

**TOWN OF LIBERTY
PLANNING BOARD MINUTES
March 3, 2009**

MEMBERS PRESENT

Diane S. Deutsch, Chairman
Ray Kelly
Lynn Dowe
Dean Farrand
John Van Etten
Denise Birmingham, Alternate

ABSENT

Peter Stettner, Alternate

ALSO PRESENT

Walter F. Garigliano, Town Attorney and Mark Van Etten, Building CEO
See attached sign in sheet

CHAIRMAN DEUTSCH CALLED THE MEETING TO ORDER AT 7:03 PM.

PUBLIC HEARING:

Yosef Brachfeld
Special Use Permit
245 Ferndale-Loomis Rd Unit #27
SBL: 41.-1-9.8
Zone: RD

Twenty-three notices sent, 15 green cards received and eight outstanding and one returned. Chairman Deutsch asked if there was anyone present from the public.

No one appeared.

MOTION WAS MADE BY DEAN FARRAND SECONDED BY JOHN VAN ETTEN TO CLOSE THE PUBLIC HEARING. APPROVED.

Jack Tompkins appeared for this project. After a short review of the project, it was determined that all requirements have been met including receipt of the 239 letter of local determination from County Planning.

ON A MOTION BY DEAN FARRAND SECONDED BY LYNN DOWE THE SPECIAL USE PERMIT FOR YOSEF BRACHFELD WAS APPROVED. ALL IN FAVOR, APPROVED.

PUBLIC HEARING:

Menderis Road
Subdivision
Menderis Road
SBL 38.-1-14 & 15
Zone: AC

Paula Kay, Attorney, Glenn L Smith, Professional Licensed Engineer and James A Bates, SPESC, SPSWQ, Senior Environmental Scientist/Wetland Specialist of Tim
3/03/2009

Miller Associates, Inc appeared for this project. Paula Kay introduced herself, Glenn L Smith and James A Bates and stated that they are at the meeting for a limited purpose for the public hearing. Glenn L Smith did a quick update.

GLENN SMITH: This is the property on Menderis Road. This is Menderis Road across the top of the plan here. East Hill Road is over here and of course East Hill intercepts with Menderis Road up in this area here. This is 144 acres that is owned by Charles Ramat that is in the AC – Agricultural Conservation Zone of the Town, which allows two acre lot sizes. And what the proposal is as we received preliminary approval on was a total of 26 lots with a proposed roadway coming in from Menderis Road going through the property this way and out the East Hill. Dead end cul-de-sac serving several lots here, dead end cul-de-sac here and a dead end cul-de-sac here. This was Silver Maple Road and they're all, it's called The Maples, all the roads are named after various species of Maple trees.

There would be a septic system and a well on each lot, individual systems. There is an existing farmhouse here and a barn here that's on the parcel fronting on Menderis. There is also an existing house over here on this side of the property. There were some Federal wetlands that were flagged on here and that's essentially it for that. So this we got preliminary subdivision approval from this Board on March 27, 2007. At that time we were talking basically two phases, roughly this half of the property would be Phase I coming off of Menderis and this half, 13 lots would be Phase II coming off East Hill Road. That subsequently changed. We were back here, Paula and I, last year in February, a year ago to revise the phasing and what was done then is Lot, which was Lot #3 on the original plan, this was Lot #18 on the original plan, they were broken out, this is now Lot 1 and Lot 2. This lot has the farmhouse and barn, this one has an existing house on it. And we asked for and received final approval for those two lots, we had a final subdivision map from George Fulton and that was all done and those lots were sold. The remaining property, the remaining 24 lots are all in this area here kind of like Phase II at this point in time. So that's where we are now, these two lots with existing buildings were sold off and of course the rest of the property, we have preliminary subdivision approval at this time.

PAULA KAY: And also, just to refresh the Board's memory at the last meeting we came back and presented to you a proposal from Tim Miller Associates for a wildlife determination and our expert is here tonight to listen to the public and if the Board so chooses at the end of the hearing you may wish to amend our proposal.

ATTORNEY GARIGLIANO: One thing I'd like to make sure we get in the record as accurately as possible, is I don't believe the project has preliminary approval, because I believe the Appellate Division of the New York State Supreme Court set aside the preliminary approval and the SEQRA determination made by this Board attendant thereto and the purpose of the public hearing tonight, the Appellate Division Decision left open a question of whether the Board had taken a hard look on the issue of wildlife and the purpose of this public hearing is to have comments on that issue so that the Board can provide the expert that the developers retained with guidance as to the scope of the review which we would expect for the developer to provide to this Board, so we would like to hear from the public in terms to that aspect of the project. I'm not sure that you agree or disagree, but from the standpoint of the record, I don't think that the project any longer has preliminary approval.

PAULA KAY: Correct. We agree.

GLENN L SMITH: I was referring to the original preliminary approval.

ATTORNEY GARIGLIANO: We understand.

CHAIRMAN DEUTSCH: Okay, the public hearing is open. If anyone from the public here would like to comment, I would like you to please state your name when you're called on and then you can make your comment.

GAIL MARSHALL: I just have one comment. My name is Gail Marshall, next door neighbor on Menderis Road. I have new neighbors. They purchased six acres on this subdivision that I didn't think was approved and um, nice people, but I'm just kinda wondering why they were able to purchase six acres out of an original 80 acre parcel.

CHAIRMAN DEUTSCH: Anyone else?

TODD MATHES: My name is Todd Mathes. I'm an attorney at Whiteman Osterman & Hanna and representing Joan Kittredge. Sort of by way of background, and actually can I just, I'd asked Walter TAPE UNCLEAR time to submit written comments following the public hearing. I have written comments and I could submit them tonight, but I prefer to just submit them later. I'm also going to address my comments to that.

ATTORNEY GARIGLIANO: I think we should allow.

CHAIRMAN DEUTSCH: We usually allow a week.

Attorney Garigliano: We usually allow to the Wednesday following the Tuesday, that's been our past practice.

TODD MATHES: Okay. Um, so by way of background on this discreet issue of wildlife I think it's worth acknowledging, I represented municipal planning boards and SEQRA lead agencies and applicants have relied on the response from natural heritage TAPE UNCLEAR, but as Walter just said, we have a decision from the Court which basically said that doesn't meet the threshold of the hard look, so the question is what sort of wildlife assessment should be undertaken the hard look threshold and if you look at case law and other resources which start to define what is a hard look, it's a scientific assessment and I think that's obviously the train of thought which led to the collection of Tim Miller's proposal to undertake some sort of wildlife assessment. So we've taken a look at that proposal and we've collected some comment and we have Karen Schneller-McDonald who is Joan's wetland and wildlife consultant here with us this evening who's going to address some issues too. Based on our review of the proposal by Tim Miller, and I don't mean to be critical because it's a briefly written scope of work, but it might not necessarily be a brief scope of work. The assessment's going to be targeted or keyed off of target species and it appears that those target species will be identified through periodical research or some sort of research. Target species, I'm not sure what that term means. I assume it means threatened and endangered species. I think it's unclear whether it means species of special concern as defined under the DEC's regulations, so I think there is some clarity needed there. But what is clear is that under the SEQRA an assessment of wildlife, flora and fauna should include, endangered, threatened species, species of special concern and common species too. Wildlife

generally. If you look under the SEQRA regulations in the determination of significance section of the assessment, the assessment isn't curtailed to what it regulatorily protected or protected by law. Um, it's a general assessment for TAPE UNCLEAR. So, we have basically a proposal in terms of the assessment which should be undertaken, which we do think would meet the hard look threshold which is to key all of the work which occurs in terms of the assessment of wildlife off of the habitats on the site off of also research identifying what species might be present on the site or might be present and associated with the actual habitats on the site and to work from that which Karen will speak to a little more fully. On my estimation, that sort of assessment, actual field work to identify the habitats on the site. You know that we know that there's a hemlock forest, we know that there's a fruit stand, we know that there's wetland complexes which are related to other wetland complexes off the site, um is not unlike a lot of other assessments which as a SEQRA lead agency you've either undertaken or typically undertake with a project, for example when you undertake a traffic impact assessment, you do research so you collect information about vehicle accident history and that sort of information but you also do actual site and stopping distance measurement collection, traffic counts, actual field level assessment to determine what the impact might be and from there you decide, well either further assessment is necessary or some sort of project re-design if an impact is actually identified as appropriate to avoid the impact. So that's the approach we're advocating. Um at this point because an assessment hasn't been undertaken on the property, we don't have, I don't have any specific comments to offer with respect to actual potential impacts. Certainly, Karen and Joan have looked at surrounding properties. They're familiar with their own property and begin to assess and characterize the habitat and potential wildlife impacts. And I think in prior comments submitted to the Board you've had comments which link potential project impacts. Storm water runoff, erosion, sedimentation, those issues, with impacts to habitat and TAPE UNCLEAR the wetland complexes and potential impacts to wildlife. Um, but to sort of qualify or quantify the actual wildlife impact which might occur, we have to figure out what's there or what's likely there based on the habitat and then you can begin to assess for example, runoff sedimentation, typically storm water designs contain something like 80% total suspended particles so there is some level of runoff and sedimentation which occurs off site. I'm not the engineer but, that's the sort of train of thought which might follow based on your identification of which habitat, significant habitats exist or don't exist and which species may be impacted or may not be impacted which are of conservation concern or not. So that's basically the scope of our TAPE UNCLEAR at this point. Um, I think that if that sort of assessment is undertaken the hard look threshold can be met and we can basically come up with either verification that the project as designed is going to be protective of wildlife or that further steps are necessary to be protective of wildlife. Certainly, because Karen's engaged in this and because Joan and Robert have been engaged in this for so long, you know we're willing and happy and able to make Joan's property available to be inventoried in conjunction with the project site, because at the end of the day particularly with respect to the wetland complexes that are linked to the property and so impacts our land. Karen has also done a lot of work in the field next door to the project site. She hasn't been on the project site, but she knows the terrain and she knows the habitats and certainly would be available to work in step with the Applicant if they would make themselves available to engage in that level of assessment. So with that said, certainly we will be submitting written comments after tonight. We also think that either to the extent we're able to work with Tim Miller Associates and offer our resources on this topic, or if not, if there is an assessment which is actually produced TAPE UNCLEAR in the report, we would like to have an opportunity to comment on that in the context of a

public hearing so that there is a formal end date to when we can submit those comments. Because obviously as a result of the Court decision and as a result of TAPE UNCLEAR causes of action which were raised by Joan and the Petitioners, you know we had a situation, where you're going to have a public hearing after you render a SEQRA determination and that's atypical for this Board. It's going to be probably a new process for a lot of Boards to begin to follow. I don't think that should preclude the opportunity for comment, substantive comment on whatever sort of assessment is actually produced. So at this point we're commenting on methodology of assessment because we think that there is a methodology of assessment which can ensure that the hard look taken. But we would also like to comment on the substance of whatever is produced and we will do some of that tonight and we'll do some of it in our written comments at the outset. But our ability to do that is limited because no actual assessment has been undertaken. Thanks.

CHAIRMAN DEUTSCH: Anyone else?

KAREN SCHNELLER-MCDONALD: I'm Karen Schneller-McDonald. Um and I am an ecologist, wetland specialist with TAPE UNCLEAR. As Todd mentioned, working on this project and I'm going to be submitting some written comments as well. So I won't go into all the detail, but I just wanted to give you an overview of a methodology that I'm recommending to fill that hard look requirement on SEQRA. Just as a little bit of background, um this graphic.

DIANE DEUTSCH: Do you want to bring it up here so everyone can see it?

KAREN SCHNELLER-MCDONALD: Sure.

(graphic is placed up front on table facing the public)

KAREN SCHNELLER-MCDONALD: This is a sketch map that includes the project site and these are areas where I have done work regarding wetlands and habitat on neighboring properties just to give an idea. Kind of surrounded it, so I haven't gone on the property per say. I have a pretty good idea of at least what's on certain parts of it.

The method that I'm just going to give you a brief summary of was developed based on recent research developed in conversations with the Department of Environmental Conservation with the Hudson River Estuary Program, with Hudsonia a research organization affiliated with Bard College in Dutchess county, with the Metropolitan Conservation Alliance, a program of the Wildlife Conservation Society, with the TAPE UNCLEAR Ridge Biodiversity Partnership and the Nature Conservancy and as part of the work I've done with and for all of those organizations this methodology had kind of emerged as one way to try and get a better handle on looking at what we call the biodiversity of a particular site and I think it was good that on the Tim Miller and Associates scope of work letter there is a reference on there to it being a biodiversity habitat assessment. And just by way of clarity, I just want to offer you a very brief definition of biodiversity. It basically includes all species, common, rare, protected, unprotected, all habitats and all habitats including aquatic, wetland and upland. And also all ecological systems which provide the function that tie all the habitats and all the species together so biodiversity is very broad, it's very all encompassing of the biological component of a particular site. So that's a good place to start. And as I said I just offered that definition so that we're starting on the same page.

Basically the method that I'm looking at begins with looking at habitat in the field and producing a map of the site, habitat map of the site. The habitat map, as I mentioned before, includes wetland, upland and aquatic habitats. It also includes habitats that are directly adjacent to the site and this is especially important for habitats that are connected by water. The next thing would be to prepare a table that compares the acreage for the linear extent if it's a stream. Each of these habitat types before construction and after construction. In other words the table would say 'well before construction there are, I don't know, 20 acres of hardwood forest, after construction there are 15'. That kind of compares it so you can get an idea of specifically what kind of habitats are going to be affected by a particular proposal. Then you would move on to identify the plants and animal species of conservation concern that are associated with each of those habitat types. And here again, it's important to define terms before we're using them so that we're coming from the same basis of understanding. For purposes of tonight I took a definition of conservation concern from a very recent DEC publication, so recent I don't have the name memorized. It just came out. Concerning Natural Areas of Wildlife in Your Community, Smart Growth Strategies for Protecting the Biological Diversity of New York's Hudson River Valley. And that report recommends that species of conservation concern include all of the species listed by New York State as species of greatest conservation need. I know I'm throwing a lot of terms at you, but I'm trying to ground the methodology that I'm sharing with you in some recent and well respected scientific literature.

Anyway, these lists form the basis for taking a look at a wide range of species that might be present on a particular site. The idea behind doing this is that a lot of times when you go out on a site and just look for any and all species, you miss a lot of the rare ones. They're rare for a reason. A lot of them are hard to find and a lot of them can only be found at certain times of the year or in certain stages of their lifestyle. So it's easier to start with looking at habitats first and to using the existing resources that can tell you what kind of animals that you can expect to find including rare ones, threatened, endangered but also a lot of other kinds in that particular habitat. Once you do that you kind of narrow your focus down. You're not necessarily going to go out in the field and look for a hundred different kinds of species, you're maybe just looking for 10 or a dozen or 20, but at any rate, it makes it easier to target field studies to those species that you think could be present based on the habitat that's already there.

After you do all that, then you can look at habitat quality, habitat connections, complexes and look at what's probably in terms of what species are probably using the site. And what are their habitat needs and does the site meet those habitat needs. And then you can design your field surveys when you actually go out there you can be efficient and hopefully just target those species that you really want more information about. For some of these you can get a pretty good idea, for birds there are ways you can design studies. A pretty good idea of an example is a breeding bird survey. For other species they might be harder to locate for surveys and a lot of these are the smaller, reptiles and amphibians, the things that hide under things and around things and are sometimes harder to find. So sometimes it might be better to, if there's a good habitat there and there's a good likelihood that some of these species are present, it can be advisable to mitigate for those species without having to particularly find them on the site. If, oftentimes it's also hard to prove that something isn't there if it's there within their range and its good habitat, so that can be used too depending on how this process

plays out and depending on professional determinations of what's found on the property.

From that then you can assess the impact that the project might have on those species of conservation concern that are likely to be on the site or that you happened to have found on the site as well and then from there, you can evaluate mitigation that's affected in protecting those particular species and their habitats and quite often when you're focusing on the rarer species and protecting what they need for habitat, you are also protecting habitat for a range of other species that are more common that use the same kinds of conditions.

Very rapidly, I know it's just a lot of information. But that's it in a nutshell and my written comments will just provide a little more detail and fill in some of the gaps around that methodology. But that's basically what I'm proposing.

CHAIRMAN DEUTSCH: Thank you. Anyone else?

LEIGH PERLMUTTER: My name is Leigh Perlmutter. I am an adjoining property. BLANK TAPE water from my natural areas. Now I've set my property up as a bird sanctuary. I'm certified to hold a bird sanctuary, I've got certification for it. Not only that but the deer travel diagonally right through my property from that area straight down and go back up again and one of the reasons they travel into my property is because I put a pond in where the deer can drink. Of course they also eat the bird seed and stuff like that during the winter time. They're there all winter on my property, see them all night around my house. The destruction of the pond that was on the other side of Route 52 down below, a very large pond because one of the dam broke. Cramer's pond, is that what it is? When that was, when that broke down and dried up, I saw the deer had no place get water, because they used to go all the way down, down there, and that's when I dug my own pond on my property. I have swamps but in August its dry and so they don't supply so I built a very large pond on my property. It's about 100 by 50 or something like that. And we've been supplying local birds and in the process finding out what exists in the area. I have a list of all the birds that we've found so far, some of them are protected species, some aren't. Red Tail Hawk. I have see Eagles but they haven't come to my house, they've just been around flying above. Black Eyed Chickadees, Tufted Titmouse, I don't want to, it's a 33 list, 33 name list. We have the Cardinals, the Blackbirds. There are a lot of mammals, the crows, some of the foxes get killed by the traffic coming by. I've seen the Turkey Buzzards feasting on them and was actually physically right next to them when they did it. So, these animals supply part of the food chain. We have Grey Fox, Red Fox, Bear, Black Bear visit us for two years, we've had baby Black Bears visiting us because they eat the bird seed. It's been amazing how much wildlife is up here. When I studied herpetology when I was a child and I still study it, and this was one of my first finds when I first moved in 13 years ago within the first year or two. It's a Spotted Newt. Now if you know anything about they breed, they breed in swamp areas and because they no real protection except to hide underneath things, they lurk in areas that tend to dry out, get wet, dry out and get wet. There's a pond just above us, it happens to b on the Heinlich property, Mrs. Heinlich was unable to come tonight. But there's a pond there that does exactly that and they breed in there and I suspect there might be land like that in the Menderis Road project. I don't know, I've been in it so I don't know, I just walk by and see it in the distance. I have been at her house and they have a pond in that area that takes the water drainage from the Menderis Road project, the water comes down into her lake. I've seen turtles

in her pond that pollution would destroy them. I've seen Wood Turtles in the area, and they're a protected species, they were on my property, went through my property, they don't stay in one place very much. I've seen Musk Turtles, Painted Turtles in different varieties, the Eastern Painted is the most common. Spotted Turtle, one Spotted Turtle so far, but now that I have these ponds, TAPE UNCLEAR what's about to come into them in the summer time. The Spotted Turtle is also a protected species in New York State. The Northern Box Turtle and Eastern Box Turtle are both available in this area. Snakes, Garter Snakes and Black Snakes and Rat Snakes and that sort of thing. But they're in the area. There's a lot of stuff around. Underneath the grasses and stuff, there's lots of stuff and in the autumn if you walk down the paths you'll find Red Efts all over the place and TAPE UNCLEAR live in mossy areas, without the moss they can't survive, there's a little bit of moisture in it and very small insects TAPE UNCLEAR small worms that live in the moss. So there's a lot of stuff around. I have a little house on my back deck that I was keeping for cats that wander the area, while people let their cats go and they wander around and they have no place to eat and other animals in to join them to eat and so we had a four or five days we had a visiting Muskrat that would come in every night and eat cat food, so the Muskrat's here and Raccoons and Woodchucks, you name it and there's a lot of them around and they deserve to have, they have a right to share the property with us. We're the strangers, they've been here a lot longer than we have and I think it would be detrimental to destroy their habitat. To work around it and allow them to exist with you, that's fine. There are people, many of my neighbors are hunters but they only shoot one deer, they won't shoot 30 of them. And when you see deer, they're in packs this time of the year. So you know, they TAPE UNCLEAR from the herds but at the same time the deer deserve to live. I also have rabbits coming up on my deck. So it's a wonderful area, beautiful. Thank you.

CHAIRMAN DEUTSCH: Thank you.

GAIL MARSHALL: When I listen to Mr. Perlmutter talk about wildlife, I must agree with him. I'm a deer hunter and I'm the one that takes one deer a year. The locals, I could sell hot dogs up on that road as the locals, and he can attest to it, during hunting season, they will come to view the wildlife. Because you will see on the fields, that long stretch field along Menderis Road, the Kehrley family and whatever, everybody comes up there to view the deer and the bucks. The only way they can get to that lot is through those lots that are proposed for development. On my property which is on the lower end its Menderis and TAPE UNCLEAR I have an average of 15 to 25 deer. Now they don't take my property and go along the road, they cut across the Wicks property right up to the apple trees that are on that parcel that was just sold and they cut over to my apple orchard and it's an old time orchard where all the trees are like 60 to 70 years old and you can't even buy these varieties anymore, that's how unique it is. But the lower quad down which was part of Legrand's property, that whole lower area is right from the swamp up and it's very steep terrain, but the deer love it because they get into the evergreens and the follow along the pathway. Now in order to do the development, all those evergreens are gone. Because they cannot develop that without destroying that area. No way TAPE UNCLEAR that a house would even fit. That's my comment, I know everybody has deer, some like 'em some don't, but this is their habitat, they come up through the swamps, that's their pathway. And you know, anybody that builds a house, the deer are not going to change, they're not going to have any shrubs.

CHAIRMAN DEUTSCH: Thank you. Anyone else?

JOHN LENNON: My name is John Lennon and own some of the property and there's no point in my carrying on a lot because I would just reiterate everything that everybody else said, I would just like to go on record as having made that statement.

CHAIRMAN DEUTSCH: Anyone else?

JOAN KITTREDGE: Hi, I'm Joan Kittredge and I live on property off East Hill Road that's adjacent to the site and I have some pictures if you want to share those around. I'm just reading from the letter that I've put together for the Board stating that I write in regard to the public hearing this evening for the purpose of getting comments from adjoining property owners on the potentially adverse impacts of the proposed Menderis roadway and subdivision may have on our wildlife and our community. My husband and I own approximately 40 acres. That's my husband over there. And it's situated in between the hamlets of White Sulphur Springs and Youngsville in the Town of Liberty, Sullivan County. Our property is adjacent to the western border of proposed Menderis Maples subdivision. TAPE UNCLEAR this secluded farm property which is part of farmland, open meadows and forested areas situated in the undulating landscape of hills and valley streams but East Hill, Willi Hill and Menderis Road and is part of the County's Agricultural District 1 in the Town of Liberty's Agricultural Conservation Zoning District. The intent of the AC Zoning District is to encourage only those forms of development that complement agricultural activities and to preserve sensitive natural areas. Our farming community is an interconnected ecosystem. In addition to our historic farmhouse, there are 10 other properties that surround the site of the proposed subdivision. Each averaging about 50 acres in size. Several of these properties including our property remain in agricultural use. Five are used for haying and two are used for the raising and boarding of horses. The Edwards family was the original homesteaders of our farm and they worked the land for many years as a dairy and chicken farm. The remains of the foundation and stone steps of their original log home are still intact. There are several open fields on the farm and the rest of the land is forested with evergreen and deciduous trees. The farmhouse which dates back to the mid to late 19th century is situated at the end of a quarter mile drive that enters the property from the north and opens up onto a flat area cut into the hillside. Beyond the house to the south is where the barn used to be and the remains of the barn foundation is still standing as is the fruit orchard we prune each winter. To the east below the house the land slopes downhill to a two plus acre pond and uphill from the house to the west are several open fields separated by remnants of stone walls. Our upper most field which forms the southwestern border of our property is at an elevation of 1700 feet and offers panoramic views during the winter months. From this field you can see many of the other properties in our community each of which have similar historical significance and topography. It bears noting that our farm and the farm property proposed for the Menderis Road subdivision were originally one farm. In reference to the pond streams and springs located within the bounds of our property along the eastern border, it's at an elevation of approximately 1500 feet. It is situated in the saddle of the land that is formed by our hill to the west and another hill to the east that is at the elevation of 1760 feet and is located on neighboring properties including the property where the subdivision is proposed. The pond is fed by underground springs and is the headwater for two streams that flow to the north and south respectively. The northerly stream flows into East Callicoon Creek in Youngsville, the southerly stream flows into and is a primary water source for the 35 acre DEC wetland LW17 with an outlet stream that feeds into Briscoe Lake. The pond and the southerly stream are bordered to the east by a 50 plus acre mature growth hemlock forest that is mostly

within the bounds of the neighboring property and the trees have an average age of 115 to 118 years. As a consequence of the elevation of the surrounding hills, all surface water along with the network of numerous streams and hydrological connections located throughout and both our and adjacent properties drains into our pond and subsequently flow out of its streams and out-flowing springs. Additionally a spring that was the original water supply to our farmhouse flows easterly into the pond and the stream that emanates from the Heinrich pond flows westerly across the proposed Menderis Road Maples subdivision site into our pond. The hemlock forest and numerous wetland areas benefit from this enormous surplus of water as the streams and storm runoff follow gravity down hill through the forest on the way to the pond and the south stream. We have owned our property for almost 16 years visiting it frequently on weekends and during vacations and hike throughout it on a regular basis. Based on our observations there is an ever present and regular flow of water as we hike in, over and through the network of springs and streams that characterize our land and the land of our surrounding neighbors. The majority of the streams and springs that flow in and out of the pond are perennial and not seasonal or intermittent and they flow year round. Throughout the year our community is visited by Deer, Coyote, Fox and Black Bear as my neighbors have already expressed. Deer graze and sleep in our fields, our pond was previously home to a Beaver family that has since moved on but occasionally a Beaver stops by for a visit. A Red Tail Hawk nests every year in the hemlock forest. In the spring of 2006 a Bald Eagle was spotted several times on the remains of an old tree on the edge of our pond. A Great Blue Heron quietly stalks his prey along the pond's edge in the early morning and late afternoon during the warm months. The same pair of Canada Geese nest each spring on the now vacant Beaver dam and each year the Snapping Turtles keep their population in check. There are several other species of turtles and snakes in the pond and many, many frogs. Spring peepers welcome the spring evening with their rhythmic chant while Bullfrogs serenade us during the hot summer nights. The pond serves as a migratory path for a variety of ducks TAPE FLIP salamanders play and hide in seeps and pools that emanate from the roots of old trees. There have been sightings of Spotted and Blue Spotted Salamanders. In the photos I've sent around there's a picture of a Spotted Salamander I think. We also had one of those. In the evenings we hear the occasional hoot of a Great Horned Owl in the hemlock forest. Many birds nest in the trees throughout our community. Wood Thrush can be heard singing in the forest at sunset. We spotted a perfectly camouflaged American Woodcock near Mrs. Heinrich's pond. There are mostly Poplar, Birch, Maple and Hemlock trees. Hemlock by our pond was aged and estimated to be about 230 years old. Woodpeckers often hammer away at the tree trunks in search of insects. Groundhogs and Rabbits are plentiful and as are the flies but thankfully the Bats keep the Mosquito population in check. Ferns, spongy spurges and wood sorrel are in abundance over south and north dams and an occasional Preying Mantis is found in the garden. There is an abundance of diversity of wildlife in our community that is inextricably interconnected with the habitat that is fed by the abundant streams, springs and seeps. Much of the flora and fauna in this environmentally sensitive area is readily observable and while the rest surprises us when we least expect it. It is a true privilege to enjoy this connection to not only our land but the land in our community. And it is my goal to understand what wildlife in our community supports and to ensure it is protected. The thorough analysis of the habitat present in and on the proposed site for the Menderis Road Maples subdivision on the adjacent properties in our community is the first step of the process of achieving this goal. The Planning Board, CR Menderis, the developer and the property owners in our community each have a share of responsibility to see that the cherished and shared natural resources of our properties

are protected from the impacts of the proposed Menderis Road Maples subdivision. It is clear that we all sincerely care about this issue based on the time, effort and money that has been spent on getting it addressed properly. So please, let us try to seize this opportunity now so we can get this right. Thank you for listening and for the opportunity to share our thoughts with you.

CHAIRMAN DEUTSCH: Thank you. Anyone else?

ROBERT SHAPIRO: I'm Bob Shapiro. This is our property. TAPE UNCLEAR Joan Kittredge it's all been very civilized so far. I had a big speech, I can't give it, too angry. Does everybody know why we're here tonight? We're here because this Board acted unlawfully and got caught at and you knew you were doing it when you did it. You were wrong, yeah Walter, it was you. And I'm going to ask a rhetorical question, I don't expect an answer. How do I know I can trust any of you? How do I know we can get a fair hearing? We know you've taken false testimony from people and we've had no opportunity to rebut it. We know you've cut us off. I can't say anymore. Thank you.

CHAIRMAN DEUTSCH: Anyone else? Anybody from the public, any other comments?

LEIGH PERLMUTTER: I would just like to say I was here for all those hearings and what took place is precisely what he said and I'm upset. I've been a resident here for 14 years now. I live on the property and I've seen horrendous things taking place. It doesn't make sense to me that in your own community you do that. And I'm here, I'm not supposed to be here, but I'm here because I care about my property and I care about the area and I want it to remain beautiful. It is a very, very beautiful area. That's why I moved here. I only have 14 acres, I'm not one of these 50 acre or 100 acre people. I have 14 acres, I take care of it. I take care of the animals on the property and I don't want it destroyed by someone putting up a project without reason. And if the Board doesn't protect us, which is their function, then we're going to figure out a way to get rid of the Board and have people who do the job properly. Thank you.

ROBERT SHAPIRO: I would just like to ask a question that I think you can answer. It is the intention of the Board to hold a public hearing on this wildlife study after its done. We're not talking about the required hearing on the preliminary plat.

CHAIRMAN DEUTSCH: You're talking about an additional hearing besides the...

ROBERT SHAPIRO: Yes, TAPE UNCLEAR it seems quite reasonable.

CHAIRMAN DEUTSCH: I don't think that's been determined yet.

ROBERT SHAPIRO: Thank you.

CHAIRMAN DEUTSCH: Anyone else? Anything? May I have a motion?

MOTION WAS MADE BY DEAN FARRAND SECONDED BY RAY KELLY TO CLOSE THE PUBLIC HEARING LEAVING IT OPEN FOR WRITTEN COMMENTS TO BE RECEIVED BY CLOSE OF BUSINESS ON WEDNESDAY MARCH 11, 2009. APPROVED.

Ironic, LLC
Special Use Permit
Application for Renewal of License
Willi Hill Road (Town Road #86)
SBL 42-1-17.2
Zone: AC

Jacob Billig - Attorney, Randy Wasson - Engineer and Gerald DeLuca- Executive Director of the Automotive Recyclers of New York (“ARANY”) appeared for this project. Applicants are in the public seating.

ATTORNEY GARIGLIANO: I thought we had asked for a proposal relating to the study of groundwater.

CHAIRMAN DEUTSCH: A Business Plan, ground water, those were the two main things.

JACOB BILLIG: And to that end we’ve made all the changes, we’ve reviewed the minutes line by line. We’ve made all the changes to the Business Plan based on the last round of comments. I would say it’s, the Board is entitled to continue to go through it, but I think it’s, we’re up to the at least 1/3 of TAPE UNCLEAR I would say having reviewed it in preparation for tonight’s meeting it is specific, it is clear and it completely complies with all the regulation. Relative to the proposal on groundwater.

ATTORNEY GARIGLIANO: Let’s take a moment of time now. Anybody here on the Business Plan?

CHAIRMAN DEUTSCH: You want to go first John?

JOHN VAN ETTEN: Sure, page 9, it said that there would be rest room facilities for employees and I was just wondering if there would be handicap access.

JACOB BILLIG: If we’re required to do handicap access I would say we would. And I mean I’m not looking to make light of the comment, I think it’s an important question but if we’re required, then of course we will provide handicap access. I really don’t know the law on that, if we’re not we won’t and we are able to we will.

JOHN VAN ETTEN: We can ask our Code Enforcement Officer.

JACOB BILLIG: I don’t know if it’s a public facility.

ATTORNEY GARIGLIANO: Hold on, let him answer.

MARK VAN ETTEN: I believe they do need to have an office that’s open to the public then it would need to have some form of handicap accessibility or a necessary bathroom. And that would be determined upon the size of, the number of the employees in all the Business Plan which I haven’t seen.

ALL TALKING AT ONCE – TAPE UNCLEAR

CHAIRMAN DEUTSCH: Anything else?

JOHN VAN ETTEN: I'm still looking through, you can go ahead.

ATTORNEY GARIGLIANO: I had gone through our list of the kind of major items that mainly me and John had raised, and whether or not they're accurately handled, that's a decision for you, but they're all mentioned. Everything that was on our list is in fact mentioned.

JOHN VAN ETTEN: Yes.

JACOB BILLIG: We went over the minutes and tried to adequately not only handle it, but adequately handle it.

CHAIRMAN DEUTSCH: On some places you're just saying still "on a regular basis"? You're not defining what that is.

JACOB BILLIG: That's because it's a function of the business. If the business gets very busy and a particular receptacle gets filled in a month, it will get empty. If the business is particularly slow, you're asking for a specific where it's impossible to give the specific and what we've done in the plan is outline by giving you all of the DEC regulations that these people have to live with on a weekly, monthly, quarterly and yearly basis. And we can't tell you every other week that the batteries are getting picked up. It's just not the way the business works. The batteries get picked up when the containers get filled and depending on the item that's being taken away, it's done by a licensed hauler or not. And some of the things that we've outlined like gasoline, they're going to re-use...

CHAIRMAN DEUTSCH: I'm not talking about that so much as inspections. When you say inspected on a regular basis. For instance when you say inspected on a regular basis for instance on 4.1, it's in several places but that's just one example. You say inspected on a regular basis, that really doesn't define how often regular is.

JACOB BILLIG: Let's get specific now. You're talking about "Areas Where Spills Can Occur and Their Discharge Points"

ATTORNEY GARIGLIANO: You could solve that, Jacob, by saying for example, "will be inspected on a regular basis but no less often than (blank) Quarterly, per year.

JACOB BILLIG: I would ask Brad.

BRAD BURNETT: You're talking about storm water?

JACOB BILLIG: We're talking about areas where spills can occur and their discharge points, which is stuff under the SPEDES.

CHAIRMAN DEUTSCH: You have potential sources for spills and leakage in areas where leaks might occur are to be inspected on a regular basis.

BRAD BURNETT: It's very vague, very vague.

CHAIRMAN DEUTSCH: Yeah, I know.

BRAD BURNETT: But where you think leaks are going to occur, the only place you're going to have leaks is like where we're draining fluids out of a car of something and maybe you missed the bucket and you had to clean the floor up.

JACOB BILLIG: But the inspections are the purpose, your working on that. You're working.

BRAD BURNETT: It's like cleaning the garage, you're going to clean the floor every day, you don't just. It's not like, it's not that it's happening. It's just not how it is. You walk around TAPE UNCLEAR fluids are kept in barrels or in the storage area. You always, every time you're in there, you'd know if there's a leak in there, which would be every time you're dealing with that, which may not be daily, but its frequent.

JACOB BILLIG: Regular, I think, is defined by the fact that there's work going on. If there's the potential that whether moving a car in or out or moving it to the crusher or what have you, there's inspection going on at the very definition that they were working on a vehicle...

ATTORNEY GARIGLIANO: I believe that the DEC regs that I read say that the facility inspections of all of the containers and all of the areas where things are stored need to be inspected no less often than quarterly. Doesn't the DEC require...

BRAD BURNETT: That happens I would think weekly.

ATTORNEY GARIGLIANO: No, no the DEC requires quarterly. And you check three days before they get there, because I know how you run your business and that's the right thing to do.

BRAD BURNETT: I have to tell you when it comes to leaks, I take, I personally check every day for any major leaks in my main yard. I walk the main yard to see if somebody left a mess. Because number one, the fact is it's illegal to have oil spills on the ground and if you don't take care of them and you get caught, the fine will more than wake you up.

ATTORNEY GARIGLIANO: I would suggest to you. My suggestion is we include after the end of that sentence the words "but no less often than quarterly" it's got to be done at least quarterly by DEC regs and if we incorporate it in here and DEC changes their regs and says you can do it every five years, at least he'll have to do it quarterly.

CHAIRMAN DEUTSCH: Okay.

JACOB BILLIG: You're actually describing you do it on a more regular basis, but I'm fine with Walter's logic which is a minimum.

ATTORNEY GARIGLIANO: And I think that if you search this electronically, I found three or four places where that could be inserted. Would that be satisfactory?

CHAIRMAN DEUTSCH: At least it would define...

ATTORNEY GARIGLIANO: At least it would tell you what the minimum of regularly means and it meshes up with the DEC inspection kind of, which of course could change.

JACOB BILLIG: I would say when you read the document, you have to not read one in an isolated capacity. It relates to the other parts of the document that provide the overview of what the DEC is going to do whether it's on a quarterly or an annual basis.

CHAIRMAN DEUTSCH: And I do have, if we go to page 6 in 4.4.3 my one concern in that section where it says 'the spill has not and will not reach the State's water or any land' my concern is the DEC might be concerned with the State water, but there's other water there that's not necessarily deemed State land.

GERALD DELUCA: I believe any ground water is considered State water.

ATTORNEY GARIGLIANO: Any ground water is considered the State's water.

CHAIRMAN DEUTSCH: Anything? Okay, cause then you want that to be... then this could be State land.

JACOB BILLIG: That is broader than what you want.

GERALD DELUCA: That is broader than if you said only for private water.

CHAIRMAN DEUTSCH: Okay, cause I didn't want it to be just State land.

JACOB BILLIG: I think that's as broad as you want.

ATTORNEY GARIGLIANO: Can you identify your guest?

JACOB BILLIG: This is Mr. Gerald DeLuca, he is from the New York Association, he's going to actually address, he wrote a letter to the Board.

ATTORNEY GARIGLIANO: Let's get through the Business Plan. And who's this other guy over here? (referring to Randy Wasson)

CHAIRMAN DEUTSCH: Okay, on page 10 Inspections. The quarterly inspections. That the inspections are going to be performed by the Pollution Prevention Team who basically are these two people. You're the whole team, but who is overseeing your...

ROBIN GEIGER/BRAD BURNETT/JACOB BILLIG: DEC

CHAIRMAN DEUTSCH: They're going to come on site? Or you're going to just submit a report?

ROBIN GEIGER: They expect me to do best management practices and I am saying that I am checking my premises quarterly, I'm indicating that I've done the best job that I could and I am being overseen by the DEC who I have to report to on an annual basis. They can come and check me anytime they want.

JACOB BILLIG: And they do.

ATTORNEY GARIGLIANO: And they don't necessarily come there every quarter, to answer your question, they come on an as required basis.

ROBIN GEIGER: They come annually.

CHAIRMAN DEUTSCH: Okay, so you guys simply submit a report to them.

ROBIN GEIGER: Annually you have to submit a report. That's a requirement of my dismantler's license. And in good faith they expect me to do the right thing.

GERALD DELUCA: And they can come at any time and they do visit facilities on an unannounced basis.

JACOB BILLIG: You've been doing on your other yard these type of reports for how many years?

ROBIN GEIGER: Well as long as it's been mandatory, it's been three years with DEC. Although Motor Vehicle and DEC has always been on a spot check that you come anytime as it is now. They don't have a date or a time or a day ahead 'we're coming to see you on Thursday at 10 o'clock', they just pop in.

JACOB BILLIG: As they did in June.

ROBIN GEIGER: With all good reports.

CHAIRMAN DEUTSCH: Which is another question I have on page 13 "Collection of annual Stormwater samples" and I think it's a wonderful thing that all these things are tested for but who's to know where you collect these sample from?

ROBIN GEIGER: We have a designated spot indicated on our Stormwater Pollution Prevention Plan by the Environmental Team that makes this. They give us an area where they recommend we take the samples.

JACOB BILLIG: That's basically how it's done all over.

ROBIN GEIGER: That's based on the topographical topography of my property.

GERALD DELUCA: They don't collect the sample, the environmental consultant that you pay collects the sample.

ROBIN GEIGER: We collect the sample.

CHAIRMAN DEUTSCH: That was my question. That would make much more sense to me.

ATTORNEY GARIGLIANO: You're getting, you have three people talking. You collect your sample and send them to the environmental consultant.

CHAIRMAN DEUTSCH: Oh that's not what I thought.

ROBIN GEIGER: We collect the sample. I have to purchase a kit for \$300.00 from them, then I fill all the little water bottles and I send it ice-packed overnight to a facility that's an analysis that checks for all the gasolines and everything.

CHAIRMAN DEUTSCH: And that's the standard?

ROBIN GEIGER: Once a year mandatory.

CHAIRMAN DEUTSCH: To collect your own? Cause even on a inspection on a house, you're not allowed to collect your own sample, it has to be from an independent person.

GERALD DELUCA: That is the Stormwater Pollution Prevention Plan standard that licensed recyclers are required to meet by NYS DEC.

LYNN DOWE: I wonder how much Leisure Time water they get?

ROBIN GEIGER: Well I didn't make the law, I just follow it.

JACOB BILLIG: DEC whether they come in twice a year or once a year, then them taking a sample and running their own test. So if you're not playing by the rules, that is ultimately the bottom line and as Brad said the jurisdiction and fines are onerous.

CHAIRMAN DEUTSCH: John, do you have anything else?

JOHN VAN ETTEN: I just think that surface water collection is a good idea compared to what we had originally discussed about testing wells. Because it would seem to me that you could find problems much quicker before they get into the ground, so I think that's a good thing.

JACOB BILLIG: If you guys are done with the Business Plan I might TAPE UNCLEAR Mr. DeLuca.

JOHN VAN ETTEN: I have one other question. On page 17 the top thing, refrigerant/Freon and all that stuff, it says they'll be collected in 55 gallon drums, now aren't they gases.

BRAD BURNETT: That would be wrong, you're right.

GERALD DELUCA: A canister.

ATTORNEY GARIGLIANO: You could collect it in a 55 gallon drum but you wouldn't have it for long. It won't stay there.

JACOB BILLIG: So it's collected in a 40 pound bottle, stored and then you re-use it.

BRAD BURNETT: In our vehicles. It goes through a clip.

JACOB BILLIG: So this is accurate.

ROBIN GEIGER: It's kind of duplicated in many spots.

JOHN VAN ETTEN: I think that's all I had.

CHAIRMAN DEUTSCH: Anyone?

JACOB BILLIG: I think I'm going to introduce Mr. DeLuca and this is a good segue from the comment made. Based on the last meeting there was some questions raised about the groundwater and I think you're right. And that's why the DEC has it set up that the surface water is tested and also beyond the surface water there's a litany of requirements with respect to how the crushing and the operation occurs so that there is no spillage and if there is spillage it's of a de minimis amount that can't enter the ground water and/or additionally is cleaned up immediately pursuant to State requirements and as outlined in the Plan. So let me just pass it over to Mr. DeLuca because I feel it would be worthwhile for him to give you his background and he'll explain the complexity of the regulations and why we think complying with them will provide the protection and the oversight that we think is reasonable.

GERALD DELUCA: Thank you. I'm Gerry DeLuca and the Executive Director of the Automotive Recyclers Association of New York which is the New York State affiliate of the international Auto Recycler's Association. We represent automotive recyclers all over the world, primarily in the U.S. and Canada but we do have people in Japan, Europe, all over the world, Australia who are members of the International Association.

Brad and Robin are active members of our Association. As a trade association we have about 175 members of the 800 or so licensed recyclers in New York State who are members of our Association. The members of this Association, like members of most trade associations, are the people who are the leaders in their industry. That are people who are out there who are working and practicing best management practices. Working within the legislature, working within the environmental regulators, the DMV, the DEC to ensure compliance, to ensure that the world's work in both areas in both directions, that we can comply with them and that they do meet the needs of the government to ensure regulation. Automotive who are licensed recyclers, which these folks are in their other facility, Brim, and they're working to get their license here for Ironic, are those folks who are meeting those standards and best management practice standards. We are heavily regulated by both the Department of Motor Vehicles and the Department of Environmental Conservation. More so in the last three years by the Department of Environmental Conservation. The statutes which I sited in the letter I sent to you, were passed three years ago. They were passed to ensure our compliance and working with our Association to make sure that we are meeting the standards. Robin held up back there their Stormwater Pollution Prevention Plan. As you can see, it is a very thick document that they must meet and get their Stormwater Pollution Prevention certificate from DEC. We must meet all these standards, we must test for a numerous chemicals in the groundwater, in the runoff water, we must test for total suspended solids, oil, grease, Benzene, Etholbenzene, Toluene and Xylene, they're all components of gasoline. These are the things that you want to make sure are not running off. Recoverable aluminum, iron, lead. These are all the things that must be tested for by this stormwater testing. If you prevent it from going into the stormwater, you're then going to prevent anything going to groundwater. The automotive recycling industry is not your grandfather's junkyard. It is a very different industry. We are recyclers. We take parts off cars. We take fluids out of cars and return them back into the economy. We're saving people money by providing used auto parts where they can't afford to buy a new part to replace the TAPE UNCLEAR or to repair an older car. When they take a car in now, these cars are drained of their fluids. They're drained of their oil, drained of

the gasoline. There are systems that they can purchase that can automatically puncture a gas tank, drain the oil all into separate vats that are then stored in whether they are 55 gallon drums or some other storage that is also regulated by the DEC. There are strict requirements as to what you can do. When you crush a car.

Let me back up. Three years ago when this legislation was being proposed, DEC talked about putting a pad down when you crush a car. It had to be either steel, concrete, or asphalt under the DEC proposal. As an association, we said to them, 'wait a minute, if you put asphalt down, all asphalt is made of oil, gasoline seeps through asphalt. That's not good enough, we don't want asphalt' So as an association we said, 'that doesn't work, we want either concrete or steel'. When they correct crush cars, when cars are crushed, I know some people have seen facilities where you crush cars inside, that is not the norm. The norm in the industry, not just in New York, but throughout the country, is that cars are crushed by mobile car crushers. They go from yard to yard to yard because most yards don't have their own crushers. Mobile crushers go around, they'll set down a steel pad and that's what I know Brad is looking to do. They'll put rubber on it sometimes. It has to be bermed it has to be collected. So any fluids that do come out must be collected right there. And what you will see happen when you have these mobile crushers going around is that the DEC folks, not just the engineers, but the DEC officers as some of our guys like to say "the guys that carry guns on their hip". They will come in and look at what they're doing when they're crushing the car. And the fines and penalties are excessive so there is a significant incentive to meet the requirements of the law or exceed them because they don't want to pay a fine or penalty. So the industry has changed over the years. We are very much pro-environment looking to make sure that the cars are recycled, that the gasoline that they take out many times, they will either re-sell it or they will give it to their employees as a bonus or a benefit to their employees. The oil is sent off to be recycled. The antifreeze is recycled. All the fluids are recycled because there's an economic incentive to do so. There is already a built in incentive to collect all those fluids. These guys do not want to waste a drop on the ground. It doesn't make sense. When you add that and combine that with your requirements for the stormwater testing, I think you're meeting all the needs that you folks have expressed concern about. Is there anything else you want?

JACOB BILLIG: We did talk about DEC was at the site in June. We looked at the report , maybe you could comment to the Board on it.

GERALD DELUCA: I looked at the report from DEC when they went to their current site, TAPE UNCLEAR and it was very clear that written into that report there no violations that the complaint that was sent to them was unsubstantiated.

CHAIRMAN DEUTSCH: They didn't view anything going on though, there was no one there. The property was totally empty.

GERALD DELUCA: No business activity. They saw no evidence of any kind of problem.

JACOB BILLIG: If there would have been something in the environment that would cause them concern. There was no observation to that extent. You're absolutely right. There was no operation going on. What I think the significance of it is, is that they were there and they did walk around and it wasn't like they saw TAPE ENDED

NEW TAPE

TAPE UNCLEAR

DEAN FARRAND: How many sample places do you have for your water collection?

GERALD DELUCA: One. That's the requirement.

DEAN FARRAND: Where is it located?

GERALD DELUCA: It's usually downstream.

DEAN FARRAND: Let me rephrase it. In relationship to your neighbors, where is it located?

ROBIN GEIGER: On the opposite side. It's like parallel to my driveway coming up. There 's a lower section where we have a proposed gate that we come in. That would be the lowest point. TAPE UNCLEAR My stormwater man went there, it was a rainy day, so we walked the perimeter of the property and he indicated that would be where he would test.

CHAIRMAN DEUTSCH: Can you point it out on the map?

ROBIN GEIGER: (pointing at map) It would be down in this area. We have the proposed possible gate coming in this way, this would be the lowest point in my field, so this is my driveway coming up, and it would be down in this area.

GERALD DELUCA: I'd also be happy to answer any questions you might have regarding what I wrote.

ATTORNEY GARIGLIANO: I don't know that you have any questions right? I mean what we're dealing with is we have had a consultant that the Town has engaged who has suggested to this Planning Board that in addition to the surface testing and stormwater runoff testing, that since in some ways this "is" our grandfather's junkyard. Some of those cars actually probably were our grandfather's cars. That in order to establish a baseline of the water quality for today, not what it's going to be tomorrow, but to know what the baseline is going today. There's no suggestion that we go out and drill test wells, there's no suggestion that we go out and create a lot of additional infrastructure. The simple suggestion made, which is what we've asked the applicant to deal with in terms of providing us with a proposal, is to test the applicant's well and to the extent that the neighbors are cooperative, to test neighboring wells to establish a baseline for groundwater. You can do all the surface water testing you want and we're not here to get into a debate with you. We hired a consultant and that what he says should be done and what we've asked the applicant to come back with tonight is a proposal dealing with our consultant's suggestion that we do some well water testing of existing wells in the area to create a baseline, so that we know today, before there is any crushing operations there how much Benzene is in the water. Maybe there's none. How much of all the other things you've listed are in the ground water.

JACOB BILLIG: The reason we brought Mr. DeLuca here and I guess our response to Tom's comment is that, I don't know that Tom A) has the expertise or that there's a causal connection between testing of let's say the Ironic well and you know how that would relate to the groundwater. I mean.

ATTORNEY GARIGLIANO: It's in the groundwater.

CHAIRMAN DEUTSCH: Yeah.

JACOB BILLIG: I don't know that whatever the operation is undergoing...

ATTORNEY GARIGLIANO: Jacob, if you don't think Tom is right in suggesting that those are the wells to test, then come back here and tell us how you think you should deal with creating a baseline of the existing quality of the groundwater in the area so that if a car crusher goes in there and crushes cars and we have a baseline to work from. That's all.

JACOB BILLIG: I understand, I guess my next question would be, if we would come back, because I think the proposal you've outlined, the proposal is testing the Ironic well and/or one or two of the neighbors.

ATTORNEY GARIGLIANO: That was Tom's suggested proposal. We're asking you if you agree with that, let's get on with it and get that done and create the baseline. And if you disagree with that, come here and tell us what you think you should be doing in lieu of that. Don't tell us you have a SWPPP, we already know that. Don't tell us the DEC regulates you, we already know that. Tell us how you want to respond to Tom's suggestion, which this Board has adopted three meetings ago that they want to know the baseline of the existing groundwater quality in this area so that if it changes negatively, and we have no reason to expect that it will, but we would like to have an evidentiary baseline so that when crushing operations start there, if it changes, we can go back to the person who's handling the crushing and say it was X and now it's Y. He's just suggesting you create a baseline.

JACOB BILLIG: I guess one of my responses it in looking to move this to closure, if the Board feels that this is the last issue, that's something that I think impacts on part of our analysis. The applicant really has been before the Board years before I became involved and obviously the Board is seeking to take a thorough and hard look at this whole thing. And I believe at this point you're at that, and if this is the last remaining issue, we can frame that issue for the Board so that we can move on to closure of this thing.

CHAIRMAN DEUTSCH: Okay, but I just want to make a comment on that statement you just made. Part of the reason why it has been ongoing for the time it's been going is because it kept changing from when it was first brought before us to what is presented to us now. And at first it was not a business.

JACOB BILLIG: I'm not assessing blame.

CHAIRMAN DEUTSCH: I'm just saying that since it's changed, every time it morphs, we have to look at it differently.

JACOB BILLIG: I would say that since I've been involved, the back and forth from the Board and the Applicant has provided a level of detail that I think is good. And so I'm not assessing any blame, I think though we're at the point because of the record we've established and the work that's being done, you know, I think it kind of impacts our perspective on answering the issue and analyzing the issue if we know this is the last issue and that's one of the things we want to talk about tonight. Is there anything else that we need to address before this Board so that we can begin to look to bring this to closure because we'd like the Board to tell Mr. Shepstone "begin drafting a Part II". Obviously this remaining issue has to be solved, I understand that, but we're also looking to understand that we're moving this to an in conclusion with the footnote that we do have to respond to this issue. That's really, I just want to make sure that there's nothing else. We did feel that by test, that by showing the level of regulation, there is, no one has come forward and said that there's any problem with their groundwater. I'm not contesting the basis of establishing a baseline, but on the other side of the coin, there is nothing in the record to establish that there is any contamination in anyone's well in that area.

ATTORNEY GARIGLIANO: There's plenty of testimony at the public hearing by people that said they were concerned about the impact of this operation on groundwater. Tom is absolutely correct in my view that the way is this Board deals with that is you go out and test the groundwater now before they crush cars there with your steel plate and your berms and all of your modern methodologies so that we know what the baseline is today, because for example, if we find that the water is already polluted, then we certainly can't say that Brad polluted it. I mean I think it protects everyone....

BRAD BURNETT: TAPE UNCLEAR how the water got polluted.

ATTORNEY GARIGLIANO: We don't know what it is, Brad.

BRAD BURNETT: I'm saying, so let's just ask a couple questions. How close should the wells be to the property. Just to answer a couple of questions so I understand.

ATTORNEY GARIGLIANO: We are expecting you to know those things better than we know them.

BRAD BURNETT: No, how close to the neighbor's wells, is the neighbor got to be two miles away, a half a mile away, 500 feet away?

DEAN FARRAND: From your property line?

BRAD BURNETT: From my property line.

DEAN FARRAND: Ask the nearest neighbor.

ATTORNEY GARIGLIANO: Well your well is certainly...

BRAD BURNETT: I don't mind testing my well, I have no problem with that. I'll tell you where I have a problem is the neighbor fixes cars and has a garage also, so how do I know what went in his well.

ATTORNEY GARIGLIANO: We're not looking for blame.

TAPE UNCLEAR – ALL TALKING AT ONCE

JACOB BILLIG: So you're saying that by establishing a baseline whatever that baseline is, it gives you the ability to....

TAPE UNCLEAR – ALL TALKING AT ONCE

JACOB BILLIG: That clarifies.

RAY KELLY: In five years from now, somebody says there's Benzene there, that it was there.

TAPE UNCLEAR ALL TALKING AT ONCE:

JACOB BILLIG: I would say and we understand that burden, and yes it was said a few meetings ago, but part of what we also wanted to establish is that some people said "how do I know, what are the protections for the groundwater". I mean those comments came up at the public hearing and clearly all of the stuff that Mr. DeLuca went through in the regulations do answer many of those comments at the public hearing. With respect to the baseline and now the clarification you're providing...

ATTORNEY GARIGLIANO: We expected you, quite frankly, you to have some concern about isn't Tom's suggestion to have a baseline, I would think that would be good for everyone including the Applicant. We thought you would come in here with an expert that said that it's not necessary to test those wells annually. That's what Tom had said.

JACOB BILLIG: We are going to address this.

ATTORNEY GARIGLIANO: You need to get somebody who is a hydrologist, or get Randy to provide some kind of input to tell us if this isn't reasonable, then what is. I don't think anything's going change here in terms of requiring a baseline. I haven't heard anything tonight that leads me to believe that.

CHAIRMAN DEUTSCH: No, and it makes me wonder why you're so resistant to do the testing.

JACOB BILLIG: Don't interpret it that way, we just thought we would answer the questions as to the groundwater by saying there's a sampling program that goes on and generally...

ATTORNEY GARIGLIANO: that sampling program, Jacob, I love Mr. DeLuca's words "it's not our grandfather's junkyard", this junkyard has been there for 50 or 60 years. We'd like to get a baseline on what exists. Whatever happened there certainly happened before Brad was there.

TAPE UNCLEAR – ALL TALKING AT ONCE

JACOB BILLIG: We're going to discuss that with someone who's expert in that area.

BRAD BURNETT: Fine, I go right along with him and he says 500 feet, I'll do the two 500 feet neighbors, but if you say two miles, we're going to have a little more discussion.

JACOB BILLIG: Right, but we'll talk about that, but clearly we have clarity now from the Board in order to meet that issue.

CHAIRMAN DEUTSCH: I would like in this testing that it be from a company that does that, you know whether it's Liberty Pest. Any of the companies that normally do water testing I would like to be an independent source.

ATTORNEY GARIGLIANO: What Tom has said in his letter just to address Brad's concern, is he has suggested a baseline established by quality testing on existing well (its own meaning the Applicant's) and those of any cooperating adjoining. Now you may have, and we've been through this here before, you may have no cooperating adjoining and if that's the case, if they're not interested in cooperating to protect themselves, then we can't make them.

JACOB BILLIG: They're just looking for a particular baseline. I'm clear about that now and thank you. I guess the next issue is other than that, is there anything else that the Board needs so that we could move forward to beginning to complete the Part II and hopefully finishing the site plan process.

CHAIRMAN DEUTSCH: I think that covered most of the concerns.

LYNN DOWE: I have a question. It has nothing to do with the water, but what was the outcome of the gate and the neighbors using the road.

ATTORNEY GARIGLIANO: I ordered a title search. You may not have been here.

CHAIRMAN DEUTSCH: No he wasn't here for that meeting.

LYNN DOWE: I missed a meeting or so.

ATTORNEY GARIGLIANO: There's an agreement between the prior property owner of the subject property, the prior property owner one of the neighbor's that shares the same road and a signatory by one of the neighbors who is still there to an agreement that deals with that issue. So it's really nothing that we can change at the Planning Board. There is a three party agreement that's been signed by the property owners that's binding on the property owners, it's a covenant that runs with the land, which deals with that issue and we can't change it. I mean they entered into an agreement signed among themselves and it says what it says.

JACOB BILLIG: I think at the hearing I think one neighbor did say yes, I was aware of that agreement and the other neighbor wasn't quite sure.

ATTORNEY GARIGLIANO; But he'd already signed it.

JACOB BILLIG: Right.

ATTORNEY GARIGLIANO: The one that wasn't sure signed it. So, I know you missed that meeting but I had it here, I ordered a title search, I got it and we had it here and it's in the record.

JACOB BILLIG: Right, so I think that issue is buttoned down. One week ago, two weeks ago, at the last public hearing.

ATTORNEY GARIGLIANO: Lynn doesn't miss many meetings.

CHAIRMAN DEUTSCH: No, very few.

JACOB BILLIG: I would testify to that too. So obviously you heard Mr. Burnett he has no problem testing his own well. I really want to, okay as his lawyer take it under advisement as to talk to an expert, Randy, what other well shall we test and maybe 500 feet is a reasonable basis, contact those neighbors if they'll cooperate fine, if they won't.

CHAIRMAN DEUTSCH: I think if you contact the adjoining neighbors and say that 'we would like to test your well for a base' that they would be agreeable.

ATTORNEY GARIGLIANO: But if they don't then they don't. If they're uncooperative, then they're uncooperative.

JACOB BILLIG: And it's the sole purpose of providing a base so that we know that neighbor A has an A-level base, B-level base for Brad's well, and it's just a factual under plan. No minus interpretation as to whether there's consequence, the consequence comes from the actions of the operation thereafter based on that baseline. I appreciate the clarity and also in terms of our going out and getting this done, is it possible that the Board could begin to fill out the Part II because a lot of this stuff I think has been addressed and we can then supplant.

ATTORNEY GARIGLIANO We're not going to hold you up. You get this done and the Part II will get done. I mean we do, we will ask Tom's assistance in filling out the Part II. Randy has provided us with a tremendous amount of information. I don't want to sit here having not poured through every aspect of this file today and say I don't have any more comments, but I'm very pleased with the changes you made to the Business Plan from where it started to where it is. I mean it started out as a three page document that didn't say a lot. I think at this point I'm not sure where the Board is on that, but I feel like in a very minor revision the Business Plan is there, you guys agree with that?

JACOB BILLIG: Absolutely.

ATTORNEY GARIGLIANO: And you know, I think you just need to deal with this issue, because I think you can come back in all deference to Mr. DeLuca, with many experts and we're still going to want a baseline. Because this junkyard IS our grandfather's junkyard.

JACOB BILLIG: With respect to the logistics of all that. Let's say we get the test results a week or two before the next meeting.

ATTORNEY GARIGLIANO: We want to approve through Tom Shepstone, or have Tom Shepstone approve. We don't want you to go do the test results without coming here

with a proposal and saying this is what you are proposing to us that you are going to do. Because if you go do it and Tom or this Board doesn't think that what you did is right, you're wasting your time.

JACOB BILLIG: I'm confident that based on what is done in the industry which is outlined in the Business Plan when Tom sees that list of what we're testing for he will say okay.

ATTORNEY GARIGLIANO: It might be a different testing protocol. It might be a much shorter list.

JACOB BILLIG: And having said all that, to not, and I don't mean it negatively, waste a month, but is it okay that we provide that proposal to you and Tom.

ATTORNEY GARIGLIANO: Provide it to Tom, absolutely.

JACOB BILLIG: And if Tom okays it, we will go out, because I think the test results could be obtained immediately.

ATTORNEY GARIGLIANO: You're still going to need, I'm not trying to make this take longer, Jacob. You're still going to have to write to the neighbors, you're going to have to send them a letter and say "this is what we propose to do" and...

JACOB BILLIG: Right, that's not going to get done in a day, I understand.

ATTORNEY GARIGLIANO: It's not going to get done in a day.

JACOB BILLIG: I'm just looking to speed up.

BRAD BURNETT: We should be able to put a limit on how long they have to answer.

ATTORNEY GARIGLIANO: Absolutely, you should.

JACOB BILLIG: But if Tom can approve the testing list parameters, that could be something that we can do in between the next meeting. I'm assuming the Board is going to kind of take him. If Tom says this is okay, the Board will okay that? So that way, like I said, if we can get all this done in the next month.

ATTORNEY GARIGLIANO: If you get it to Tom for him to review, we'll be lucky if we have his letter by the next meeting.

CHAIRMAN DEUTSCH: If you can move him along, that would be great.

JACOB BILLIG: So you're okay with, because normally I know the procedure is NOT to contact Tom directly, with good reason.

ATTORNEY GARIGLIANO: No, send it to Nancy and she'll get it over to him. You don't even, I don't know if Randy's going to do this or you're going to get somebody else to assist, that's up to you guys, but

JACOB BILLIG: I'm looking to expedite the process with Tom, that's all I'm raising now. As long as I have your okay on that, we'll get her done. Good. Anything else? No? Okay. Thank you.

Abraham Bierman
Special use Permit
245 Ferndale-Loomis Road Unit #50
SBL: 41.-1-9.8
Zone: RD

Jack Tompkins appeared for this project. After some discussion, it was determined that the two following projects are also on this parcel and Joseph Irace was representing them with a different map. It was determined that this project would be brought back for a public hearing on April 7, 2009 and that it be sent for 239 review.

Solomon & Gitty Birnbaum
Special Use Permit
245 Ferndale-Loomis Rd Unit #39
SBL: 41.-1-9.8
Zone: RD

Joseph Irace appeared for this project.

Attorney Garigliano asked Mark Van Etten if he had files on these buildings.

MARK VAN ETTEN: It's a big mish mosh and that was one thing he would ask the Board help with on this, is getting adequate TAPE UNCLEAR so that they're addressed properly. There are unit numbers but the lanes in there are considered roads and they should be, have to be numbered off those roads from what the 911 center has told me. And none of them are labeled, none of them are listed.

CHAIRMAN DEUTSCH: None of the buildings are labeled?

MARK VAN ETTEN: None labeled, none listed properly.

ATTORNEY GARIGLIANO: Well I don't know that there's a map by which 911 could even begin to think about it. Because if you look at either the map that Joe has that he got from Glenn, which is the approved site plan or the Adler map, there's units that exist that aren't on the map, there's units on the map that don't exist. I mean this isn't right, this isn't right.

MARK VAN ETTEN: I'm going to ask, for the next meeting, I'm going to see if the 911, if 911 can get me an aerial shot that they will work off of for numbering and maybe if I e-mail a copy of that to you, then can we work together to get that.

JOSEPH IRACE; We can revise this map.

CHAIRMAN DEUTSCH: I think we need to clarify what's there before we can make a more determinations.

ATTORNEY GARIGLIANO: Yeah, planning on these bungalows so long as they don't exacerbate existing problems, I think we need to review those, but if we can get the people before us to collaborate some of Mark's long term issues while they're here, I think that's a good thing. They don't seem to be against it.

MARK VAN ETTEN: It's actually their long term problem because ambulance's have spent an hour trying to find somewhere in the summer there and the fire company only could see the fire, because of the language barrier some of the people have there, was seeing the smoke. One building is not the other neighbor's concern, that's basically what I was told.

It was determined that this project would be brought back for a public hearing on April 7, 2009 and that it be sent for 239 review.

Mark & Rachel Moskovits
Special Use Permit
245 Ferndale-Loomis Rd Unit #20
SBL: 41.-1-9.8
Zone: RD

Joseph Irace appeared for this project. It was determined that the 10 x 34 covered porch would be over the limit bringing it only eight feet from the road. It is 18 feet off the road now.

JOSEPH IRACE: If there is a distance separation that we're violating we can eliminate that front porch.

ATTORNEY GARIGLIANO: I don't know that there even is.

JOSEPH IRACE: This is not a piece of property that you can use your map, chart.

MARK VAN ETTEN: If that road is indeed listed as a roadway within the property then it does.

ATTORNEY GARIGLIANO: But this is the road back here isn't it?

JOSEPH IRACE: Well this is the site.

ATTORNEY GARIGLIANO: Yeah, but the road comes around here Mark.

MARK VAN ETTEN: No, but the road also, that's my problem. The road comes here to a gate, up here to a gate, which is closed all the time from a 90 degree corner. The fire trucks can't get through. It has to be widened, comes to another 90 degree corner, which is all labeled. 911 center has this all labeled as a road. Access front roadage for these properties which is nothing more than a golf cart road.

ATTORNEY GARIGLIANO: This unit is here. This unit is here.

JOSEPH IRACE: Well I'm thinking it's there.

ATTORNEY GARIGLIANO: I don't think it's there, I think it's more like here.

I measured off this manhole, because I figured they at least put those where they're supposed to be.

JOSEPH IRACE: I can actually access an aerial view from a live search map website that I use. This particular one actually gives a bird's eye view and you can see three dimensions. I could probably download that and trace that for the next meeting. But it's not going to change exactly what we're doing here. Mark, if you know that there's actually a distance, this is not a paved road, it's a gravel road, so I don't know what the regulation is for maintaining.

TAPE UNCLEAR – ALL TALKING AT ONCE

MARK VAN ETEN: This has a name, that was my argument with the 911 center. This is considered a roadway. It's got a name.

JOSEPH IRACE: So is there a distance separation actually maintained, cause I'll just simply eliminate that.

TAPE UNCLEAR – ALL TALKING AT ONCE

DEAN FARRAND: 'No part of any structure shall be located within twenty-five(25) feet of the edge of pavement of any road to or through the development.' That's under Bungalow Colonies (in the Town Code Chapter (84-25).

After more discussion it was determined that the porch would be eliminated.

It was determined that this project would be brought back for a public hearing on April 7, 2009 and that it be sent for 239 review.

IT WAS DETERMINED THAT A CONSOLIDATED PUBLIC HEARING BE HELD ON ALL THREE PROJECTS AT THE APRIL 7, 2009 MEETING.

Carl L Hartman
2 Lot Subdivision
Denman Road
SBL: 37.-1-29.7
Zone: RD

Carl Hartman appeared for this project. After a short discussion with Mr. Hartman it was determined that the upper portion of the existing driveway was not 50 feet wide and should be reconfigured to be so. Mr. Hartman agreed to do so and will bring a new map back in time for the next meeting.

Kevin & Jayne Reiman
Lot Improvement
Neversink Road
SBL: 23.-1-38 & 44.2
Zone: RD/RS

No one appeared for this project, but the Board discussed it anyway and it was determined that Mr. Galligan measured from the center of the road for this project instead of 25 feet back from the road edge. It was determined that Nancy would call Mr. Galligan and tell him of this error and ask that he correct it and submit a new map with the change in time for the packet delivery for April's meeting.

**ON MOTION BY RAY KELLY SECONDED BY LYNN DOWE THE MEETING WAS
ADJOURNED AT 9:25 PM.**

Respectfully submitted,
Nancy Saucier, Planning Board Secretary

The foregoing represents unapproved minutes of the Town of Liberty's Planning Board from a meeting held on March 3, 2009 are not to be construed as the final official minutes until so approved.

Approved as read