if the public is being invited in for any events. Mr. Ingalls said occasionally, he then introduced Jen Knotek the daughter of the applicant to explain. Ms. Knotek stated it will be a small family farm, she and her boyfriend will be living there, eventually they would like to do small shows and clinics. Chair Martindale asked how many horses they plan on hosting or having there. Ms. Knotek replied 20 – 25 maximum at one time. Mr. Brennan asked where would the stalls for the horses be, Ms. Knotek said in the main barn. Ms. Rippon-Butler asked what kind of construction the indoor arena would be, would it be tent structure, Ms. Knotek said they have been talking to different companies, they are looking at coveralls, tent structure, permanent base and kick walls. Vice Chair Heber asked if that would be hooked to the main barn, Ms. Knotek replied if they can. Mr. Brennan stated it appears the parking area and the trailer parking area is small if they are having shows they may have to expand in the future. He then asked if it would be English or Western, Ms. Knotek said she has a background in Western riding and she had switched over to English, so they will do both.

Ms. McGarrahan asked if there were any existing structures, Mr. Ingalls said no. Ms. Rippon-Butler asked if where the main barn was it was the flattest, Ms. Knotek stated the field is pretty flat, Mr. Ingalls said there is a little rise up from Thomas Rd and then it is flat, he added the main barn will be centered in the field. Ms. McGarrahan stated it looked like there is a structure on the side of the proposed driveway to the barn, Ms. Knotek said yes that is going, it will be knocked down. Vice Chair Heber asked what the fencing structure would be, Ms. Knotek replied wood.

Mr. Brennan asked at what point do they get into the SPEDES regulations for the manure, through DEC? Vice Chair Heber said it depends if they are going to dispose of it or pile it on the property, Ms. Rippon-Butler said she believes it is like 200 cows. Mr. Ingalls said they will have to research that and he added they are currently showing a 3-sided concrete structure on the site and they will make sure that is away from any water courses. He stated he failed to mention there are water courses that goes through the property and he indicated where they were on the map. Mr. Brennan asked about lighting, if they would light the outdoor arena, Mr. Ingalls said it would be basic lighting and it would be down shielded. Vice Chair Heber said one of the biggest things is what the barn will look like, get a rendition of the barn and how big the coverall will be. He then suggested they check with the Highway Department regarding the driveway and site distance. Mr. Brennan asked about the tack room, Ms. Knotek said what they are looking at is more of a conceptional plan, because they need to make sure there is an ample amount of space. Ms. Eggleston asked if there would be a turnaround for the driveway, Vice Chair Heber interjected because of the long driveway it will have to be built to handle firetrucks and turnaround space for emergency vehicles due to the length. Mr. Colozza agreed and said it starts at 300' and at 500' you have to have a passing area, 50' long and 20' wide and you will have to show the area for fire apparatus on both the horse farm and the house. Chair Martindale asked if they are proposing a sign and where will it be located? Ms. Knotek explained it is not on the map yet, they were envisioning having it a few feet into the driveway and it would be two posts going up and one post over the top with their sign hanging from it. Chair Martindale said they will need that on the map.

Ms. Eggleston asked if fire suppression was needed for the barn? Discussion ensued and Mr. Colozza said that will depend on what they are going to do for the arena and if they are going to have some sort of seating and if it gets attached to another building, they will look at the fire rating for the material for the arena, seating capacity falls into it for doorways and there may need to be a monitoring system on the farm. Discussion ensued on dry hydrants, Mr. Colozza stated there is no requirement for dry hydrants, the Town is serviced by volunteer fire personal that haul water in. Mr. Brennan stated this will go to the Fire Department for their comments. Ms.

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McGarrahan asked if the parking area needs designated handicapped spaces, Vice Chair Heber replied yes. Mr. Ingalls agreed and stated there is a requirement for them and they will have signage. Ms. Rippon-Butler asked if they needed the property owners across the road on the map, Mr. Ingalls said yes, they will. Ms. Eggleston asked if there would be bathrooms, Mr. Ingalls replied yes, there will be in the barn he added the sketch they have tonight is a concept, when they submit the actual building plans it may vary from it. Vice Chair Heber asked if they planned on building the house first or the barn? Mr. Brennan said the question is whether there will be a full site plan review or just building permits? Mr. Ingalls replied they were looking at the Town Code and were also unsure of that. Mr. Colozza said the house has to be built first, because they need a primary use before the accessory use. Vice Chair Heber questioned why they cannot build a barn in the agricultural zone. Discussion ensued; it was determined if this were just agricultural the barn could be built first, however because of the commercial use they need the site plan. Mr. Brennan said there is a defined use called a riding academy, he feels that is what this would be, it is not just a farm it is open as a commercial operation. Mr. Ingalls asked if they could start off with a small operation and then come back for a special use permit? Vice Chair Heber stated riding stables are under special permitted uses. Mr. Ingalls asked what the next steps are? Mr. Brennan said submit the application for site plan / special permit, the EAF (SEQRA, State Environmental Quality Review Form), discussion ensued on a long form or short form? He said they can do the review, schedule a public hearing and get it over with.

Next item on the agenda; Application # 0018-21, John Cornell, 165 Beaver St, agricultural district, site plan review. Mr. Cornell explained it is a basic multipurpose farm, they purchased this 14-horse farm in January of this year, it has been a horse farm for 40 years. They are looking to build a building roughly 80' x 175' or 85' x 150'. Chair Martindale asked if they would have any boarders, Mr. Cornell responded they will have some, like 5. He continued to explain the barn will be a rectangle there will not be any living quarters, it will be for storage of hay and space for machinery. He explained they have pregnant mares; all thoroughbreds and they are part of the NYS Breeding Association and breeding in the winter is typical so they would like space to turn out some of the baby fous and pregnant mares in addition to that he and his partner ride so they would like a covered arena so they can ride during the winter. They have 5 boarders some ride, some do not. They have prior thoroughbreds on the property that is part of their mission. They are not open to the public and they have very limited space, they only have 10 stalls. They would like to build a couple more stalls with this building but they are at their capacity, they will not have anymore than 5 or 6 boarders at a time. He explained they have an easement / shared driveway that goes back to the property and they would like to utilize that. He then pointed it out on the map, explaining as it goes off Beaver St it takes a hard right and at that corner there is a gate and they would like to go straight through that gate to access the arena, he stated they do not need to and they are not adding parking. He said he talked with Mr. Colozza about the width of 20' and 125' off the property line so there is ample room for a turnaround for any larger trailer they bring in or a large fire truck.

Vice Chair Heber asked if they have an existing operation now? Mr. Cornell replied yes. Ms. Eggleston reiterated they have one other horse barn now, Mr. Cornell said yes, there is a 10-stall barn and a 3-stall garage and a small 3-bedroom apartment that is on the property. He said they purchased it as a turn key operation. Chair Martindale asked if anybody would be living in the apartment. Mr. Cornell said yes, right now and that is all pre-existing. Chair Martindale reiterated there is somebody on the property. Ms. Eggleston said there is a proposed house on the map, Mr. Cornell said at some point they would like to build a house. Vice Chair Heber questioned why this application is before the Board. Mr. Colozza said it is the same thing as the previous application, an arena. Mr. Brennan said the definition says instruction and / or boarding. Mr. Cornell stated they do not provide lessons, they are not a riding academy, it is just a safe place undercover for the winter and 100-degree days to exercise the horses. Mr. Brennan repeated these need site plans because they are open to the public, although this is different than the previous applicant you may own it 60 or more years but at some point there maybe someone with a riding

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arena and stables or turned into something. It is worth looking at parking, access, turnarounds for fire protection and the board will agree they are not interested in how to design the farm but there is public safety involved.

Mr. Cornell stated there will not be a rest room in that building so they don't have to worry about septic, they do have a well head about 50 away but basically it is just a shell. Mr. Brennan said it is definitely more low key than the previous and they are mostly looking at parking, access and fire department access. Ms. Rippon-Butler asked if it was showing the entire property they own? Mr. Cornell responded no, he then displayed and explained his property and the easement, in total about 76 acres. He pointed out where they intend to build the structure in a paddock of about 22.8 acres. He stated they selected that area because there is a lot of topography and that is a flat area. Mr. Brennan asked for clarity of the easement. Mr. Cornell explained it was all one piece of property about 8 or 10 years prior and Ms. Bongard subdivided the 76 acres and left 12 which is their neighbor. Mr. Brennan asked if the shared driveway that he has an easement for part of their lot or is it his lot? Mr. Cornell said it is the neighbor's property and he has an easement over it. Mr. Cornell reiterated what they would like to do is enter the driveway to the gate and then go straight through the gate if they need to, but all the parking is up where the existing barns are. Their understanding of the rule is that the easement is narrow so they would like to go through the gate to have the 20' wide driveway so a fire truck can get in there and turnaround, that will be safer for them and the neighbors because it would be very difficult for a fire truck to get through the existing driveway. Ms. Rippon-Butler asked if the new proposed driveway is marked on the map. Mr. Cornell said no because technically they don't need it, but they want to do it, it will just be roughed in dirt not paved really just an access point. Mr. Brennan reiterated they are currently using the shared driveway and that is the way it has been for 4 years. Ms. Rippon-Butler asked if the neighbors were on this map, Mr. Cornell said no, this was a survey map. Ms. Rippon-Butler said that is the next step. Vice Chair Heber said the safety of the driveway for a fire truck should be on the map, any required turn arounds. Mr. Brennan interjected this one doesn't need the parking like the last one so mostly it is the access Vice Chair Heber agreed. Ms. McGarrahan asked if they are approving the proposed future house? Vice Chair Heber said no, Mr. Brennan said they can leave that off because it is not a site plan issue. Vice Chair Heber asked if there was a primary use on this lot, discussion ensued on the 3-bedroom apartment. Chair Martindale asked if there would be any lighting? Mr. Cornell said inside the barn but only landscaping outside. Ms. McGarrahan reiterated they would not be doing any indoor riding events or wash rooms? Mr. Cornell replied no but there may be an area to give a horse a bath but no plumbing at this point. He pointed out the well head and said it had a 50 to 75' hose to fill water buckets. Ms. McGarrahan asked about signage at the road? Mr. Cornell said no. Ms. Rippon-Butler stated he needed to put the driveway on the map, Mr. Cornell said the map is showing a driveway coming straight off Beaver St and that was an error they are not looking to come off Beaver, he explained and pointed out where they would turn off the existing shared driveway, he said so it is on there. Ms. Rippon-Butler said it needs to be removed where it is not going to be, corrected on the map. She then asked if all the setbacks were on there and then the surrounding property owners and across the street. Vice Chair Heber asked if they wanted to schedule a public hearing if that is all that is needed. Discussion ensued. It was determined if he corrects the map in time a public hearing would be scheduled. Mr. Colozza stated the one thing about shared driveways when you are bring in public is who maintains it, will it always be guaranteed to be plowed and maintained in a passable fashion, there are 2 people that have to come to a conclusion of who is doing it and now you are bringing the public in which is adding traffic, it was only suppose to be the two owners using the shared driveway. Vice Chair Heber asked they are already doing it, with the boarding. Mr. Cornell said for clarification the previous business that was there was a thoroughbred breeding farm, not a boarding farm, they sold the property about 8 years ago to a couple families that live in NY City that would come up on the weekends and shoot guns and they rented the property to various horse owners it has been a very consistent operation throughout the years. When it was subdivided it turned into a different business, those individuals rented the property for polo and they rented to a couple other breeders so there has always been commercial traffic on the driveway and easement. He

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stated when Ms. Bongard owned it there was commercial traffic. They are limited capacity; they are not looking to have a 20-horse boarding facility. They are limited by the stalls that they have they are not looking to build another 20 horse stalls, they have fulltime jobs. He said they are taking the neighbors into consideration by eliminating traffic all the way through, some will go straight in. Vice Chair Heber stated it needs to be shown on the map, Mr. Cornell said it is, Vice Chair Heber said it is showing in the wrong spot. Mr. Brennan asked when they go down the shared driveway do, they turn to the neighbors first or into his property? Mr. Cornell explained from Beaver St all of them enter the driveway, it goes right it comes down, that is their driveway and his driveway continues straight, so on the corner there is an existing gate they would go straight through the gate, turn right and follow the path of what is already there. Mr. Brennan reiterated they would split the driveway closer to Beaver St. Mr. Cornell agreed, they want to eliminate traffic and this is more of a protected driveway, in consideration of the neighbors they would remove that section of the driveway as best they can. It won't prevent them from still using the easement, they are trying to be mindful of the neighbors by having another access to this barn. Ms. Rippon-Butler asked Mr. Colozza if they should have something regarding the maintenance of the shared part of the driveway. Mr. Colozza said some sort of protection that the driveway is going to be open constantly and maintained constantly, he was unsure if it would be the applicant or the neighbor, somebody needs to show. Ms. ? interjected and said this is not their first winter at this farm and it was always plowed, Mr. Cornell said they have a shared maintenance agreement that is 50/50. Mr. Colozza said that is fine but now you are changing the use. The subdivision regulation says they have to have 25' of usable road frontage for a key hole lot, they have a shared driveway to conserve money at the time for the set of barns that were there, now it has grown by barn, house now a riding arena and another house on the other lot that is all serviced by this one driveway, what he is concerned with is Schuyler Hose. He stated he could get a statement from them because they don't like shared driveways because of maintenance aspects, for the number of terms in the agreement it was strictly for residential use because it was all one farm at one time. Ms. Rippon-Butler asked Mr. Colozza what he was asking the applicant to do? Mr. Colozza said build his own driveway to the structures that are there, it is one of those things where you are building another barn and you already have a barn with tenants, how much more are you going to tax this, make sure this driveway is going to be adequate and taken care of. Mr. Cornell said if they ever build a house, it would come straight off Beaver St, Mr. Colozza said that would save them money, if they build the driveway now they could use it for both. Mr. Cornell said unfortunately the topography is not on the map and what Mr. Colozza is suggesting is not possible because if they were to do a driveway somewhere in the middle where it is flat and that is the rough area where they would be able to put the house if they were going to. Mr. Colozza asked how much footage they had on Beaver St?

Mr. Brennan asked what the maintenance agreement said? Mr. Cornell said just to the ingress and egress and maintenance, they share 50/50 so they split the plowing bill, the potholes they brought in material and he put it in the bucket loader and they used a shovel to fill in the potholes. Ms. McGarrahan reiterated someone else plows it and they split the bill. Mr. Cornell agreed, Mr. Brennan said that is in the agreement, Mr. Cornell said yes and he said he had emailed the agreement. He added he has full liability insurance and they have a million dollar umbrella policy, their understanding of the law is if somebody invites somebody onto the driveway they are liable for that person. They spoke with the neighbors and they asked him to limit the traffic on the property line and he agreed, currently he can direct all the traffic down the existing driveway, but to be respectful he will move it over a little to gain access.

It was determined a short form EAF would be provided and corrections to the map to include the location of the new driveway and the surrounding landowners including across the street. If the corrected map is received in the office within the required time a public hearing would be scheduled for the November 22, 2021 meeting.

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Last item on the agenda; Angelo Rosse, Application #: 0002-21, site plan for mining permit located at lot 1 Homestead Estates, Virginia PL. Public hearing was closed and response to Mr. Zee's last submission is needed from the Board and Town Attorney.

Donald Zee, Esq. introduced himself stating he is the Attorney for the applicant. He reminded the Board at the last meeting he had submitted responses to the public comments and submitted a packet to the Board that they were going to review. He said the subsequent public hearing had comments that were repeated from previous public hearings. The Board agreed they were repetitive from previous meetings. He said it was then discussed that the issue at hand was their legal opinion to whether mining was a permitted use on the property despite the fact of the language that was in place on the subdivision map when the cluster subdivision was created. At the last meeting they submitted their memorandum with 3 major points that they have presented in that memorandum, copies of actual cases supporting their position as well as Town Law §278, Town Counsel and he spoke Friday in regards to concerns he may have in regards to the memorandum, Town Law §278, sub-paragraph 6, the Town Law talks about the creation of the right for municipalities to create cluster subdivisions, the Law provides in sub-paragraph 6; The provisions of this section shall not be deemed to authorize a change in the permissible use of such lands as provided in the zoning ordinance or local law applicable to such lands. He said what they interpret that to mean is; the note that was placed on the approved subdivision map for phase 2 of Homestead which talks about the uses only being permitted under the agricultural zone at the time, that is what the Board has a concern about. It is their opinion based on this provision of the Town Law that the Planning Board cannot utilizing the cluster zoning law restrict future uses that are permitted under the Zoning Code. So as a result, under the agricultural district zoning currently under Town Law that was adopted after this subdivision was approved mining is a permitted use and it is still a permitted use. Because of this provision under Section 278 of the Town Law, mining is applicable to this parcel of land that his client owns. He added that even if there is a dispute as to that, it is their opinion that case law, if there is a discrepancy or ambiguity in the law and he sited that if the Planning Board's is not clear as to what uses are or are not permitted or restricted back when the subdivision was approved you must find in favor of the landowner, anything else would be restricting his rights. The third matter, your Counsel had greater concerns, the Section of the Cluster Law; section 2A – Authorization or Purpose – it says the Town Board may by Local Law or Ordinance authorize the Planning Board to approve a cluster development simultaneously with the approval of a plot or plots pursuant to this article, approval of cluster subdivision development shall be subject to conditions set forth in this section and such Local Law Ordinance, such Local Law Ordinance shall also specify zoning districts outside of incorporated village in which cluster development may occur. He stated they did a search of the Town Law and they did not find any situation where the Town Board passed an Ordinance or Local Law authorizing the Planning Board to create a subdivision. Vice Chair Heber asked if he was saying they didn't find anything that gave them permission to do a cluster subdivision? Mr. Zee said that is correct, prior to the date this subdivision was approved. He added he did not know if they wanted to go there because that would make every single lot that was approved in the subdivision that is less than 5 acres a non-conforming use. He said they would like the Board to consider at this point in time their provision looking at sub-paragraph 6 with regard to the authorization this section of the Town Law does not allow a Planning Board to create zoning uses or restrict zoning uses when it makes a determination on a subdivision application.

Vice Chair Heber said he did not know about the legal ramifications, and he was probably the only one that was on this Board when they approved it at that time, but you cannot pull something out of the air 10 years later and make it work for your situation. He added at the time the law said that was not an allowed use, did the Town Board change it, did you find where the Town Board changed the uses? Mr. Zee said yes, Vice Chair Heber said but you didn't find where they allow cluster subdivisions, Mr. Brennan interjected that is in there too, he is sure. Vice Chair Heber said Mr. Zee is saying the Town Board didn't authorize it. Mr. Brennan said Mr. Zee is saying in

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1992 there was no Town Board authorization to allow cluster subdivisions, Vice Chair Heber stated they did a couple of them. He stated his opinion was that if the speed limit is 30 and you get a ticket and the next day, they change it to 40 the ticket is still good because it was 30 the day before. Mr. Zee said what he is saying is under the Town Law that was in affect is fact, forgetting about whether you create the subdivision, a cluster subdivision, under the Town Law is specifically says a Planning Board cannot restrict as part of it's subdivision approval, use restrictions, it is in your package, Subdivision section. Mr. Brennan interjected he will take the 3 arguments and give his thoughts, 1992 this Planning Board approved a conservation subdivision with a number of residential lots and the front lot was to remain open space, Vice Chair Heber stated what happened at that time was they asked if they could have agricultural use because it was tied to the lot down the street, a 40-acre lot. Mr. Brennan said his opinion is that approval was applied for by an applicant, was approved the subdivision was built, lots were sold, the developer got the benefit by the bargain by selling the lots and profiting and then come back and say they got all the benefit of the bargain but now they want to undo that and say you didn't have the authorization for the conservation subdivision in 1992 so this lot should have no restrictions, he stated he takes issue with that being a statement of law. He added he thinks if they are going to benefit from the bargain both sides should benefit. He said as far as there is an ambiguity, he thinks in the zoning there are a lot of cases saying if there is ambiguity in the Zoning Law the benefit goes to the property owners and strictly construed against the municipality. He added he is not saying he thinks there is an ambiguity, he thinks the approval granted in 1992 said that the lot was restricted to the uses allowed in the agricultural district under the 1977 Zoning Ordinance, there is no ambiguity there. Finally, he stated he did not think the Board is restricting future uses of the property under 278 subsection 6, you listed the uses that could be on that lot as those listed in the agricultural district in 1977, yes those uses have changed over time but there is a clear snapshot as to what the Board authorized to be allowed on that property which did not include mining. Balancing of the equity goes to the other residents that bought houses in a conservation subdivision and did not expect mining to be a use. Mr. Brennan said that was his view and the Board can except or reject his opinion, clearly Mr. Zee and his client don't agree. It could be as simple as farming the property, brining a bulldozer on and leveling it to farm, it is not really about farming it is more about a commercial extraction of a resource which is ok to ask for but then it goes back to there is a condition of approval on the subdivision imposed by the Board in 1992, the Board can look at it and say in the passage of 30 years something has changed that will allow you to change that restriction. Vice Chair Heber said it is like any deed restriction it doesn't evaporate, Mr. Brennan agreed it is a restriction on the approval of the subdivision of 1992, they are asking you to lift that restriction and that is within the Boards discretion if you feel there is a basis for doing that.

Chair Martindale asked the Board if they wanted to voice their opinions, Vice Chair Heber said as a Board Member, if he approves something today that approval shouldn't be changed by someone down the road if that were the case then everyone that bought development rights and somewhere down the road it was changed and now, they can't develop on the lot, no that doesn't work. Chair Martindale stated her opinion is that the original application was approved with that restriction in good faith, both parties agreed to it at that time and she thinks this Board should hold up that agreement and not allow the mining operation. Ms. Eggleston said she understands the desire to want to utilize the property to the full benefit to the owner, but there was the original spirit of the whole plan which everyone agreed to at that time and there was an opportunity to come back and say can we do it now and she thinks they can look at it and say no. Ms. McGarrahan said the original owners purchased their land with this agreement, it should stand to reason that it continues on. Vice Chair Martindale asked Ms. Rippon-Butler her comments, Ms. Rippon-Butler said she thinks the agreement should stay.

Mr. Zee stated for the record as part of the documents he submitted were in fact every set of minutes pertaining to this subdivision, including the minutes of July 20, 1992, with regard to the Homestead approval, the final, it says cluster subdivision in regards to the speed limit Mr. Lanaro prepared an application and submitted to the Town, the

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Town accepted the application, Mr. Lanaro said the soil and drainage erosion had been addressed, they have received final approval from the Health Department, Mr. Lanaro spoke with Mr. Bennet and explained the subdivision, which is a new concept, Mr. Bennet said he should be commended as to what he could see from the presentation looked good, Mr. Doster said the subdivision was presented to Mr. Hamilton in regard to drainage and the developer has addressed Mr. Doster's and Mr. Hamilton's concerns. In regard to saving the trees the developer it was up to the Zoning Office and it was flat, ultimately the public hearing was closed and the subdivision was approved. Mr. Zee asked the Board to look at the minutes in regard to what was said with regard specifically to the cluster development and the fact that lot one was suppose to never be used for mining again subject to the Planning Board approval and that is where he is saying in part there is an ambiguity because that is spelled out in the minutes, he respectfully disagrees with regard to the provisions of Mr. Brennan's interpretation of Law and as to the Planning Board Member with regard to the fact he must say he has known of Planning Board's making mistakes during their review process in granting approval and not following the proper procedures, yes it is unfortunate that someone didn't bring it up 30 or 20 years ago, but the fact remains, at the time the subdivision was adopted the Law, section 278, subparagraph 6 was in effect dealing with the fact and he will quote it again, "The provisions of this section shall not be deemed to authorize a change in the permissible use of such lands as provided in the Zoning Ordinance or Local Law". Vice Chair Heber stated he answered his own question, that was agricultural land, lot 1 did not get changed. Mr. Zee said it says "permissible uses", and you can't in 1992 tell the rest of the world forever, the Town was the Legislative authority. So for now if you go for a subdivision application and the applicant says they are not going to use it for commercial use, and the next day the Town Board changes the Zoning for that piece of property and says commercial uses are permitted you are in fact superseding the authority of the Town Board. Mr. Brennan interjected and said the next step in this is he stated the board is giving a motion to deny based on discussion, he asked the Board to take into account not with standing the decision to deny, they also require a special use permit for this use if it were to be accepted and it could be done. If you look at the special use permit standard. He said this may or probably will go to court, he asked if they would grant the special use permit if mining was allowed in that district based on everything you know? He stated that if Mr. Zee is correct and it is allowed use by special permit in this zone, so it comes back to you for a special permit, he said when you look at the code and it says "In authorizing any special permit use, the Planning Board shall take into consideration the public health, safety, general welfare, the comfort and convenience of the public in general and tat of the immediate neighborhood in particular." He then read *Adjacent land uses: The Planning Board shall not approve the special permit use unless, in its determination, the proposed use will not have a negative effect on existing adjacent land uses.* He explained that if he is wrong and he says mining is not an allowed use and a Judge tells him it is it will get kicked back to the Planning Board to process the special use permit. He asked the Board if they thought this would qualify for a special use permit for mining in the backyards of the subdivision where this lot was created to buffer? The Board unanimously declined. Mr. Zee stated that is a Legislative decision as well, whether it is an appropriate use. Mr. Zee discussed the Town Board as the Legislative Board that adopted the most recent Zoning Ordinance and the 1977 Zoning Ordinance believes that it is an appropriate use to have mining in an agricultural district and single-family residences are permitted in an agricultural district, so in the Legislative Body's thinking residential housing next to a mining use is not incompatible because they have adopted Legislation that is permitting that. Mr. Brennan stated just because they are permitted does not mean they are compatible; the Law does not require you approve every single special permit. It says that special permits are uses that are typically it says thinks that are inherently problematic and difficult and require additional scrutiny at the time of application. It is not that every special use permit has to be granted, it is for the Board to exercise discretion as to whether the uses in close proximity are appropriate, he believes that this Board is going to say that they don't believe a mine of commercial excavation over a period of 5 or more years is appropriate in the backyards of this neighborhood. He suggested the Board direct him to write a decision both on the legal argument and on your belief that this special permit is not subject to be issued he can write it up and bring it back for formal adoption at the next meeting. He will write it up based on the discussions and you authorize the Chair to sign it if

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that is what the Board wants, there has to be a decision on this. If Mr. Zee and Mr. Rosse don't like it they can go to the Supreme Court and he may get told he is wrong, he asked the Board what they wanted to do? The Board unanimously agreed to direct Mr. Brennan to write up a denial and review it at the next meeting for changes or adoption, it can then be filed with the Clerks office and that will start the 30-day clock.

Vice Chair Heber made a motion to accept the August meeting minutes as submitted,
Ms. McGarrahan 2nd the motion,
All in attendance unanimously agreed.

Vice Chair Heber made a motion to accept the September meeting minutes as submitted,
Ms. McGarrahan 2nd the motion,
All in attendance unanimously agreed.

Chair Martindale reminded the Board Members to review the Solar Law and make note of any suggestions for the Town Board. Mr. Brennan stated the information submitted to the Board tonight is Ms. Rippon-Butler's comments on the Solar Law.

Vice Chair Heber made a motion to adjourn the monthly meeting at 9:38PM
Ms. Eggleston 2nd the motion,
All in attendance unanimously agreed.

Respectfully Submitted,
Tia Kilburn, Planning Board Clerk