

PLEASANT VALLEY ZONING BOARD OF APPEALS

February 26, 2009

This meeting of the Pleasant Valley Zoning Board of Appeals took place on February 26, 2009, at the Pleasant Valley Town Hall, Route 44, Pleasant Valley, New York. Chairman John Dunn called the meeting to order at 7:31 p.m.

Members present: John Dunn, Chair
 Bob Maucher
 Helene Czech
 Christina Perkins
 Tim Gerstner
 Lisa Rubenstein
 Ronald Vogt

Also present: Steve Kish, Alternate

1. **APPEAL #938 - MARION SALON SPA – AREA VARIANCE**

Applicant is applying for a variance from Section 98-20 (B)(3): “Projecting signs – any sign which shall project forward from the surface of the wall of any building shall not extend more than three (3) feet from the surface.” The applicant is requesting a 2’ variance.

Mr. Dunn reported that the file contains:

- Notarized letter from Herb Redl, property owner, authorizing Nancy Forrest of Gloede Signs to represent him
 - Affidavit of publication in The Poughkeepsie Journal dated 2/29/09
 - Referral from the Fire Advisory Board: no position as there are no fire or safety issues
 - List of adjacent property owners who have been notified of this hearing
 - Pleasant Valley Planning Board recommendation: positive recommendation (original on file)
 - Dutchess County Department of Planning recommendation: conditional referral (original on file) requiring a super majority vote by the ZBA to grant the appeal.
- Concerns include:
- Accuracy of the graphic
 - Inclusion of the bracket in computing the variance requested
 - Lighting
 - Excessive variance requested

Ms. Nancy Forrest, Gloede Signs – GNS Group, was sworn in. She stated that the size of the proposed sign is less than what the ordinance permits on a projecting sign. She pointed out that the fact that it is an oval dictates the size of the letters. She explained that space between the building and the oval sign is required for visibility. She referenced the double-sided neon sign that projects 6’ from the Department Store. She stated that Marion does not like internal lighting, that everything in her salon is more traditional and low key, and that she prefers external lighting. She pointed out that they would be permitted 37 ½ sq. ft. for a sign attached on the building, which is 3 times the size of the proposed projecting sign. She explained that the tree line is a visibility issue for a sign attached to the building. She argued that the health, safety, and welfare of the public will not be affected by granting this

variance. And she pointed out that the scale of the sign in relation to the building in the photo is correct, contrary to what the DC Department of Planning suggested. However, she did state that the original drawing of the oval sign was over 5' and that it has been corrected to 4 ½' - that the tip of the oval projects 5' off of the building.

Mr. Dunn explained that the ZBA is tasked with granting a variance that is as close to Code as possible – the minimal variance possible. He also pointed out that the sign as proposed is almost overpowering in relation to the size of the one-story building. He asked if it is possible to consider a smaller sign that would serve the applicant's purpose and require less of a variance. Ms. Forrest walked to the back of the meeting room and displayed a paper version of the sign in order to give the Board members a sense of the size of the lettering on the sign.

Ms. Rubenstein commented on the Code's restriction that permits only one projecting sign per building and suggested the possibility that another tenant in the building would request a projecting sign. Ms. Czech stated that the Comprehensive Plan Committee is currently working on a redraft of the sign ordinance and recently held a meeting with business owners to review the draft.

Ms. Rubenstein asked whether there would be a sign on the building along with the proposed projecting sign. Ms. Forrest confirmed that there will not be a sign on the building if the projecting sign is approved.

Mr. Gerstner asked how the sign will be lit. Ms. Forrest explained that there will be traditional goosenecks coming off the center of the bracket shining on the sign that can be on a timer to be shut off at a specific time.

Ms. Rubenstein asked about the lineal measurement of the store frontage. Ms. Forrest stated that the salon has 25' lineal store frontage.

Ms. Marion Morris, 1600 Main Street, Pleasant Valley, NY, was sworn in. She stated that she wants her sign to be beautiful. She stated that she has been in the same location for 10 years and that people are still asking where her salon is. She stated that they took down their awning, which had provided a landmark for her customers. She stated that she needs visibility, especially in this economy, and she wants it to be beautiful.

The Board agreed that the bracket is part of the sign and is included in computing the variance. As a result, the proposed sign and bracket projects 6' from the building. Board and Ms. Forrest discussed design options, issues of visibility, and the possibility of reducing it to 4' projecting from the building.

Public Hearing was opened. No one spoke. Public Hearing was closed.

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DISCUSSION

Ms. Rubenstein raised the question of re-codification of the sign ordinance and the desire to know where the Town is going with regard to signs. Helene explained that the Comprehensive Plan Committee is considering the redraft of the sign ordinance. She stated that quite a few business owners in the Town attended a meeting with the Committee and

provided feedback. Ms. Rubenstein noted that in the years that she has been on the ZBA the Board has never approved a sign variance. She explained that in balancing the interests of the individual with the Town's preference for uniformity and consistency in appearance, the Board's determination was not overwhelmingly on the individual's side in most cases. She expressed her desire is to know what is being discussed with regard to redrafting the sign ordinance, especially as it may relate to the design of this proposed sign.

Ms. Czech summarized that the Town is looking for more walkability in the Town, but right now Pleasant Valley is not a walking community. Although this proposed sign is nice looking, she noted that the sign is quite large and larger than the Code allows. She agreed that it might be a good idea to look at what direction the redraft of the sign ordinance is going in.

Mr. Vogt explained the possibility of delaying a decision by the ZBA for 30 days so that the Board members can review the redraft of the sign ordinance. Ms. Rubenstein pointed out that the Board has 60 days from the date that the public hearing is closed to provide its decision. Mr. Vogt explained his position that he cannot go above what the Code allows, that 3' projecting from the building is reasonable.

Mr. Dunn asked whether the applicant would like to postpone the decision for a month to allow the ZBA members to be better informed regarding the redraft of the sign ordinance.

Ms. Morris withdrew her application for an area variance.

Ms. Forrest will redesign the sign in compliance with the current Code.

2. MINUTES

Board unanimously approved the minutes, as written, of the ZBA December 2008 meeting.

Meeting was adjourned at 8:25 p.m.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represents unofficial minutes of the February 26, 2009, Pleasant Valley Zoning Board of Appeals meeting. They are not official and should not be construed as the official minutes until approved.

_____ Approved as read

_____ Approved as corrected with deletions/additions

PLEASANT VALLEY ZONING BOARD OF APPEALS

March 26, 2009

This meeting of the Pleasant Valley Zoning Board of Appeals took place on March 26, 2009, at the Pleasant Valley Town Hall, Route 44, Pleasant Valley, New York. Chairman John Dunn called the meeting to order at 7:34 p.m.

Members present: John Dunn, Chair
 Bob Maucher
 Tim Gerstner
 Lisa Rubenstein
 Ronald Vogt
 Steve Kish, Alternate
 Ed Feldweg, Alternate

Members absent: Helene Czech
 Christina Perkins

1. APPEAL #935 – HOMELAND TOWERS, LLC – SPECIAL USE PERMIT

Mr. Dunn reported that this is a request for a Special Use Permit to erect a monopole cell tower on the Boy Scout camp. The file contains:

- List of adjacent property owners who have been informed of this hearing
- Referral from the Fire Advisory Board (ORIGINAL ON FILE): no position because it is solely an appeal to the ZBA at this time for a Special Use Permit. However, the FAB requests that upon application for site plan, the matter be forwarded to the FAB for review at that time.
- Affidavit of publication in The Poughkeepsie Journal dated 3/19/09.
- Recommendation from the Pleasant Valley Planning Board (ORIGINAL ON FILE): positive recommendation, with requests for specific items to be considered by the ZBA, with specific suggested locations from which to view the balloon test, and with the stipulation that the application return to the Planning Board for a full site plan review.
- Referral from DC Department of Planning (ORIGINAL ON FILE): application is incomplete because the materials submitted do not include a waiver from the moratorium. This application must be resubmitted if the waiver is granted.

Mr. Robert Gaudio, attorney with Snyder and Snyder, representing Homeland Towers was present. He explained that Verizon Wireless is a co-applicant with Homeland Towers. The application is for a wireless communication facility at the Boy Scout camp. The facility consists of a 150' monopole within a 3500 sq. ft. equipment compound. The Verizon equipment consists of 12 antennas on the top of the monopole and a 360 sq. ft shelter at the base. The facility is designed for collocation to avoid proliferation of additional towers within the Town. He stated that they have a Federally licensed carrier, Verizon, currently as part of this application and the ability to support 5 future carriers plus municipal antennas for the Town's use for emergency communication entities.

Ms. Rubenstein asked if monopole is designed, now, to accommodate the additional 5 carriers or if that would require the tower to be taller. Mr. Gaudio responded that it is designed for that right now. He explained that Verizon will be at 150' and then there are 5

slots under that height at 10' intervals. Also, the ground equipment area would be designed so that additional space would be available for the additional carriers.

Mr. Gaudioso stated that the project requires a Special Use Permit from the Zoning Board and site plan approval from the Planning Board. He stated that under the moratorium, they filed with the Zoning Board for the SEQRA process, as permitted, and for an informal conference, which is also permitted under the moratorium. More importantly, however, he stated that the reason they wanted to appear before these Boards before they obtain a waiver from the Town Board is that they want to schedule a balloon test to create visual renderings. He stated that the Town's ordinance is very specific and that they submitted all the material required under the ordinance except for the visual renderings. They wanted to do the process in conjunction with the Planning Board and the Zoning Board. He pointed out that the Planning Board has listed specific locations for viewpoints from which to take photos. Further, they hoped to coordinate the balloon test, now, under the worst-case scenario with no leaves on the trees.

Mr. Gaudioso stated that they have filed an application with the Town Board for a waiver from the moratorium, that there is a Public Hearing on 4/8/09. He stated that they were pleased that the application was referred by the Town Board to the Planning Board and that the Planning Board gave a positive recommendation to the ZBA. He recognized that this is at a preliminary stage because the waiver has not yet been granted. However, he proposed that the balloon test be scheduled for Sat. 4/4/09 from 9 a.m. – 11 a.m., early in the morning when the winds are the lightest, with the understanding in the event of inclement weather it would be postponed to Sun. 4/5/09. And if the weather on both those days is inclement, then it would be scheduled for the following weekend. He described that the balloon will be floated to a height of 150' and that they will take photographs from locations as requested by the Town. He stated that they would then use computer modeling to be able to show what the facility would look like from those locations in the photographs.

Mr. Dunn noted that Verizon is already collocated on Pine Hill Road. Mr. Gaudioso stated that that is correct and that they submitted Verizon's coverage maps and the locations of all surrounding sites. He stated that Pine Hill Road tower is 2.5 miles away and does not cover this portion of the Town – Route 44 and the Taconic Parkway. Mr. Vogt asked if they are collocated on the NYS police tower. Mr. Gaudioso stated that they are located on the silo. Mr. Vogt stated that they are also on the police tower and pointed out that he is a Verizon customer and is trying to find out from the maps where the coverage is. He stated that it does not make sense to him where the lack of coverage is. He suggested that the issues would be way south and way north, which this tower does not seem to address.

Ms. Rubenstein pointed out that, based on the assumptions that they get a waiver from the moratorium and that the ZBA will be the lead agency, this Board will engage the services of a frequency expert to evaluate the material that has been submitted. She suggested, therefore, that the discussion of coverage be postponed at this time.

Ms. Rubenstein questioned the procedures and expressed the need to clarify the proper next steps. She recalled that the last time the ZBA reviewed a cell tower was in 2007 at which time the ZBA was lead agency. She suggested that the ZBA cannot take that step to establish lead agency until they receive a waiver from the moratorium. Mr. Gaudioso stated that the moratorium law has a specific exemption to allow the process under SEQRA. Ms. Rubenstein and Mr. Gaudioso reviewed the portion of the law that pertains to SEQRA. Ms.

Rubenstein pointed out that there are timetables under SEQRA and that it is not prudent to initiate the process without an opinion from the Town's attorney regarding how to proceed.

Mr. Gaudioso emphasized that all they are asking for at this time is to schedule the balloon test. Ms. Rubenstein asked if they are asking the ZBA to declare themselves lead agency at this time. Mr. Gaudioso responded no, that they just want to schedule the balloon test.

Mr. Gaudioso also asked the ZBA for a positive recommendation to the Town Board for their waiver request. Also, he pointed out that the comprehensive plan makes no proposed changes to that specific wireless law and makes no proposed changes to that specific piece of property. He also pointed out in the submissions that there is ample Federal law about why these things are public utilities. From a practical process, he stated that they are only asking for full Special Permit hearing process with the ZBA, which the moratorium allows.

Ms. Rubenstein asked if the Town Board has asked for a recommendation from the ZBA with regard to Homeland Towers' waiver request. Mr. Gaudioso stated that the Town Board has referred it to the ZBA for a recommendation. None was found in the file. Ms. Dickerson will check with the Town Clerk on this question. Ms. Rubenstein asked how the ZBA could make a recommendation; that is a legislative decision. Mr. Vogt agreed that it couldn't. Mr. Gaudioso stated that if the Board has no recommendation, he has no problem with the ZBA communicating that to the Town Board. He pointed out that the Town Board adopted a motion to have a Public Hearing on 4/8/09 and specifically asked for recommendations from the ZBA, the Planning Board, the Comprehensive Plan Committee, and the County Planning Board.

Board members stated that they have no problem with scheduling the balloon test. Mr. Dunn stated that this Board has had previous experience with these tower applications and pointed out that it will not be resolved in one meeting. He announced for the benefit of those in the audience that no decision will be made and no approvals granted this month or the following month, and probably not even the following month – that the review and approval process will take several months to conclude. He stated that the Board will keep the public portion of the hearing open as long as necessary.

Ms. Rubenstein read into the record a portion of a letter from Gellert and Klein dated 3/11/09 (ORIGINAL ON FILE) to the Town Board regarding the application for the waiver: if the Town Board elects to accept the application for the waiver, they must set a public hearing and may, at their discretion, refer the application to the Planning Board, ZBA, Comprehensive Plan Committee for their advice and recommendations on the substance of the application. Thus far, the ZBA has not received a request from the Town Board for a recommendation. Mr. Gaudioso affirmed that the Town Board did adopt that resolution and it was their intent to have the ZBA give back a recommendation as to the substance of the application. He also acknowledged that the ZBA's recommendation would be limited at this stage because the investigation of the application is in its beginning phases.

Ms. Rubenstein stated that she did not review the Special Use Permit application with an eye towards making a recommendation regarding a waiver from the moratorium. She stated that she is not prepared to vote on that tonight. Mr. Vogt agreed. Board agreed that they are OK with going forward with the schedule for the balloon test at this meeting.

Public Hearing was opened.

Mr. Stanley Robin, 277 Davis Road, Salt Point, NY was sworn in and asked about the height of the tower above the natural elevation of the site. Mr. Gaudioso stated that the tower itself is 150' for a total of 607' above ground level. He stated that the facility will not require lighting per the FAA and will not be a hazard to aircraft or navigation. Mr. Robin asked how high the ground level is where the tower will be built. Ms. Rubenstein suggested that Mr. Robin drive to sites to visually see the balloon from areas that he is personally concerned about. Mr. Vogt stated that the tower will be installed on the highest point on the Boy Scout property.

Mr. Robin expressed his concern about the impact on health from these cell towers. Mr. Gaudioso stated that as part of the package that they submitted they provided a report on the law and summarized it. He explained that a 1996 law prohibits local boards from regulating on the issue of radio frequency emissions provided that the facilities meet the FCC standards. Therefore, this ZBA and the Town of Pleasant Valley in general are pre-empted under Federal law. They have also submitted a report from a 3rd party engineer that looked at this facility and looked at it as if 6 carriers were fully constructed and operating on the tower – full build out. They compared the radio waves produced from this facility with the Federal regulations. The result of their study determined that this facility would be approximately ½ of 1% of the allowable 100% limitation – it is 100's of times below the Federal standards. The Federal standards are based on the consensus of the scientific community.

Ms. Rubenstein announced to the audience that they are invited to review the full application in the Town Zoning and Planning Office. She specifically referenced Exhibit 6 of the application that provides information on human exposure to radio frequency fields from cellular and pc radio transmitters.

Mr. Robin expressed his concern about the deterioration of the residential character of the area. He specifically asked why this tower can't be put in a more commercial area or more wilderness area. He stated that a big tower will cost the residents money and have a negative impact on their property values. He considers the tower to be an eyesore – “large monstrosity” – that will be seen in many different areas. Mr. Vogt explained that Mr. Robin should view the balloon test and then return for the public portion of the hearing and express his concerns at that time. Mr. Robin agreed that he would do that.

Ms. Cathy Colao, 200 Scout Road, Salt Point, NY was sworn in. She asked about the process for approving the waiver from the moratorium. Mr. Dunn explained that this evening's meeting is strictly about scheduling the balloon test. Ms. Rubenstein explained that the Pleasant Valley Town Board is holding a public hearing on 4/8/09 as part of their regular meeting on this application for a waiver from a moratorium. She advised the speaker and the audience to come to that meeting to express their concerns. Further, she pointed out the other towers that already exist in the area and asked if there truly is a necessity for another one locally. She stated that she's very much concerned with health, about the higher incidence of cancer, and with the devaluation of property. She stated that her home is .10 of a mile from the tower that everybody is piggy backing off of. She stated that she's more concerned with the impact of these towers and of the radio frequencies that you cannot see. She stated that she's very concerned and very opposed to the tower.

Mr. Dunn announced that the public portion of this hearing will be held open for several months. Mr. Vogt stated that there will be plenty of opportunities to speak to the ZBA.

Ms. Colao asked if this tower can be put somewhere else where there are fewer families with young children. Ms. Rubenstein explained that one of the things that the ZBA will do as part of the review, if the applicant is granted a waiver from the moratorium, is to hire a radio frequency engineer who will look at the applicant's materials and determine whether they are making a legitimate case or indicate that the tower can be located somewhere else. She explained that this is the fourth tower application, three of which have been built, that the ZBA has reviewed. She stated that the Board will ask for that information to be documented for the Board, for the residents, and for the Town. She encouraged Ms. Colao to come to the office and review the application and come back to the Board meetings to hear the engineer's report.

Ms. Dickerson stated that local residents will not receive another notice of future hearings, but the date of the hearings are posted on the Town's website and on the bulletin board in Town Hall's entryway.

Mr. Christopher Arnone, 40 Hurley Road, Pleasant Valley, NY was sworn in. He stated that he owns 10 acres on Hurley Road with 240' on the Wappingers Creek. He stated that he is registered with the DEC as a Class A game bird breeder. He stated that he does not have a problem with his Verizon service and that he spends a lot of time cleaning his property. He stated that he breeds and releases birds as a hobby. He noted that he can see two towers from his property on Pine Hill – that they are side by side. He stated that it does not make sense to build another one. He stated that Verizon is very close to switching to satellite service. He suspects that there is more to it than the cell phone service. He can see the two towers from his kitchen window and now they are going for a third. He stated that it is too much – “enough is enough, already.” He stated that the Town needs an engineer to look at the impact to the community and the environment and asked why the cell towers are not environmentally friendly. He stated that the pine tree design is more attractive. He also stated that he thinks they are dangerous without a light at the top.

Mr. Arnone also stated that something needs to be done about the towers when they aren't used anymore – some arrangement to remove them. He stated that he thinks the carriers are on the verge of not using them anymore because the technology is moving to satellite. He explained in detail the technology that is in use to track his activities as an employee of UPS in his delivery truck. They even know when his seat belt is on or off. He stated that the technology exists and that he is very surprised that Verizon wants to put all this money into cell towers. He stated that he delivers to Verizon and talks with the employees that put up the cell towers, who tell him that they are going satellite. He asked, then, what happens when they go satellite in two years and all the towers are here. He asked if there is money allocated to take them down and rehabilitate the areas. Again, he mentioned the two towers side by side on Pine Hill and stated that someone is not doing the math.

Board discussed additional locations from which to view, and take photos from, of the balloon:

- Hurley Road
- Allen Road north of Salt Point Turnpike
- Salt Point Turnpike and Gretna Road

- North Avenue at Turkey and Orchard

No other member of the public spoke. Mr. Dunn reported that the public portion of the hearing will remain open and the public will be able to speak to the Board at a future time.

Ms. Rubenstein asked the applicant how long it will take to provide the photos and the visual addendum to the application. Mr. Gaudio stated that it will take a few weeks, that they will provide a map showing the photo locations, and will photo render the towers into the photo locations. He stated that his goal is to submit that to the Board prior to the next meeting.

Board members discussed weather conditions that would prevent the balloon test. Mr. Feldweg pointed out that if it is blowing like crazy, then it is an inclement day, because the balloon needs to float consistently at the 150' height. Mr. Gaudio agreed that wind is the biggest problem as is fog and rain.

Mr. Gaudio stated that there is a Code provision that requires a removal security. Also, the reason that there are two towers at Pine Hill is that they did not build the first one structurally to support the multiple uses. Therefore, he stated that in this current application they are building in the collocation to avoid that problem. He also asked the Board members to review provision 4B of the moratorium law regarding the process for the SEQRA application. Ms. Rubenstein stated that the Board will ask its attorney to provide the Board with an opinion.

A member of the public stated that she is an adjacent property owner and asked if the Board will send her information about the balloon test and other procedures. Ms. Rubenstein explained the process:

- that she received a notice of this hearing and that it is the only notice that she will receive
- the balloon test is scheduled for 4/4/09 unless the weather is bad
- if she wants to keep up to date with what is happening with this application then she needs to come to the next ZBA meeting on 4/23/09
- she can contact the office to confirm that the cell tower application is on the agenda for the April meeting
- she can come to the office to review the application

ZBA members will drive around over the weekend to choose locations from which to view the balloon and from which to take photos and will call the office by Monday with their list of locations. Board members agreed that locations should be generally north and west of the Pine Hill tower location.

2. APPEAL #939 – BARN #2 FURNITURE – AMENDED SPECIAL USE PERMIT

Mr. Dunn stated that this is an appeal for a Special Use Permit on County Road 44 for an office and furniture sales. The file contains:

- Affidavit of publication in The Poughkeepsie Journal dated 3/19/09
- List of adjacent property owners who were notified of this hearing
- Recommendation from the Pleasant Valley Planning Board: positive recommendation “as the Planning Board thinks it is a good use for the building” and

with the condition that the application return to the Planning Board for a complete site plan review

- Referral from the Pleasant Valley Fire Advisory Board: no position as it is uniquely a matter for the ZBA.
- Recommendation from Dutchess County Department of Planning and Development (ORIGINAL ON FILE): recommending denial, which requires the appeal to be passed by a super majority of the ZBA.

Mary Clark, 364 Clinton Hollow Road, Salt Point, NY, and director of The Barn, was present and was sworn in. She reported that this project is part of The Barn Thrift Shop, located at 1416 Route 44. She stated that they have been at that location for 9 years, that they fix up donated items, and that it is their main place of business. She stated that they accept anything that the public brings them, which includes furniture. She explained that they are limited in their current space to display furniture or do anything with it. She stated that their plan is to find another place to store, display, repair, and sell the donated furniture. She explained that they only plan to move the furniture to the new site.

Ms. Clark submitted to the Board a letter dated 3/26/09 in response to the County's concerns. She stated that the County may be looking at their appeal as a bigger operation than they are proposing. She stated that they are a small business and that they do not want to expand the business. Rather, she stated that they want another place to deal with the furniture that they receive. Also, she explained that the office for The Barn Thrift Shop is currently in her home, and that it would also be moved to the new location.

Ms. Clark explained that they don't plan to do anything different than what they are doing currently, but that they are totally limited in their present location. Again, she mentioned that possibly the County viewed their project as a Raymore and Flanagan, which will never be the case for The Barn. The space limitations at their current location make it impossible for them to function well.

Ms. Clark stated that their proposal is to move the office for The Barn and to store, repair, display, and sell furniture in the new location. She stated that their proposed uses will not constitute an increase in impact from what is already existing on the site – which is an office building. She stated that it is now an office building that accommodates at least 2 people in each of the offices for a total of 4 people. She stated that The Barn intends to have 2 employees on the site – which is a lesser use.

Ms. Clark stated that the existing parking on the site accommodates 8 cars. She stated that their average furniture sales are 1-3 pieces a day. Currently, they store furniture in another building and stated that they do not intend to take any more than what they currently take now. She again stated that they do not intend to increase their business. Because the parking is already on site, it does not change the usage on the site. She suggested that their use will be less intense than is the current office building.

Mr. Dunn stated that they are changing the use. Ms. Clark concurred and stated that she is trying to explain to the Board that their proposed use is less than what the County described in their response.

Ms. Clark stated that they accept approximately 2 truckloads of furniture a week, delivered by pickup trucks or vans. She mentioned that the parking already exists on the site.

Ms. Clark stated that their hours are 10 a.m. to 5 p.m. Monday through Saturday; so all activity would be during daylight hours – nothing early morning or late at night. She stated that they intend to clean up the property, to paint the building, and generally rehabilitate the site. Therefore, she stated that for all of these reasons the use that they are proposing is either equal to or less than the current use on the site.

Mr. Dunn asked for clarification that The Barn is a not-for-profit. Ms. Clark responded yes and explained that they are a non-denominational Christian group that raises money in order to give it away – other ministries and individuals in need.

Mr. Dunn stated that although Ms. Clark says that they will not expand their business, if they have a separate location they probably would expand. He also pointed out that if this permit were to be granted, the ZBA has no control over any expansion.

Ms. Clark stated that they have a storage unit where they store furniture but do not display or sell furniture from – it does not have electricity or water. Therefore, they anticipate that their numbers would remain the same – that they would give up the storage unit and put all the furniture in the new site. Further, she stated that the proposed site is not that large, so they cannot expand. She stated that they cannot display any furniture at their current site, that it goes immediately to the storage unit or other things get piled on it. She stated that if they cannot sell the furniture, then it does not make sense financially.

Mr. Feldweg stated that they are currently using a remote unit now to store furniture, so if someone came to The Barn to look for furniture they would not see it there, but rather would be taken to the storage unit. He asked if that is the operation that they would like to move to the proposed location. Ms. Clark stated that that is correct. Mr. Feldweg asked if they would have a sales person on the site. Ms. Clark stated that they would have two employees, one in the office and the other to move things around and sell things. Mr. Feldweg asked if they would give up their remote storage unit. Ms. Clark responded yes, that they would not need it anymore.

Ms. Rubenstein asked about the percentage of display versus office versus storage. Ms. Clark stated that their biggest problem right now is display and storage and that they have no place to repair anything. Ms. Rubenstein asked which they would be doing more of at the new location. Ms. Clark stated that display and storage would be most of it, with a small area for repair. She stated that they have not thought that far yet, that the building is approximately 2100 sq. ft.

Mr. Vogt asked about the hours – whether they would be open 5 days a week. Ms. Clark stated that they had thought about 4 days a week, possibly. Mr. Maucher asked if a portion of the space would be used as an office. Ms. Clark stated yes. Ms. Dunn mentioned that if the permit is approved, the Planning Board will require a lot of site work. Ms. Clark stated that they understand that.

Public Hearing was opened. No one from the public spoke. Public Hearing was closed.



DISCUSSION

APPEAL #939 – BARN #2 FURNITURE – AMENDED SPECIAL USE PERMIT

Mr. Dunn stated that this is a good cause, that the non-profit raises money for donations, and that he is in support of their activities. However, he stated that it will be a non-conforming use – a retail use – in a residential district.

Mr. Vogt stated that as little as 500' from the site is the antique store, which is in his back yard, to which the ZBA granted increased sales. He pointed out that sales activity from this proposed use by The Barn will be less than from the antique shop. He stated that he would rather see this property – which he can see from his back window – cleaned up and made use of than stay in its present condition. He recognized that it will take money to clean up the property, and that it has been a while since it has been occupied. Mr. Maucher mentioned that it is kind of an eyesore.

Mr. Vogt stated that the proposed use will not increase any traffic onto Route 44, that there is a 4-lane road in that area. Mr. Kish asked if business is being conducted on the site today. Mr. Vogt and Mr. Dunn responded no, that it is closed down. Mr. Vogt stated that it was insurance. Mr. Maucher noted that there was an attorney's sign in the window. Mr. Vogt stated that there were a couple of businesses that never really did anything about the property and worked around mounds of dirt – no rehabilitation was done on the site.

Ms. Rubenstein identified the problem of authorizing a change from one non-conforming use to another non-conforming use, the Code requires the Board to justify the finding. Mr. Vogt pointed out that the County's concerns are about impact on traffic in the area and his point is that it will not increase the traffic. Ms. Rubenstein read from the Code the items that the Board must consider:

- Traffic generated
- Nuisance characteristics
- Fire hazards
- Hours of operations

Ms. Rubenstein pointed out that approval for retail use throws the door open, even though this application seems like a small use. She agreed with Mr. Dunn that it is a dilemma. Mr. Vogt stated that it was a gas station in 1979 and they had vehicles all over the site and the use has changed over the years. He pointed out that one of the problems was contamination from the gas tanks, which were removed, and the ground had to be aerated because of the contaminants. He emphasized that people who purchase properties accept all responsibility for whatever exists on the site that have been created by previous owners. Ms. Dunn asked Ms. Clark if she intends to rent. Ms. Clark stated that they are in the process of making the decision whether to purchase or to rent.

Mr. Vogt pointed out that when it was a gas station, there was a lot of traffic generated from the site. Ms. Rubenstein pointed out that there is a lot more traffic on Route 44 today. Mr. Vogt stated that he does not think the traffic pulling in or pulling out of that site will impact anything and that is what the County was concerned about. Further, he stated that it won't change anything with water usage on the site.

Ms. Rubenstein stated that she visited the site – pulled into it and out of it – before the meeting this evening to get a more complete picture of the site and what is nearby. She stated that there is very good visibility in all directions and that there was not the slightest concern about traffic. Mr. Vogt agreed and emphasized that that is one of the things that the County had not taken into consideration. He stated that it is not on a curve in the road.

Ms. Rubenstein asked how to limit the usage on the site. Mr. Vogt recalled the hours of operation are 10 a.m. to 5 p.m. Monday through Saturday, which is reasonable, and that they will not be there in the evenings so lighting should not be an issue. Further, he pointed out that if the ZBA approves this application, they will go to the Planning Board for site plan review. He stated that he would much rather see the property improved and used and that he does not see anything detrimental from what they are proposing to do on the site. It will include an office with two employees and it won't be a Raymour and Flannigan operation.

Mr. Kish asked what the likelihood would be that someone would demolish the building on the site and build a house there. Board members agreed that it is unlikely to happen.

Mr. Vogt noted that it is not a large building – 2000 sq. ft. – part of which will be used for office space, which will be self-limiting.

Board discussed the County's concerns in their denial and their reasons for disagreeing with those concerns. Board members noted that they have voted against the County's recommendations in the past. Mr. Maucher added the point that the Planning Board also provided a positive recommendation for this application.

In response to Ms. Rubenstein's statement that approving furniture sales on this site would open the door to other activities, Mr. Feldweg stated that it actually does not do that based on the fact that, under the Schedule of Permitted Uses in the Code, furniture sales is a named activity. Further, he pointed out that furniture sales is permitted in zones H-2 and C-1 and by Special Use Permit in C-2. From the zoning point of view and trying to establish what the current use on the site is, Mr. Feldweg asked whether it is "multiple business professional or professional service offices" or is it "professional or professional service office." He stated that at the end of year the current owner of that property came to the Zoning office to ask what he could do with the property, at which time Mr. Feldweg was Code Enforcement Officer. Mr. Feldweg stated that he visited the site with the owner, at which time the owner stated that he had been running his business from that site. The owner told Mr. Feldweg that he was in the remodeling, or kitchen cabinet business and that he also had an attorney on the site. Mr. Feldweg asked for documentation to that effect, which he submitted – a letter from an attorney with copies of contracts. At which time it was the end of the year and the end of Mr. Feldweg's tenure in that capacity. He discussed the property and the situation with the new Code Enforcement Officer at that time. Mr. Feldweg stated that the new Code Enforcement Officer stated that he was comfortable that that use would continue as those two professional service offices. Therefore, he stated that he considered it a professional service office. Referencing again the Schedule of Permitted Uses, Mr. Feldweg discussed the situation as it pertains to multiple business and/or professional offices. He pointed out that a determination by the ZBA of the previous use as one or the other would enable the Board to decide how to proceed with this current application with respect to whether it is more, less, or equally non-conforming. Mr. Feldweg stated that as soon as you introduce the

thought of sales into an area where the pre-existing use was professional service, either single office or multiple offices, you've got a different cat in your bag.

Ms. Rubenstein stated that, therefore, if it is a multiple business professional or professional services offices it's a lesser step to go to retail. She wondered what the difference is in traffic volume between a multiple business professional or professional services office. Mr. Feldweg suggested that at the time the Code was written, there must have been a difference and explained, further, that multiple businesses in a building will generate more traffic than a single business. Ms. Rubenstein agreed and stated that there has been a certain amount of traffic on the site from the previous use as two different offices. Therefore, she stated that it may not be that big of a step to furniture sales, because there already were a couple of different things going on at the site. Mr. Vogt pointed out that a professional service office – such as a doctor or dentist – that is permitted at that site would increase traffic more than furniture sales. Mr. Feldweg stated that, with regard to the degree of non-conformity on the site, this perspective is that the degree of non-conformity is the same. Mr. Vogt concurred. Ms. Rubenstein concurred. Mr. Feldweg stated that, therefore, if the ZBA granted this appeal the use on the site would not be changing from a more non-conforming use to a less non-conforming use; but rather it would be changing from a use to a similar use. Ms. Rubenstein stated that if you consider the intensity of the use of the property, this application is not that much more intense than the current use. Further, she pointed out that the building is limited in size and due to its location on the property they will never be able to expand it. Mr. Vogt pointed out; in any case, they would have to come back to the Board to apply for any expansion.

Board discussed other reasons for approving this appeal – rehabilitation of a derelict site, good use for the location, positive recommendation from the Planning Board, adequate ingress and egress.

Mr. Vogt read into the record Part II – Impact Assessment of the EAF (ORIGINAL ON FILE).

Mr. Vogt: **MOTION FOR NEGATIVE DECLARATION UNDER SEQRA**

SECONDED BY R. MAUCHER

VOTE TAKEN AND APPROVED 7-0-0

T. GERSTNER	YES
S. KISH	YES
E. FELDWEG	YES
L. RUBENSTEIN	YES
R. VOGT	YES
R. MAUCHER	YES
J. DUNN	YES

Ms. Rubenstein read into the record the resolution to grant the Special Use Permit, as follows:

Whereas, the applicant, The Barn Thrift Shop, has submitted proof in support of its application for a Special Use Permit to change from multiple business professional or professional service offices to furniture sales, which under the Code of

the Town of Pleasant Valley requires the issuance of a Special Use Permit, pursuant to Section 98-38, which sets forth the requirements to change from one non-conforming use to another, and

Whereas, proof has been duly considered by the Board at a public meeting, and

Whereas, the Board has taken into consideration, among other things, traffic generated; nuisance characteristics; fire hazards; and hours and manner of operation, now

Therefore, be it resolved that the Board finds that the use for which such permit is sought, furniture sales with room for an office, and under the conditions hereinafter set forth, will not be injurious to the neighborhood or otherwise detrimental to the public welfare and be it further

Resolved that the Board determines that in its judgment, the special use:

- 1. is reasonable and in the general interest of the public and fosters a positive use of the property**
- 2. is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal and similar facilities**
- 3. that the neighborhood character and surrounding property values are reasonably safeguarded**
- 4. will not cause undue traffic congestion or create a traffic hazard**
- 5. the intensity of use as “furniture sales” is approximately the same as the intensity of use as a “multiple business professional or professional service offices,” as per the schedule of permitted uses**
- 6. complies with all other conditions or standards specified in the Zoning Code of the Town of Pleasant Valley**

And, be it further resolved, that the Board determines that the following appropriate conditions and safeguards (and/or time limitations) are included with the issuance of this Special Use Permit:

- 1. Hours of operation will be 10 a.m. – 5 p.m., Monday through Saturday (limited due to the non-conforming use in a residential zone)**
- 2. No outside storage.**
- 3. The applicant must return to the Planning Board for site plan approval.**

These conditions are found to be appropriate so as to guarantee that the use of the premises shall not be incompatible with other permitted uses in the vicinity and area where the property is located.

Ms. Rubenstein: **MOTION TO GRANT THE SPECIAL USE PERMIT**

SECONDED BY T. GERSTNER

VOTE TAKEN AND APPROVED 7-0-0

T. GERSTNER	YES
S. KISH	YES
E. FELDWEG	YES
L. RUBENSTEIN	YES
R. VOGT	YES
R. MAUCHER	YES
J. DUNN	YES

3. MINUTES

Board unanimously approved the minutes, as written, of the ZBA February 2009 meeting.

Meeting was adjourned at 10:10 p.m.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represents unofficial minutes of the March 26, 2009, Pleasant Valley Zoning Board of Appeals meeting. They are not official and should not be construed as the official minutes until approved.

_____ Approved as read

_____ Approved as corrected with deletions/additions

PLEASANT VALLEY ZONING BOARD OF APPEALS

April 23, 2009

This meeting of the Pleasant Valley Zoning Board of Appeals took place on April 23, 2009, at the Pleasant Valley Town Hall, Route 44, Pleasant Valley, New York. Chairman John Dunn called the meeting to order at 7:31 p.m.

Members present: John Dunn, Chair
 Bob Maucher
 Tim Gerstner
 Lisa Rubenstein
 Ronald Vogt
 Helene Czech
 Christina Perkins

Also present: Steve Kish, Alternate
 Ed Feldweg, Alternate

1. APPEAL #935 – HOMELAND TOWERS, LLC – SPECIAL USE PERMIT
2. HOMELAND TOWERS, LLC – MORATORIUM REQUEST

Mr. Dunn reported that this is a request for a Special Use Permit to erect a monopole cell tower on the Boy Scout camp. Also, Homeland Towers has applied for a hardship waiver from the moratorium and the Town Board has asked the ZBA for comment on that waiver request.

Ms. Rubenstein stated that, technically, this is not a public hearing on an application because no waiver has been granted. She stated that on 5/13/09 the Town Board will decide on the waiver request. She announced to the public that anyone who wishes to speak on the waiver request for the tower will have an opportunity at that Town Board meeting on 5/13/09 to speak on the issue of whether the applicant should be granted a waiver.

Mr. Dunn explained that the Town of Pleasant Valley has a moratorium in place at this time. He explained that applicants can apply for a waiver to be exempt from that moratorium, as Homeland Towers has done. He stated that the actual waiver has not been granted and the Town Board will rule on that waiver request on 5/13/09. However, the Town Board will be discussing the waiver request at the workshop meeting and anyone who is interested should call the Town Clerk's office.

Ms. Rubenstein reviewed procedure for this application. The applicant submitted to the Board, tonight, a visual resource analysis based on the balloon test that was held on 4/5/09. She enumerated the procedures that will take place:

- Homeland Towers is in front of the Town Board for a waiver to the moratorium
- Technically, although the applicant is in front of the ZBA asking this Board to do a SEQRA review, their application for a Special Use Permit is not officially in front of this board because they don't have a waiver, yet.
- Homeland Towers has also applied for a waiver for Site Plan Review so that they can go to the Planning Board, and that waiver must be granted before site plan review can go forward.

She noted that the moratorium law permits the applicant to come before the ZBA with respect to their SEQRA application, at their own risk, understanding that if they don't get the waiver from the moratorium, then nothing will be done with their SEQRA submission.

Ms. Rubenstein suggested that the visual resource analysis and the EAF be referred to the Board's engineer and to the Board's radio frequency engineer for their review and comment. She stated that she spoke with Mr. Volkman today and that the ZBA does not have a resolution to circulate for lead agency, which this Board can do at the next meeting. She stated that she wants the engineer to confirm that there are no other involved agencies that would have to be notified for a coordinated SEQRA review. Once it is confirmed that there are no other involved agencies to deal with, then the ZBA can declare itself lead agency and ask the Planning Board to consent.

Procedurally, Ms. Rubenstein stated that the ZBA will undertake a SEQRA review and will not do the Special Use Permit. She stated that the majority of things that the ZBA would be deciding on with respect to the Special Use Permit will be what is discovered through the SEQRA process. She stated that anyone who is interested in what will happen with the Special Use Permit needs to read the submitted material and pay attention to it.

Mr. Gaudioso concurred with this analysis of the procedure. He asked, specifically, that the ZBA notify the Planning Board and any other agencies of the Board's intention to act as lead agency under SEQRA.

Ms. Rubenstein asked for extra copies of their application and EAF to be available to the public in the Town Clerk's office, the Pleasant Valley Library, and a copy for the radio frequency engineer. She also stated her desire to confirm that the list of involved agencies is correct. Ms. Dickerson asked who makes that decision. Ms. Rubenstein stated that the Board will get a recommendation from its engineer – Morris Associates.

Ms. Rubenstein asked about the escrow process. Ms. Dickerson confirmed that the applicant has deposited money into an escrow account with the Town. Mr. Gaudioso asked that the consultants provide an estimate of the scope of work. Ms. Dickerson confirmed that she will provide Mr. Gaudioso with copies of all invoices charged to their escrow account and asked who pays for the radio frequency engineer. Ms. Rubenstein stated that the applicant will pay for those services.

Ms. Rubenstein stated that, in the past, the Board has used the services of Mark Hutchins as a radio frequency engineer. Mr. Gaudioso stated that he has not personally worked with Mr. Hutchins but understands that he is qualified and that he has no reason to object to selecting Mr. Hutchins. Ms. Rubenstein stated that she will e-mail Mr. Hutchins to ask him to take on this project. She will also contact Pete Setaro at Morris Engineers to work on this project.

Ms. Rubenstein stated that she declines to comment on the applicant's request for a waiver from the moratorium and would abstain from any vote on that. Mr. Gaudioso noted that the Town Board has asked the ZBA for a recommendation on their waiver request and asked that, if the ZBA declines to make that recommendation, the Board send a note to the Town Board documenting that it is the Board's intention not to make a recommendation.

Mr. Dunn asked the Board members for their thoughts on commenting on the waiver request. Board members discussed whether it is the purview of the ZBA to comment on a waiver

request. Ms. Rubenstein clarified that the applicant's request for a waiver is a request to be exempted from the restrictions of the moratorium and to be allowed to go forward with their project at this time. Mr. Vogt stated that he did not think the ZBA should be making a determination on whether they should be granted a waiver or not. Mr. Dunn stated that, due to the fact that a great part of the ZBA's decision is based on need, it would be premature for this Board to make a recommendation prior to having the information from the engineers.

Mr. Gaudioso agreed that it is a little strange that a Board that ultimately has to rule on it is being asked to make some decisions on information that will ultimately affect that final determination. He reiterated his request that the ZBA communicate to the Town Board its decision to, or not to, comment.

Ms. Dickerson asked if the decision not to comment on the waiver would be done by resolution. Ms. Rubenstein asked if the Board members are in consensus that the Board will not make any specific recommendation with regards to whether the Town Board will allow a waiver of the moratorium. Board members agreed and determined that a resolution by the ZBA is not required. Ms. Dickerson asked whether it will be adequate for her to do a memo to the Town Board from the ZBA that says that the ZBA is choosing not to comment on the waiver request. Mr. Dunn stated that this decision is supported by the fact that the ZBA does not have an opinion from its engineers. Board members agreed that they do not have enough information, at this time, to provide a comment.

Mr. Gaudioso noted that the crane/balloon test was completed and submitted copies of the visual renderings and photos. He stated that they did 24 viewpoints. He stated that they put a 4' x 6' flag at the 150' level and 6' above that they floated a 4' diameter balloon. Mr. Dunn noted that he and a number of Board members were out to view the test.

Mr. Vogt reported that the most visual impact is on Davis Road.

Mr. Dunn and Board members discussed the issue of whether an official public hearing was opened at the previous meeting and, therefore, whether it can be adjourned or should be closed. Mr. Dunn announced to the members of the public that they should come back when the application has been officially submitted and the public hearing has been scheduled. The previous testimony is in the record. Mr. Gaudioso stated that he has no position on whether the ZBA closes the unofficial public hearing. He did point out that NYS law requires a re-notice for the official Public Hearing.

Ms. Rubenstein explained that normally before a permit is issued and before the SEQRA process is concluded, a combined hearing is held. She asked whether the applicant would have a problem with the ZBA holding a public hearing when the EAF is complete and prior to a SEQRA determination. Mr. Gaudioso stated they have no objection to the ZBA holding a public hearing before the Board issues its determination under SEQRA, even though a public hearing might not ordinarily be required at that stage in an application. He anticipates that if a waiver from the moratorium is granted, a combined public hearing would be held to address the Special Use Permit issues and SEQRA issues, if any.

Ms. Rubenstein explained the process as it pertains to the moratorium and SEQRA; she stated that previous testimony from the public is on the record and in the minutes. She stated that those comments can be considered in Board's decision-making process.

Ms. Rubenstein: **MOTION TO CLOSE THE PUBLIC HEARING; SECONDED BY R. VOGT; VOTE TAKEN AND APPROVED 7-0-0**

A member of the public asked about the process. Ms. Rubenstein advised that if anyone has an objection to the waiver request, they should speak at the Town Board meeting on 5/13/09.

3. APPEAL #940 DEYO/BALKIND – SPECIAL USE PERMIT

Mr. Dunn stated that this is an appeal for a Special Use Permit for permission to have a variety of animals on the property. He stated the file also contains:

- Referral from the Planning Board (ORIGINAL ON FILE): positive recommendation with a request that the ZBA take into consideration:
 - If horses are permitted, the ZBA consider the number of horses based on the size of the property
 - That there be a documented manure management plan in place – a disposal plan so that adjacent property owners' wells are not put at risk and to help manage odor
 - To make sure the guinea fowl are contained or penned
 - To get input from adjacent property owners with regard to the Special Use Permit
 - Area variance is required because of the proximity of the barn to the property line, which must be a separate application.
- Affidavit of publication in The Poughkeepsie Journal on 4/17/09
- List of adjacent property owners who have been notified of this hearing
- DC Department of Planning and Development: no comment – matter of local concern
- Referral from the Fire Advisory Board: no position as the FAB sees no fire or safety issues

Robert Balkind, 16 Swain Drive, Pleasant Valley, NY was sworn in. He stated that he and Tami Deyo are the owners of 16 Swain Drive in Pleasant Valley. He stated that they were at the Planning Board meeting the previous week to start the process of seeking approval to have some farm animals on their property. He stated that they own a 4-acre parcel that they purchased 3 years ago. He stated that they were excited about the possibility of using the barn as the previous owner had used it.

Mr. Balkind reported that the Planning Board made a positive recommendation to the ZBA with some conditions. He submitted a written document discussing the points that the Planning Board raised. He stated that the records show that the existing barn was built in 1974 and has 3 existing horse stalls in it. He stated that the previous owner did have 3 horses in the barn. He stated that 4 out of the 5 abutting property owners currently are the same abutting property owners who have been there when the previous owner had his horses and they all speak very fondly of the him and his horses. He stated that he and Tami think the 3 horses would fit their property, especially since the previous owner had 3 and that the barn is set up for 3. He stated that there is enough paddock and pasture area for three. However, he stated that he understands the concerns for the neighbors and that they want to be reasonable. He stated that they could live with two horses if the Board felt strongly about that. He pointed out that it is desirable for the horses to not have simply one horse on the property as they are herd animals and thrive better when there is more than one horse on a property. He asked the Board to consider the horse's well-being in their deliberations.

With regard to manure management plan, Mr. Balkind stated that the manure that will be collected from the stables and paddocks areas will be trucked to a local landscaping company that has agreed to accept it. He submitted a letter to the Board from the owner who has agreed to take the manure for compost and soil enhancement.

With regard to the waste materials going into the ground from the barn, Mr. Balkind stated that the stables have a concrete floor. He stated that with the exception of occasions when they would rinse out the barn and wash the floor, there would not be any filtration of those wastes into the earth.

Mr. Balkind stated that the direction of surface drainage from the barn and from all the paddocks area, they are generally a lower spot than most in that area. He stated that none of the neighbors' wells or septic systems is in the path of that drainage.

With regard to penning the guinea fowl, Mr. Balkind stated that their goal with the guinea fowl is to have an environmentally sensitive way to manage ticks and bugs on the property. He stated that they prefer not to use pesticides on the property; that they have dogs and cats. He stated that if the guinea fowl were penned, they would be of limited use for that goal. However, he stated that if the Board insisted that they be penned, they would do so.

Mr. Balkind pointed out a signed and notarized letter from Mrs. Gerry Knechtel, their closest neighbor – she owns the house closest to the barn – who wholeheartedly supports their application to have all the animals. She did request that they not have any roosters, which Mr. Balkind stated that he agrees with. He stated that they want the chickens for eggs. Also, Mr. Balkind stated that Mrs. Knechtel built her house in 1957 and has lived there since then and during the years when the previous owner had his horses. She stated that she has no problem with the horses.

With regard to the area variance, Mr. Balkind stated that he understands the issue and asked the ZBA to require him to seek an additional variance. He stated that they are before the Board to seek approval to use the barn that came with the property that they bought. He stated that the barn is where it is – 6' to 7' from the property line since it was built. He stated that he understands that current zoning requires a 100' setback for the barn but that there is no way they can comply with that. He stated that if they are not granted permission to use the barn, then it would become a big valuable asset on the property that they would no longer have the benefit of. He stated that it has been there for 30 years and asked that the Board use its judgment and allow them not to apply for another variance on that matter.

Mr. Balkind stated that the animals are for their enjoyment and their use. He stated that this is a way for them to act locally – raise the chickens for eggs and meat and enjoy the animals. He stated that 1/3 to 1/2 of their property is encumbered with a Central Hudson easement – there is a major utility transmission line running right through the middle of their 4 acres and they are unable to build on any of that and they also have unlimited use of it because their use cannot conflict with Central Hudson's rights.

Mr. Dunn asked how much of their 4.2 acres will be pasture? He stated that he visited the site, but that it appeared that no one was home. Mr. Balkind responded that 2-3 acres of open pasture and pointed out the remnants of an old riding ring. He stated that they are not

intending any commercial use for anything. The old fences are still in place, and it is set up for horses.

Ms. Perkins asked what their plans are for land management. Mr. Balkind asked for clarification on what she means. Ms. Perkins asked if there is one open pasture area. Mr. Balkind stated that they would probably have 3 separate paddocks. Ms. Perkins asked what their plans for that are. Mr. Balkind stated that they would rotate the horses – one paddock set aside for wet weather. Ms. Perkins asked what their plans are for the other two paddocks. Mr. Balkind stated they would mow and managing them as they do now. Ms. Perkins asked if they would use them full-time – simultaneously.

Ms. Perkins explained her concern that a precedent would set with the number of horses per the number of acres. She stated that there are a number of small farms in this Town where there's no land management and the result is a rock pile – no grass – and runoff. She stated that even if they had 6 acres and 3 horses and had no land management plan, they would still end up with a rock pile and run off. She stated that she would like to know, specifically, the applicant's plan for land management.

Mr. Balkind stated that they will rotate the horses in the paddocks to let the grass recover. Ms. Perkins asked how often they would do that and what they would do to maintain the turf. Mr. Balkind stated that the frequency of rotation would be dictated by how quickly the turf cover becomes disturbed. Ms. Perkins asked what they would do to assist the turf.

Ms. Perkins stated that she also has horses and is very concerned about setting the precedent of people having these animals with no land management plan which creates a mess and a lot of runoff. She stated that if there is appropriate grass cover, manure gets absorbed. She also stated that removing the manure from the barn and trucking it to the nursery is appropriate, but asked how they will go out into the fields and rack it up and gather it for removal. She stated that that is not realistic that that will happen. Mr. Balkind stated that it is realistic and that he does not agree with her. He stated that it is simply his backyard – not 20-30 acres. He stated that his property is well kept at this time. Ms. Perkins asked how many horses he now has. Mr. Balkind stated none. Ms. Perkins stated that she understands his desire to have horses but that he must have plans in place to maintain the land.

Mr. Balkind stated that they don't want their land to look like a rock pile, that they have a lot of money invested in their home. He stated that they care a lot for their property, they have an in-ground pool, and they love being outside. He stated that they will do what it takes to maintain it. He stated that they will do what it takes to manage their land, that he is a professional engineer and works in land use issues – transportation projects. Mr. Balkind asked for an example of a land management plan. Ms. Perkins suggested that he go to the farm and home center for their advice.

Mr. Maucher raised the question of whether the applicant plans to sell the animals. Mr. Balkind responded no and that they don't intend to sell the eggs, either. Mr. Maucher asked about the rationale for them applying for a Special Use Permit. Mr. Balkind explained that zoning requires a Special Use Permit to keep farm animals in an R-1 district.

Board members discussed the interpretation of farm animals and the need for a Special Use Permit in this instance. Also, they discussed the history of similar applications before the ZBA and the ZBA's decision on those applications. Mr. Maucher stated his opinion that

there is no need for a Special Use Permit for this application. Ms. Rubenstein stated that unless they are considered to be pets, then the S.U.P. is required. Ms. Perkins stated that they would not be considered pets. Mr. Maucher stated that it does not matter whether they are called pets, it's more a question of whether they will be used for agricultural purposes. Ms. Rubenstein stated that the ZBA has had this question in the past – that the only way that a S.U.P. would not be required is if the animals were established to be pets. She stated that the ZBA has ruled in that way in the past. Mr. Maucher countered that agriculture, in the Code, includes sale and that Mr. Balkind will not be selling these animals; therefore, he does not think it applies in this case.

Mr. Dunn asked for clarification on when the barn was built. Mr. Balkind stated that the assessor's office records it in 1974, that he thinks it was built before that, but that he does not have anything to prove that.

Mr. Balkind assured the Board that he will provide a land management plan.

Ms. Rubenstein expressed the rationale for requiring a Special Use Permit in this application. To take it to the extreme, she noted that one could have any number of farm animals on any piece of property. She stated that the ZBA has never interpreted the Code that way and neither has the Town. Mr. Maucher stated that it, then, becomes a question of what is the proper number of animals and is a matter of opinion. Ms. Rubenstein stated that the reason this application is before the ZBA is because that is how the Town has traditionally interpreted it when people come in to have horses or farm animals; they are requested to do a Special Use Permit because then the Town and the Board have some ability to set some guidelines and some conditions that make sense - such as land management. Further, she pointed out that the Special Use Permit stays with the land. Therefore, as an example, if granted without any conditions, subsequent owners of the property could put 20 horses on the site. Ms. Perkins agreed that conditions need to be put on this permit, if granted.

Mr. Balkind stated that he agrees with the Board that a property of their size should not have unlimited horses – that it cannot support that. He stated that they submitted an application that they thought would be reasonable. Ms. Rubenstein asked if they plan to breed the goats. Mr. Balkind responded no, that they just want a few animals to enjoy. Ms. Perkins pointed out that goats have the same impact on the land as horses. Mr. Balkind stated that, if they get approval, they plan to phase into this – that this year they will try 6 chickens and see if they can handle them. And next year they will get some goats and see if that works out – and so on. He stated that they don't want to make this their life's work, but rather for their enjoyment and at a level that they can manage. He stated that if they discover that they can only manage 4 chickens and 2 goats and no horses, they will stop there.

Ms. Czech asked where the chickens will be housed. Mr. Balkind stated that they will have a "chicken tractor," which is a portable chicken hutch, that moves them around the property. He stated that they will move the goats around also – but that all the animals will be housed in the barn.

Public Hearing was opened.

Mr. David Smith, 23 Swain Drive, Pleasant Valley, NY was sworn in. He stated that he and his wife, Karen, have some concerns:

1. noise and odors – especially odor from manure and other by-products from the animals
2. manure and potential ground water contamination – they have a domestic water well
3. containment of the animals – they had an experience living in a rural setting where the cows across the street got out and into their front yard
4. farm animals in the neighborhood would adversely affect the property values – property devaluation

With regard to the barn and the outbuildings on the property now, Mr. Smith stated that those buildings were constructed when that parcel was 14 acres. He stated that when the previous owner left that property, it was subdivided into its current configuration. He stated that to say that 4 acres will support a barn of that size and the outbuildings is stretching it a bit. Ms. Rubenstein asked if they lived there when it was 14 acres. Mr. Smith responded yes, they lived there a couple of years before it was subdivided. Mr. Dunn asked where the additional acreage was located. Mr. Smith stated that it was open area in the back – he pointed it out on the aerial map. Mr. Gerstner asked if there were horses on the property at that time. Mr. Smith responded no, that the previous owner was elderly and no longer had horses, although he had horses for most of the time he lived on the land. Mr. Gerstner asked if Mr. Smith had his water tested. Mr. Smith responded that they did when they first moved in and it passed all tests.

Mr. Dunn asked Mr. Balkind about noise and odor issues and about guinea fowl, especially. Mr. Balkind stated that the fowl cluck and at night they are good sentry birds, but also noted that they have wild turkeys clucking around on the property. He stated that if the guinea fowl became problems for any of his neighbors he would pen them or get rid of them. Mr. Vogt stated that they graze around from property to property and they aren't very noisy until a fox or a threat excites them. Mr. Balkind stated that he wants to maintain good relationships with his neighbors.

Mr. Dunn asked about containment and adequate fencing. Mr. Balkind stated that the fencing is currently in poor condition. He stated that there are 3 designated paddock areas with gates and the fencing is dilapidated. He stated that the first order of business is to fix the leak in the barn roof, clean out the barn, and put all the fencing back up. He stated that they have some ways to go before they can have animals and that they don't want to put a lot of money into those projects unless there is a purpose to do it.

Mr. Dunn stated that animals can work as a positive or a negative on property values.

No one else from the public spoke.

Public Hearing was closed.

4. APPEAL #941 – SEMINARA - INTERPRETATION

Mr. Dunn noted that this is an application for an interpretation on whether the parcels in question are build-able parcels. The file contains:

- Referral from the DC Department of Planning: no authority to make any recommendations regarding this application.
- Referral from the Planning Board (ORIGINAL ON FILE): negative recommendation and ask that the ZBA factor into its decision the following:

- 5 tax parcels not 5 building lots
- not created as a result of a town-approved subdivision
- requests that the ZBA research additional documentation provided by the applicant
- based on the facts provided, the Planning Board does not agree with the applicant's proposed interpretation as build-able lots
- recommendation was given to the applicant to research all the deeds for the chain of title on the parcels to, especially, look for easements
- affidavit of publication in The Poughkeepsie Journal dated 4/17/09
- list of adjacent property owners who have been notified of this hearing
- notarized letter from the property owners authorizing Mr. Devers to represent them
- memo from Jack Neubauer, Pleasant Valley Zoning Administrator (ORIGINAL ON FILE) regarding this application

Mr. Fred Seminara, 360 Buddle Bay Lane, Lexington, NC 27292, and owner of the property in question was sworn in. Mr. Peter Devers, 62 Rascal Road, Millbrook, NY 12545 was also sworn in.

Mr. Seminara stated that there are 5 parcels and that a neighbor was interested in buying 1 or 2 parcels. He stated that during research they discovered that they could not split up the property. He stated that he has been paying premium tax on these 5 parcels for 25 years. He stated that one of the lots is mostly rock and would not pass Board of Health and another one is swamp. He stated that Mr. Devers looked into the old deeds and has initiated a title search on them.

Ms. Rubenstein stated that in the past where lots have existed prior to zoning the ZBA has determined that subdivision was not necessary in order to build on them, however the lots must have 50' of road frontage. She stated that the ZBA cannot make any determination on this interpretation until Mr. Devers gets the title work in hand and it can be established that the lots existed prior to zoning.

Mr. Vogt and Ms. Rubenstein reported that the ZBA has, in the past on similar appeals, treated each lot individually – as long as they have some access to the road and is not too narrow to be a driveway the Board has allowed them to be built upon as long as the lot can meet all the other requirements.

Mr. Devers stated that they ordered title searches for two of the properties. He stated that they are a little disappointed that the Planning Board did not examine what the rules were 30+ years ago when these lots were created. He stated that he talked with the Dutchess County Real Property Tax Clerk and the attorney for the title company - deeds go to the county, that they draw the map and assign parcel numbers, but then they come back to the Town of Pleasant Valley for determination as to exactly what they were. He stated that these parcels have been assessed as build-able parcels and taxed at that rate – with the exception of the 2-acre lot that was created after zoning was implemented. He stated that that suggests that the Town looks at these parcels in different ways – 3 of them are assessed as build-able and one is not. He stated that he thinks this is very good evidence for how the Town has regarded these properties, legally, for over 30 years.

Ms. Rubenstein stated that for years people cut out portion of their property to give to someone without any subdivision and then there was a period of time when things were filed with the County that the Town had no knowledge of. She stated that this Board is not in a position to argue that issue and can only look at the current Code. She stated that if he can establish that they existed prior to zoning, then the ZBA will consider whether the parcels have the appropriate road frontage. She stated that the only evidence to the ZBA that it was created before zoning is a deed that shows when it was created. Mr. Devers stated that the title search should provide that on 4 of the lots. He also pointed out that access could be granted via an easement.

Ms. Rubenstein emphasized that there needs to be evidence that the lots were not just created before zoning but that they were build-able lots before the zoning code was adopted. Mr. Devers suggested that that would be hard to prove. Ms. Rubenstein stated that the ZBA has addressed this issue in the past with previous applications. She asked Mr. Devers to submit the documentation to the Zoning office as soon as he receives it.

Mr. Vogt asked if the applicant purchased the lots in 1979. Mr. Seminara responded no. Mr. Vogt noted that one of the deeds submitted to the Board – for parcel 5544 and 552 – in 1979, which was after zoning, were sold total 1.2 acres for \$10. He stated that to him it is a deed of conveyance. He also pointed out that one of the other lots was sold for \$1 on a deed of conveyance. Mr. Vogt pointed out that the Board does not have adequate information yet.

Mr. Devers asked whether the Board will be able to render an interpretation once it receives the abstract title on the property. The Board stated that that is correct.

Mr. Maucher asked how much road frontage they have at this time. Mr. Devers stated that he thinks their driveway is about 25'. Mr. Seminara stated that it is more like 17' but that he's not sure. Ms. Rubenstein suggested that they get the actual measurement of the road frontage prior to returning to the ZBA.

Mr. Dunn asked about the 2-acre lot. Mr. Seminara stated that he purchased all the lots as one. Mr. Devers stated that the 2-acre lot was created after Zoning was implemented, which is why it is assessed about ½ of what the others are even though it is twice the acreage. Ms. Rubenstein stated that, therefore, it was never a build-able lot. Mr. Devers agreed with that. Ms. Rubenstein stated that it is unlikely that the Board will grant any relief for a lot that was created after zoning. She stated that the question is when the rest of them were created.

Public Hearing was opened.

Mr. George D. Kott, Jr., 1319 Salt Point Turnpike, Pleasant Valley, NY was sworn in. Mr. Kott stated that he is an adjacent property owner and that his concern is that the area is all swamp and marshland. He stated that he moved up here 9 years ago to be in the country and that he enjoys the wildlife. He stated that he's concerned about the wetlands and what will be developed there. Mr. Dunn stated that if that is designated wetlands then it cannot be developed. Mr. Kott stated that there is no access to the area and that he would like it to be protected. Mr. Dunn explained that it cannot be built on unless there is dry land that is outside of the 100' buffer. Ms. Czech stated that there is a wetland ordinance and a wetlands map that Mr. Kott can look at in the Town office. Mr. Feldweg stated that there is over ¼ acre protected wetland with a perennial stream, which carries a 100' buffer on either side – so that it will be almost impossible to build on it.

Mr. Michael Schmitz, 1269 Salt Point Turnpike, Pleasant Valley, NY was sworn in. He stated that he is just south of the Seminara's property and that he has a horse property. He stated that his paddock line would be right on the line where a new home might be. He stated that he lives in a bucolic neighborhood and that is why he bought his property – that it is all woods, which is what attracted him and his family to the property and that he would hate to see that change. He stated that the property is landlocked. Further, he stated that to exit from his property onto Salt Point Turnpike, he has to be doing 60 mph the minute he hits Salt Point Turnpike because that's the nature of that road. He stated that the egress from Mr. Seminara's property, which is north of his property, has even less exposure to the oncoming traffic. He stated that he cannot see how it is a safe situation, which cars coming in and out on one driveway. He stated that someone trying to exit the driveway at the same time as someone trying to access the driveway would not be a safe situation – someone will get hung up on Salt Point Turnpike with a possible fatality. He stated that this is a concern for him exiting his driveway and he has more visibility. Mr. Schmitz also stated that he cannot see how a driveway into the property would be wide enough for two cars – one coming in and one going out. Further, he stated that he cannot see a way for the driveway to be widened to allow for two cars to pass each other.

Mr. Schmitz agreed with the previous person regarding the concern for the wetlands.

Ms. Rubenstein explained that the ZBA is looking at whether there is eligibility for these to be building lots or not. She stated that if the determination is made that they are, then the application would go to the Planning Board for site plan review as a condition of a Special Use Permit. She stated that Mr. Schmitz would receive notice of hearings before the Planning Board and advised him to attend those meetings and make his comments during that public hearing also. She assured Mr. Schmitz that his comments this evening are definitely appreciated, that it is important for the ZBA to know about any concerns for traffic in the area.

Mr. Vincent DiPompei, 1271 Salt Point Turnpike, Pleasant Valley, NY was sworn in. He stated that Mr. Schmitz covered most of his concern. He pointed out his property on the map. He stated that multiple cars trying to get in and out will end up driving on his lawn, which has been a problem in the past. He pointed out a dangerous curve in the area and that he has a problem getting out of his driveway. He stated that access in and out is a big concern for him. He also asked what will happen to his water supply and noted that both the neighbors have had to drill new wells already. He stated that his well went dry a couple of years ago and that he had to drill another one. He stated that putting a couple of new houses in the area will affect the water supply.

Ms. Mary Henschel, 1275 Salt Point Turnpike, Pleasant Valley, NY was sworn in. She stated that she's the neighbor in the front and has 1/3 of an acre. She pointed out her driveway and stated that her house is very close to the driveway. She stated that the driveway is only about 17' wide and would not be adequate for any new houses. She stated that she loves the view that she has and that the property in the back is beautiful, park-like setting. She noted that the Seminara's house is not currently occupied, so it is quiet. However, if there were to be 1 or 2 new houses built back there, there would be a minimum of 6 cars in and out any time of the day or night. She stated that she does not want that to happen. She stated that it is a blind driveway coming out onto Salt Point Turnpike. She stated that she wanted to go on record that she does not see how the parcels could be built on

– that they are landlocked and don't have road frontage. She also pointed out a section that is not a road but is where the electrical lines come into the property. She stated that she has a lot of traffic on Salt Point Turnpike and does not need more on the side of her house invading her privacy.

Mr. Dunn asked about a Central Hudson easement. Mr. Seminara stated that it is not Central Hudson, but is the power lines to his house.

Mr. Mark Lashway, 1285 Salt Point Turnpike, Pleasant Valley, NY was sworn in. He pointed out his property on the map and stated that he would be most affected by the development of the parcels. He stated that he bought his property because it is so picturesque and is beautiful. He stated that there are close to 100 acres around these parcels that would be affected by any development on them. He stated that there is no way that they could get 50' road frontage. He stated that dogs have been killed on that curve, that cars have gone off the road at that site. He stated that he opposes any change on the parcels.

Ms. Permelia Truex, 1303 Salt Point Turnpike, Pleasant Valley, NY was sworn in and stated that she agrees with the concerns of the previous speakers. She stated that there is swampland and a little creek on her property, which is the property that she grew up on. She stated that her parents bought the property from the Stoutenbergs, who owned a lot of property there. She stated that the Stoutenbergs sold, gave some of the property to their sons, who passed it on to their sons – it was a family division of some of the property. She noted that the wetlands are in the back and that the traffic is heavy on Salt Point Turnpike. She stated that she cannot see the other driveway from her driveway. She thinks that the sight distance would be a problem.

Mr. Gerstner asked if the house is currently occupied. Mr. Seminara responded no.

Public Hearing was adjourned.

Mr. Dunn stated that the public comment has been duly noted and recorded and the Board will wait to receive the documentation of the title search. He announced that this appeal will be on the ZBA's agenda for the 5/28/09 meeting.

5. OUT ON A LIMB - DISCUSSION OF MORATORIUM WAIVER REQUEST

The Town Board referred Out On A Limb's waiver request to the ZBA for comment. Applicants are permitted to apply for a waiver based on hardship. Ms. Rubenstein read from the Town law the definition of an "unnecessary hardship." Board members discussed the history of Mr. Swanson's application for a Special Use Permit, which was granted in October 2007 and the fact that it expired in October 2008. She explained that the applicant is now subject to the moratorium, and if the waiver is granted he must re-apply for the Special Use Permit.

Ms. Czech: **Motion that the Zoning Board of Appeals recommends that the Town Board grant the request for a waiver submitted by Out On A Limb so that the applicant can move forward with his project.**

SECONDED BY L. RUBENSTEIN

Discussion: Board members discussed the fact that the applicant acknowledges that he did not apply for a site plan within the time period of his Special Use Permit and that, therefore, his Special Use Permit expired. The applicant must now reapply for the Special Use Permit and then proceed to Site Plan review. Board members agreed that this was an existing project that the applicant has been working on consistently to get it ready so that he could do the engineering.

VOTE TAKEN AND APPROVED 7-0-0



DISCUSSION

APPEAL #940 – DEYO/BALKIND – SPECIAL USE PERMIT

Ms. Rubenstein stated that if the ZBA does not issue an area variance on the barn, the ZBA would be creating an illegal non-conforming use with respect to the barn. She stated that whenever the ZBA has received such an application, in order to make sure that the use is reflected in the property records as being a legal conforming use, the Board has issued an area variance, where appropriate. She stated that there must be an application for an area variance and that the Special Use Permit cannot be issued without it.

Mr. Maucher asked whether it is a question of whether the barn was created prior to Zoning. Ms. Rubenstein stated that it does not matter when the barn was erected – that the building has existed but it has not been used as housing for farm animals for years. Therefore, she noted that the use lapsed. Mr. Maucher stated that the building was built before zoning and is within 15’ of the property line, which is why a variance is needed. Ms. Rubenstein pointed out that the Code requires 100’ setback to house animals. She stated that if the ZBA were to grant a Special Use Permit, then it must be granted in conjunction with an area variance.

Ms. Rubenstein stated that the applicant needs to apply for an area variance so that the ZBA can deal with both applications together. Board discussed the loss of the use and the fact that the property size changed when it was subdivided. Further, that when the barn was built there probably was no requirement for setback or other restrictions. Board members discussed the need to address the use as it pertains to the Code today. Ms. Rubenstein pointed out that future owners of the property would be unable to sell the property because they would not have a permit for the barn at its current location.

Mr. Maucher reiterated his opinion that the applicant does not need a Special Use Permit. Board discussed the question of which animals are pets and which are farm animals. Mr. Vogt noted that over the years the ZBA has addressed that question and defined, at one time, what the Board considered to be pets versus farm animals. He noted that the ZBA determined many years ago that a horse is a farm animal. Mr. Vogt stated his opinion that this applicant requires a Special Use Permit and an Area Variance. He referenced Section 98-34 – Discontinuance regarding the loss of use.

Ms. Rubenstein stated that if the applicant were to be granted a Special Use Permit, this would create a barn that does not meet the Code because the Code would require

100' from the property line. Therefore, the Board would want to grant them an Area Variance in order to create a completely consistent and legal decision. Mr. Dunn agreed that they must apply for an Area Variance for the barn. Ms. Rubenstein pointed out that 20 years in the future when the property owners go to sell the property, the bank will ask the Town to confirm whether there are any violations or Code problems with the property, at which time they will find out this building has no variance to be that close to the line. Therefore, she pointed out that it is to the benefit of the applicant to make the application for an Area Variance. Mr. Gerstner stated his understanding that there is no problem until the ZBA grants them a Special Use Permit. Mr. Maucher stated his opinion that there is no problem because the applicants don't need a Special Use Permit. Ms. Rubenstein stated her position that they do need a Special Use Permit and noted that the applicant could bring in their attorney and make the argument that they don't need one. Mr. Maucher suggested that they could just go and do it, and if someone complains then the Zoning Administrator could go out and investigate and see what Code they are in violation of. Mr. Gerstner pointed out that that is how they got to the ZBA in the first place.

Mr. Dunn agreed that, in order to clean this up and prevent complications in the future, the ZBA should do both the Special Use Permit and the Area Variance. But, he pointed out, that the applicant has not submitted an application for an Area Variance. Board discussed adjourning the Special Use Permit pending receipt of the Area Variance application.

Ms. Rubenstein suggested that the Board could discuss the Special Use Permit this evening and consider conditioning the issuance of the S.U.P. on a particular number of animals based on the fact that this Board has some experience granting such permits for animals. She noted that the Board does not have to make a final resolution on the S.U.P. and that her issue is the number of animals permitted. Mr. Dunn pointed out that the Planning Board's referral stated that an Area Variance is required for the barn.

Mr. Vogt stated that the barn will always be there and that there's no problem with the structure. But, he noted, that the use as housing for animals has been lost in that structure. He stated that the barn can house farm implements and equipment; he stated that it predates zoning and is a non-conforming building by its nature. But it has lost the use as housing for animals because it has not been used to house animals for three years. Mr. Vogt stated that a 93' area variance is a severe variance and is a major change and pointed out that there is plenty of space on the property to erect a sheltering structure for the animals. He stated that the variance is major and would be setting a precedent and wondered why, if the variance is granted, the law exists at all.

Ms. Rubenstein stated that the rationale for granting the S.U.P. could be that, as a condition, a certain number of animals are permitted and the ZBA is permitting this use in the existing structure, which is too close to the property line, because it is an existing structure and that there are no houses close by. She pointed out that in her neighborhood, even if there were an existing barn, it would never be permitted to have farm animals because it would not be possible to meet the setback. However, it is possible for the applicants to meet the setback on their property, but there is a rationale to permit them to use the structure with the appropriate variance and S.U.P.

Mr. Dunn suggested that the Board consider this application for the S.U.P. at the same time as it considers the Area Variance application. Ms. Rubenstein stated that she would like to look at what the proposed change in the Code is because she thinks there will be a connection between the number of animals permitted on a property. Ms. Perkins stated that it will be one acre per horse.

Board members discussed issues with specific animals – chickens versus guinea fowls versus goats versus horses. Ms. Rubenstein suggested that she would like to hear from the Cornell Cooperative Extension regarding what amount of acreage makes sense – to get some perspective on appropriate acreage for animals. Mr. Vogt stated that it has changed over the years. Ms. Rubenstein stated that she only has a problem with the number of animals to be permitted. She stated that she will make some calls and do some research and pointed out that it would be great if the applicant would come forward with some information on that. Mr. Vogt reiterated his objection to the severe area variance which would be nearly a 100% variance and that there is no option for granting a smaller variance. He stated that he could not vote in favor of such a severe area variance.

Board discussed adjourning the S.U.P. application for 30-days. Ms. Rubenstein stated that the question is what number of 4-footed creatures makes sense on a 4-acre parcel. She stated that, although these applicants may not have any neighbors now, in the future there may be neighbors and this Board must consider the issue of impact and of the number of permitted animals.

Ms. Rubenstein proposed that the ZBA adjourn this application for 30 days and request that the applicant file an application for an Area Variance and that individual Board members can think about the issue of the appropriate number of animals to be permitted on the property. Further, she suggested that the applicant do some investigation on the number of animals, also.

Mr. Maucher stated that he would vote against the S.U.P. application because he does not believe that the applicant needs such a permit. Ms. Rubenstein stated that the Zoning Administrator has already informed the applicant that a permit is required and if the applicant were to act without a permit, then they would be in violation. She pointed out that most towns have links between acreage size and numbers of animals, which Pleasant Valley has not had. However, she noted again that the town requires that any animal shelter be 100' off the property line, which has been the only way to control the issue of animals on property.

Ms. Czech stated that she would like the Board to check with the Town attorney on the question of whether a S.U.P. is required – whether these animals would be considered pets or farm animals. Ms. Rubenstein stated that the Board has already made that determination – that they are farm animals – and that the applicant may wish to apply to the ZBA for an interpretation on that question. Mr. Maucher stated that he does not agree that a horse cannot be a pet. He stated that a farm animal can also be a pet. Ms. Rubenstein stated that she thinks it can be one or the other but that in the Zoning Code context it must be one or the other in order to figure out which regulations apply.

Mr. Dunn stated the next steps:

- the applicant will apply for an area variance
- the chair will ask attorney Volkman for an interpretation on whether a S.U.P. is required

Mr. Maucher stated that there is an additional question for the attorney, which is if they don't need a S.U.P., do they, then, still need a variance.

Mr. Balkind stated that he will apply for the Area Variance and does not want to wait for another month for the attorney's interpretation. Ms. Rubenstein noted that there seems to be a sentiment on the Board that he may not need the S.U.P. and that there are Board members who want the attorney's opinion anyway. Mr. Dunn will check with Mr. Volkman. Mr. Balkind will check with Cornell regarding turf management and regarding the number of animals.

MINUTES

Board unanimously approved the minutes, as corrected, of the ZBA March 2009 meeting.

Meeting was adjourned at 10:45 p.m.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represents unofficial minutes of the April 23, 2009, Pleasant Valley Zoning Board of Appeals meeting. They are not official and should not be construed as the official minutes until approved.

_____ Approved as read

_____ Approved as corrected with deletions/additions

PLEASANT VALLEY ZONING BOARD OF APPEALS

May 28, 2009

This meeting of the Pleasant Valley Zoning Board of Appeals took place on May 28, 2009, at the Pleasant Valley Town Hall, Route 44, Pleasant Valley, New York. Chairman John Dunn called the meeting to order at 7:29 p.m.

Members present: John Dunn, Chair
Tim Gerstner
Lisa Rubenstein
Ronald Vogt
Helene Czech
Steve Kish, Alternate
Ed Feldweg, Alternate

Absent: Bob Maucher
Christina Perkins

1. APPEAL #935 – HOMELAND TOWERS, LLC – SPECIAL USE PERMIT

The applicants were not present. Mr. Dunn announced that the ZBA is circulating a resolution for lead agency in this matter.

Mr. Dunn read into the record (original on file) the **Resolution to Circulate for Lead Agency for Coordinated SEQRA Review.**

SECONDED BY E. FELDWEG

VOTE TAKEN AND APPROVED 7-0-0

	YES	NO	ABSTAIN
Tim Gerstner	X		
Lisa Rubenstein	X		
Ronald Vogt	X		
Helene Czech	X		
Steve Kish, Alternate	X		
Ed Feldweg, Alternate	X		
John Dunn, Chair	X		

2. APPEAL #941 – SEMINARA - INTERPRETATION

Mr. Peter Devers, representing the applicants, was present. Mr. Dunn stated that the ZBA has consulted legal counsel and they have put in a number of hours on this appeal. Further, he noted that counsel has listed a number of documents that they would like to see. Mr. Dunn provided Mr. Devers with a memo documenting the additional information the ZBA is requesting in order to provide an interpretation on this appeal.

Mr. Dunn informed Mr. Devers that, to date, the attorneys have worked for 5 hours on this appeal for a total of \$625, for which the applicants are liable. Mr. Dunn stated that there will be additional legal fees if the applicants pursue this appeal and asked Mr. Devers to check with the applicants about how they would like to proceed and to let the Zoning office know.

This appeal is adjourned for more information.

3. APPEAL #940 – DEYO/BALKIND – SPECIAL USE PERMIT

4. APPEAL #943 – DEYO/BALKIND – AREA VARIANCE

Mr. Dunn stated that the ZBA has received advice and counsel from the Board's attorney regarding the question of whether this can be considered an agricultural enterprise.

Mr. Robert Balkind was present and had been sworn in at the previous ZBA meeting.

Special Use Permit – Appeal #940

Mr. Balkind stated that the Board had some questions about the number of livestock animals – horses and goats - being considered. He stated that at the suggestion of the Board he and Ms. Deyo visited Cornell Cooperative Extension. He stated that they explained to Cornell what they are proposing and thanked the Board for sending him to Cornell. He stated that Cornell looked at their property in terms of what it would support under the guidelines that they use. He stated that Cornell's guidelines for grazing animals is 500 lbs. of animal per acre if you were to support that animal entirely by grazing on the land. He stated that Cornell refers to one animal unit – that a horse is an animal unit – and one horse at about 1,000 lbs. would be a match for 2 acres. He stated that Cornell reported that "higher densities may occur if the animals are rotated on grazing areas, fed additional hay and grain to ease grazing pressures and spend less grazing time on the field or paddock areas." Mr. Balkind stated that they intend to supplement the animals with feed hay, that they would not expect the animals to feed off the land for their entire sustenance. He stated that Cornell recommended that they don't have more than 2 horses, which he thinks makes sense and is realistic. Mr. Balkind stated that they would like the ZBA to consider 2 horses rather than 3.

Mr. Balkind stated that Cornell's pounds per acre apply to all the livestock – the horses and the goats – regardless of the animal. Cornell did say that the goats and sheep tend to be less destructive on turf than horses – the cloven hoof of sheep and goats is easier on the grass than the solid hoof of a horse.

Mr. Balkind stated that they also consulted DC Soil and Water who concurred with Cornell's advice. He read from their letter: "encourage you to reduce the number of horses to 1 or 2 maximum with proper feed and pasture management" with pasture rotation and supplemental hay. Further, the letter states that "if you want to have the 2 horses and the smaller livestock, you will need to carefully manage the pasture areas for them to remain fully vegetated." In sum, DC Soil and Water reinforced the information from Cornell.

Mr. Balkind submitted the letters from Cornell Cooperative and from DC Soil and Water to the ZBA for inclusion in the file. He also submitted an aerial map of his property on which they identified the suitable grazing areas – total of 2.09 acres of paddock and grazing areas. He stated that the area for the animals would be limited to the 2 acres.

Mr. Balkind stated that they would like to get approval for 2 horses and 4 goats. Mr. Gerstner asked about whether 500 lbs. is cumulative. Mr. Balkind responded yes and explained that the 500 lbs. guideline is if there is no other feeding provided and that Cornell states that higher density is ok if hay feeding and rotation is provided. He described the detailed management plan that Cornell gave them for the paddock areas. He stated that they

will have a minimum of 3 pasture areas – each ¼ to 1/3 acre. He stated that they will do 4 pastures eventually. He stated that they will rotate the animals within the 3 pasture areas.

Ms. Rubenstein asked if Cornell had comments about the chickens or guinea fowl. Mr. Balkind quoted from DC Soil and Water: “The 12 chickens and 4 guinea fowl will not impact the grazing since they are managed differently. The size of the animals will dictate the number allowable for grazing requirements.” Mr. Gerstner asked about how the chickens will be managed. Mr. Balkind described the chicken tractor – a portable chicken house – that they will pull around to different areas. He stated that they are good at aerating the soil – the droppings fertilize and the chickens dig it all in.

Mr. Balkind stated that they think the 2 horses are appropriate and the 4 goats are manageable. He stated that they will rotate the pastures and do the turf management as suggested by Cornell. He stated that he mows close to 4 acres now, so the mowing and the turf management isn't anything different for him.

Mr. Feldweg asked what Cornell estimated the average weight of a sheep or goat to be. Mr. Balkind stated that Cornell did not say, but that people he knows who raise goats say that they are about 75-100 lbs.

Ms. Rubenstein pointed out that, if granted, the Special Use Permit continues with the property and asked if Mr. Balkind would have any problem with the Board imposing the turf management plan as a condition of approval. Mr. Balkind responded no, he would not have a problem with that.

Mr. Kish asked about the manure strategy. Mr. Balkind stated that they submitted a letter last month that described the plan to put the manure in a covered area, adjacent to the barn and not in a drainage path, and then delivered off site to a landscaping company.

Ms. Rubenstein commended the applicant for doing this research and stated that he has done a lot to answer the Board's questions about these appeals. Mr. Balkind thanked the Board for sending them to those resources that they did not know existed, which was a huge benefit to him.

Public Hearing opened for Appeal #940 – Special Use Permit and #943 – Area Variance.

Ms. Geraldine Knechtel, 22 Swain Drive, Pleasant Valley, NY, was sworn in. Ms. Knechtel stated that she was very glad that she was notified of these appeals and that she thinks her neighbors have done good research on this. She stated that she supports resource management. She stated that her concern is that the barn is only 7' from the property line and that it is supposed to be 100'. She stated that as much as she loves her neighbor, and that he is a good neighbor, she is concerned for her property value and for herself – that the barn is that close to her bedroom. She stated that she's glad that there is a limit on the number of animals and that she feels better about that. She stated that she did not know how the proximity of the barn would affect her.

Ms. Knechtel stated that she's lived there 50 years. Ms. Rubenstein asked if there were animals in that barn during that time. Ms. Knechtel responded yes, that there were 2 horses, and that she did not object to them but that the Code was not in effect at that time. She stated

that she does not understand how the Code will affect her. Ms. Rubenstein explained that the Code does not change the impact. She stated that if the ZBA permits 2 horses on the property, theoretically it is the same as the 2 horses that were there before. Ms. Rubenstein stated that the Code is intended to create consistency in the distances from homes to their property lines, but all over the Town buildings are closer to the side lines than the Code would require. She stated that the difference would be if it is an impact on her to have the horses there. If Ms. Knechtel were to tell the ZBA that there were animals there in the past and that it was horrible, then that would be a significant impact, which could affect the ZBA's decision on this application. Ms. Knechtel stated that there were horses there before and she did notice them; but being a neighbor raising children and having dogs, there are certain things that are not that important. She stated that she is relieved to have come to this meeting and learn about the restrictions and is encouraged by the ecological measures that will be taken.

Ms. Knechtel stated that she did not understand the implications of the Code. Ms. Rubenstein explained that the applicant is proposing to use the barn for animals, which is what it was used for before. And, because the barn was not used for that purpose for a period of time, the applicant now has to make that part of an application to the ZBA. Ms. Rubenstein stated that the ZBA would want to know whether the presence of the horses in the past had been a negative impact. Ms. Knechtel stated that horses are not particularly noisy and that now that she has heard how the animals will be managed ecologically she feels better about it. Mr. Gerstner noted that the horses will be in the barn at night. Ms. Knechtel pointed out her home on the aerial map that is right next to the barn.

Ms. Knechtel noted that at her age she is concerned about how long she can keep the house and whether the presence of animals next door would be an issue when she wants to sell the house. Ms. Rubenstein noted that if someone were looking to buy a house in a country setting, they might like the fact that the neighbors have animals. Ms. Knechtel asked about how the waste will be managed. Mr. Balkind explained the photos of the barn and the area where the manure will be collected in the barn until it is trucked off the property to the landscaping business.

Public Hearing for Appeal #940 – Special Use Permit – closed.

Appeal #943- Area Variance

Mr. Dunn read into the record the appeal for an area variance for the barn that is located 7' from the property – the Code requires 100' setback from the property line for any structure housing animals. The file contains:

- Letter from the nearest neighbor stating that they have no objection to the proposed use of the existing barn to house farm animals
- Referral from the Pleasant Valley Planning Board: positive referral based on the fact that the applicant has developed an appropriate manure management system
- Referral from the DC Department of Planning: matter of local concern
- Referral from the Fire Advisory Board: no position as it does not appear to involve any fire or safety issues
- List of adjacent property owners who have been notified of this hearing
- Affidavit of publication in The Poughkeepsie Journal dated 5/20/09

Mr. Robert Balkind, applicant, was already sworn in on the previous appeal. He explained that the existing barn is closer to the property line than the Code requires. He stated that they are appealing for relief from that zoning requirement so that they can use the barn for what it was used for originally.

Mr. Gerstner asked if there is electric or water in the barn. Mr. Balkind responded yes. Mr. Gerstner asked if there is septic. Mr. Balkind stated that there are no waste facilities in the barn.

Mr. Dunn asked if anyone from the public would like to speak to this application. Ms. Rubenstein suggested that Ms. Knechtel's prior comments be incorporated into the record for this appeal.

Public Hearing for Appeal #943 – Area Variance – closed.

Mr. Feldweg asked if the fowl will be housed in the barn. Mr. Balkind stated that they will be housed in the barn in the winter. He explained that the chickens will be in the chicken tractor during the other seasons and that the guinea fowl will be loose on the property. He stated that the goats will use a portion of the barn, as well. Mr. Feldweg noted that before when the barn housed 2 horses, it will now house 2 horses, 4 goats, and some number of chickens. Mr. Balkind stated that the barn has 3 horse stalls, one of which had been converted to a tack room. He stated that if they end up getting the 2 horses and the goats, they will convert the tack room back into a stable.

Mr. Vogt pointed out that an option is that the applicant build a run-in shed somewhere on his property where a variance would not be needed. His suggestion was that the applicant build a shelter in the middle of the property or at another location that is more than 100' from the property lines. Other Board members pointed out that a run-in shed does not provide the same level of protection for the animals in the winter. Mr. Vogt stated that the applicant is applying for a very severe variance – 93'.

Mr. Balkind stated that they intend to put a run-in shed towards the middle of the property for protection from the weather when the horses are in that paddock. However, it would not be adequate to house the animals; it would not have climate control in the winter.

Mr. Feldweg noted that the managed pasture areas will be located adjacent to the property line. Therefore, the horses will, at some point in time, be right next to the property line – regardless of where the barn is located.

Mr. Vogt stated that the issue is with the fact that, for a number of years, the non-conforming use has been expired. Ms. Rubenstein agreed and stated that this is like a new use, a Special Use Permit, in an existing structure. She stated that if they were going to start over they would put the barn 100' into the center of the property. But the Board is dealing with a building that is already existing and she stated that it seems like a real waste of resources to not permit them to use their barn. Further, she noted that if the neighbor had reported that the presence of the animals in the barn so close to her property was horrible, that would have a different impact on the Board.

Mr. Balkind stated that the Town has been getting the benefit of taxing that improvement for close to 40 years and that, now, he would like to have the benefit of its use.

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DISCUSSION

MISCELLANEOUS

Homeland Towers: Ms. Dickerson will deliver the EAF for the Homeland Towers to the Pleasant Valley Library for the public's perusal. Ms. Rubenstein reported that she has had e-mail correspondence with Mark Hutchins, radio frequency engineer, and asked if the Board is ready to go forward with his services. Mr. Dunn authorized her to ask Mr. Hutchins to submit an estimate for the work. Ms. Rubenstein stated that she has asked the Board's attorney for a short memo reviewing the SEQRA process, timetables and procedures.

Fees and Escrow for ZBA Appeals: Mr. Dunn reported that the Planning Board, as a matter of course, always requires escrow to be deposited at the time the application is filed and the application fee is paid. He stated that the ZBA has never had it as a standard to require escrow. However, he explained that when the ZBA needs to use a consultant and incurs fees, then the applicant is liable for those fees. He reported that Ms. Dickerson has given him a copy of the Schedule of Fees that includes escrow. Ms. Rubenstein stated that the fee structure is a Town Board matter and the ZBA has no authority in that matter. Ms. Dickerson provided Ms. Rubenstein with a copy of the document that lays out the fees and the escrow procedures. Ms. Rubenstein reiterated that whatever the Town Board has ruled with regard to fees and escrow is what is required.

Mr. Dunn read from the Fee Schedule the portion that states that "escrow fees may be waived, only upon express resolution of the reviewing Board wherein such Board clearly finds that the subject application is not of such substantial nature as to require consultant review." Ms. Rubenstein pointed out that problem – that the ZBA does not know until the applicant is before the Board whether that applies or does not apply. Therefore, she stated that the applicants, at the time of application, will not know how much it will ultimately cost them to proceed with the application. Mr. Dunn pointed out that until recently the ZBA appeals have not required outside consultants, but that 3 of the appeals on the current agenda have required legal consultation. Ms. Rubenstein stated that an applicant may decide not to file an appeal if they knew at the outset that it would cost them another \$1,000 for escrow.

Board members and Ms. Dickerson discussed procedures for managing escrow on ZBA appeals. The law passes the expenses for legal and engineering consultants on to the applicants. Mr. Feldweg noted that, historically, the ZBA has not used consultants. Board members concurred that the fees and escrow are set and that the ZBA is only authorized to determine whether or not the application is of a substantial nature to require consultant review. They noted that there are simple appeals, such as a shed, for which the ZBA has never required consultant review. They discussed the need to amend the law in order to provide the ZBA with discretion to collect such fees after the first hearing.

1. APPEAL #940 – SPECIAL USE PERMIT – DEYO/BALKIND

Ms. Rubenstein listed the concerns with this appeal:

- Number of animals to be permitted
- Conditions to continue with the property

Mr. Dunn stated that it is not possible to ensure that conditions are maintained by subsequent property owners. He stated that it is not possible to ensure that someone is going to run a

good manure program or rotate paddocks. Oversight is not possible. Ms. Rubenstein stated, therefore, that realistically it is only possible to limit the number of animals. Ms. Czech suggested that a condition can be that they have a waste management and turf management plan and that they follow it. Board members discussed the appropriate number of animals: 2 horses, 4 goats, and no more than 20 fowl.

Board concurred that conditions for this Special Use Permit will be:

- Number of animals
- Waste management plan
- Turf management plan

Mr. Balkind asked for clarification on what measures he must undertake, if the Special Use Permit is granted, that would prove that the granted use is currently in place and will not lapse. Specifically, he asked whether they would lose their permit if they were to only have chickens to start off with and kept them for a year or two and not get the horses or the goats till some time in the future. Board members concurred that if they start with chickens they have initiated the use and if they start fencing off the paddocks, then they have done something towards their Permit. Board agreed that, if there were no animals on the property, that would start the clock on the lapse of the use.

Ms. Rubenstein: **RESOLUTION TO GRANT SPECIAL USE PERMIT**

Whereas the applicants, Tami Rae Deyo and Robert Balkind, have submitted proof in support of their application for a Special Use Permit to use their property for agricultural use as provided in the Schedule of Permitted Uses, which under the Code of the Town of Pleasant Valley requires the issuance of a Special Use Permit, and

Whereas, such proof has been duly considered by the Board at a public meeting on April 23, 2009 and May 28, 2009, and

Whereas, the property is approximately 4 acres in the R1 Zone, and

Whereas, the applicant will devote approximately 2 acres to use by the animals, and

Whereas, the applicant has consulted with Cornell Cooperative Extension to prepare a turf management plan and a waste management plan, and

Whereas, the applicant has proposed 2 horses, 4 goats, and fewer than 20 guinea hens and chickens, and

Whereas, the members of the public were heard by the Board in consideration of this application, now

Therefore, be it resolved that the Board finds that the use for which such permit is sought, to wit: to house animals, and under the conditions hereinafter set forth, will not be injurious to the neighborhood or otherwise detrimental to the public welfare, and

Be it further resolved, that the Board determines that in its judgment, the Special Use Permit:

- 1. is reasonable and in the general interest of the public**
- 2. is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal and similar facilities**
- 3. that the neighborhood character and surrounding property values are reasonably safeguarded**
- 4. that the use will not cause undue traffic congestion or create a traffic hazard**
- 5. and that it complies with all other conditions or standards specified in the Zoning Code of the Town of Pleasant Valley**

And, be it further resolved, that the Board determines that the following appropriate conditions and safeguards are included with the issuance of this Special Use Permit:

- 1. No more than 2 horses, 4 goats, and 20 fowl will be permitted**
- 2. The applicant will use a waste management plan and turf management plan as prepared by the applicant in consultation with Cornell Cooperative Extension and the applicant will follow the plans**
- 3. The applicant will pay all applicable fees**
- 4. The applicant will submit a revised plan with copies of all management plans attached for retention in the file.**

These conditions are found to be appropriate so as to guarantee that the use of the premises shall not be incompatible with other permitted uses in the vicinity and area where the property will be located.

SECONDED BY R. VOGT

VOTE TAKEN AND APPROVED 7-0-0

	<u>Yes</u>	<u>No</u>	<u>Abstain</u>
<input type="radio"/> T. Gerstner	X		
<input type="radio"/> L. Rubenstein	X		
<input type="radio"/> E. Feldweg	X		
<input type="radio"/> S. Kish	X		
<input type="radio"/> H. Czech	X		
<input type="radio"/> R. Vogt	X		
<input type="radio"/> J. Dunn	X		

2. APPEAL #943 – AREA VARIANCE – DEYO/BALKIND

Ms. Czech read into the record (original on file) resolution to grant the Area Variance:

- Benefit to the applicant is greater than the potential detriment to the neighborhood

Ms. Czech: **MOTION TO GRANT THE AREA VARIANCE; SECONDED BY J. DUNN**

Discussion: Mr. Vogt stated that the variance is too severe and does not agree with giving the non-conformity back to a building that could be used for other purposes. He stated that he does not want to open the door to anybody who wants to reactivate something because it is such a severe variance – 93' variance.

Mr. Dunn stated that he speaks from experience – that he built his barn far from the neighbor's house but only 40' from his own house. He stated that he never had a problem as far as odor. He acknowledged that the 93' variance is severe and that an alternative exists whereby the applicant could build a barn in the middle of the field. However, Mr. Dunn stated that that would be a hardship, particularly given that a very serviceable building currently exists.

Mr. Kish stated that common sense says that the building is there now and has been there for 50+ years and has been used for farm animals in previous years. Therefore, it is reasonable to permit its use now and that he cannot imagine requiring them to destroy the existing barn in order to build another building in the middle of the field. He stated that if this were a new application to build a new barn, then he would consider the 100' rule.

Ms. Rubenstein stated that the non-conforming use is dead – whatever the previous owner was doing before, whatever number of animals they had, animals without regulation because it was probably a bigger parcel of property at that time – that is gone. Therefore, she stated that this application is as if anyone with a piece of property in R1 zone came forward and applied for a Special Use Permit or this Area Variance. She noted that the ZBA has granted relief to other applicants who have existing sheds that are too close to the property line – that the ZBA attempts to make these situations conform as close as possible to the Zoning Code. She stated that she is not looking at this as permitting a non-conforming use, but rather as a structure, which has always been used, that is too close to a property line.

Mr. Vogt stated that he does not want to set the precedent – he does not want anybody to come in and state that because the ZBA granted a 93' variance they want the same relief.

Ms. Rubenstein pointed out that one of the key factors on this appeal is that it is a pre-existing structure. Mr. Kish agreed. Ms. Rubenstein stated that it is true that the ZBA would not give someone that much of a variance to build a garage or barn now. However, she also pointed out that the ZBA is not in the business of rendering structures on properties unusable. Mr. Gerstner agreed. Ms. Rubenstein pointed out that if the ZBA denies this variance, the Board would not require them to tear the barn down. She stated that the Board specify in its resolution that the reason is because it is a pre-existing structure and the Board wants to promote use of these structures rather than letting them disintegrate. In this way, she stated that it can be easily distinguished from other applications to put a new barn 7' from a property line.

Mr. Feldweg stated that he thinks this is a unique situation – there was a use that expired and yet the person who could be the most aggrieved - Mrs. Knechtel - has lived there since the barn was built. He pointed out that Mrs. Knechtel has lived with the prior owner having horses in the barn and has never, apparently, had any problem and per her testimony does not anticipate having any problems. He stated that that is a very compelling factor to this application – a unique situation where the Board does not have to worry about the neighbor because the only one affected is in agreement and it is something she has lived with in the past. He stated that if she gets to the point where she sells the house and the person who buys the house suddenly finds that there is a horse next door and then objects, then the new owner should have discovered that the horse was on the property before they purchased the house. He stated that people have a responsibility to find out what's going on in the neighborhood before they buy into it and then start complaining about it. Mr. Kish pointed out that Mrs. Knechtel was concerned about property values and stated that if they don't use

the barn for the horses and just let it deteriorate, it would be worse for her. If they are permitted to use the structure for horses, it will preserve the structure.

VOTE TAKEN AND APPROVED 7-0-0

	<u>Yes</u>	<u>No</u>	<u>Abstain</u>
○ T. Gerstner	X		
○ L. Rubenstein	X		
○ E. Feldweg	X		
○ S. Kish	X		
○ H. Czech	X		
○ R. Vogt	X		
○ J. Dunn	X		

Mr. Gerstner expressed the ZBA's appreciation to the applicants for all the work that they put into the research on these applications, which was very helpful to the Board in its deliberations.

Board and applicants discussed legal fees incurred on the two appeals. Ms. Rubenstein pointed out that it is not in the purview of the ZBA to discuss or adjust fees and if the ZBA thinks it needs legal advice, it will seek that advice. She pointed out that the Town Board has ruled on the fees and escrow, which is now Town law, and this ZBA cannot negotiate with applicants regarding fees and escrow. Ms. Dickerson will provide the applicant with copies of the invoices.

3. MINUTES

Board unanimously approved the minutes, as submitted, of the April 2009 ZBA meeting.

Meeting was adjourned at 9:10 p.m.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represents unofficial minutes of the May 28, 2009, Pleasant Valley Zoning Board of Appeals meeting. They are not official and should not be construed as the official minutes until approved.

_____ Approved as read

_____ Approved as corrected with deletions/additions

PLEASANT VALLEY ZONING BOARD OF APPEALS

June 25, 2009

This meeting of the Pleasant Valley Zoning Board of Appeals took place on June 25, 2009, at the Pleasant Valley Town Hall, Route 44, Pleasant Valley, New York. Chairman John Dunn called the meeting to order at 7:31 p.m.

Members present: John Dunn, Chair
 Tim Gerstner
 Bob Maucher
 Ronald Vogt
 Helene Czech
 Steve Kish, Alternate
 Ed Feldweg, Alternate

Absent: Lisa Rubenstein
 Christina Perkins

Also present: Bruce Donegan, Interim Zoning Administrator

1. **APPEAL #944 – OUT ON A LIMB – SPECIAL USE PERMIT**
 Grid #6463-01-296827
 1777 Route 44

Mr. Dunn reported that the file contains:

- Referral from the DC Department of Planning: local concern
- Affidavit of publication in The Poughkeepsie Journal dated 6/18/09
- Referral from the Planning Board: positive recommendation
- Referral from the Fire Advisory Board: no position
- List of adjacent property owners who have been notified of this hearing

Mr. Matt Swanson, 16 Amanda's Way, LaGrangeville, NY 12540, was sworn in. Mr. Swanson stated that they cleaned up the property and did their environmentals. He stated that everything came back clean. He stated that they plan to construct a structure on the property and that they have been granted a waiver from the moratorium. He stated that the structure will look like a barn and will be for office and storage.

Mr. Dunn explained that this project was granted a Special Use Permit in 2007, which expired in 2008 because Mr. Swanson did not act on it and did not apply for site plan approval.

Public Hearing was opened.

Mr. William Baker, 1782 Route 44, Pleasant Valley, NY 12569 was sworn in. He stated that he is across the street from the property. He stated that he is speaking in favor of this project. He stated that it will be a great asset to the Town and that he has no objections.

Mr. Paul Daubman, 53 Arbor Hill Drive, Pleasant Valley, NY 12569 was sworn in. Mr. Daubman stated that he has the property next to Mr. Baker and across the street from Mr.

Mr. Swanson mentioned that there are a couple of easements on the property. He stated that there's a front easement that he is currently using. Also, he stated that he gave an easement in the back of the property to accommodate a shed and drainage.

Mr. Dunn read into the record (original on file) Part II of the Environmental Assessment Form: no adverse environmental impact.

Mr. Dunn: MOTION THAT THE PROJECT WILL NOT RESULT IN ANY SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACTS

SECONDED BY E. FELDWEG

VOTE TAKEN AND APPROVED 7-0-0

	YES	NO	ABSTAIN
T. Gerstner	X		
H. Czech	X		
E. Feldweg	X		
B. Maucher	X		
R. Vogt	X		
S. Kish	X		
J. Dunn	X		

Ms. Czech read into the record (original on file) the Special Use Permit Resolution.

Ms. Czech: MOTION TO GRANT THE SPECIAL USE PERMIT WITH THE FOLLOWING CONDITIONS:

- 1. Payment of all applicable fees**
- 2. Site Plan approval by the Pleasant Valley Planning Board**

SECONDED BY R. VOGT

Discussion: Mr. Feldweg suggested the addition of language to more specifically describe the improvements to the property: to replace an existing auto repair/salvage yard with a tree service.

MOTION AMENDED TO ADD THE SUGGESTED LANGUAGE

SECONDED BY R. VOGT

VOTE TAKEN AND APPROVED 7-0-0

	YES	NO	ABSTAIN
T. Gerstner	X		
H. Czech	X		
E. Feldweg	X		
B. Maucher	X		
R. Vogt	X		
S. Kish	X		
J. Dunn	X		

Mr. Dunn advised Mr. Swanson to move quickly on the site review process with the Planning Board.

3. MINUTES

Board unanimously approved the minutes, as corrected, of the May 2009 ZBA meeting.

4. MISCELLANEOUS

Mr. Dunn stated that Mr. Nelson and Ms. Gomez Anderson are so much more on the ball. He stated that they call ahead of the meeting to ask if the Board wants them to be at the meeting. Also, they will offer things such as the revised Special Use Permit Resolution and Variance Resolution. He stated that he is grateful and relieved that the ZBA now has timely legal counsel. He asked Board members to review the revised resolution forms and offer any suggestions for changes to them. Ms. Czech pointed out some changes to the forms and a correction to her name. She pointed out that in some of the clauses reasons may not be needed and suggested a revision to the language.

Mr. Kish preferred the short form. Ms. Dickerson pointed out that the longer form includes clauses that only apply to certain circumstances.

Ms. Czech asked about the wording that mentions the benefit to the applicant versus the detriment to the neighborhood. Board members recalled that that language only pertains to the variances. Ms. Dickerson stated that she will check this with Ms. Gomez.

Ms. Czech stated that she will not be at the July meeting.

Meeting was adjourned at 8:15 p.m.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represents unofficial minutes of the June 25, 2009, Pleasant Valley Zoning Board of Appeals meeting. They are not official and should not be construed as the official minutes until approved.

_____ Approved as read

_____ Approved as corrected with deletions/additions

PLEASANT VALLEY ZONING BOARD OF APPEALS

July 23, 2009

This meeting of the Pleasant Valley Zoning Board of Appeals took place on July 23, 2009, at the Pleasant Valley Town Hall, Route 44, Pleasant Valley, New York. Chairman John Dunn called the meeting to order at 7:34 p.m.

Members present: John Dunn, Chair
 Tim Gerstner
 Bob Maucher
 Lisa Rubenstein
 Ed Feldweg, Alternate

Absent: Ronald Vogt
 Christina Perkins
 Helene Czech
 Steve Kish, Alternate

Also present: Bruce Donegan, Interim Zoning Administrator

1. APPEAL #945 – CIMORELLI – AREA VARIANCE
Grid #6264-02-995636
51 Melville Road

Mr. Dunn stated that the applicant wishes to replace an old mobile home with a new larger mobile home and is requesting a 5.5 ft. area variance from the rear setback. He reported that the file contains:

- Referral from the Planning Board: negative recommendation because the lot allows for the placement of the replacement mobile home to comply with required setback
- Referral from the DC Department of Planning: local concern
- Referral from the Fire Advisory Board: no position
- List of adjacent property owners who have been notified of this hearing

Mr. Dunn discovered that the file does not contain an affidavit of publication in The Poughkeepsie Journal as required by the Code. Ms. Dickerson checked the file and the e-mail records and confirmed that she neglected to publish the required notification of this hearing.

Board decided to proceed with the hearing.

Mr. David Pretak, Heritage Homes, 1383 Route 44, Pleasant Valley, NY was sworn in. He stated that he is representing the applicant, Ms. Helene Cimorelli. Mrs. Cimorelli was also present at this meeting. He stated that Ms. Cimorelli and her family live at 51 Melville Road. He pointed out that the property consists of a single family residence and a 50-year-old trailer. He stated that the Cimorelli's purchased the property in the early 1990's and have lived there 15+ years. He stated that everything that is on the property now was on the property when they purchased it. He stated that Mrs. Cimorelli lives in the single-family residence and that her daughter, her son-in-law, and her grandchild live in the trailer.

Mr. Pretak explained that the family has wanted to replace the trailer for a very long time. He stated that Mrs. Cimorelli's husband was very sick for 6 years and passed away this past spring. He stated that one of the things that Mr. Cimorelli wanted to accomplish was to replace the old trailer.

Mr. Pretak stated that the existing trailer is 12' x 54' and is within 9.5 ft. of the rear property line. He stated that they looked at getting a double-wide home, but the cost was prohibitive and there did not seem to be enough room on the property. He stated that they settled on a 2-bedroom, single-wide, 14' x 66' mobile home that will not encroach on the side lot lines.

Mr. Pretak stated that there is one septic system on the property that has been there forever. He stated that Mrs. Cimorelli has no problems with it. He stated that the water and sewer come up underneath the mobile home. He noted that the Planning Board had asked what it would cost to move the home forward in order to comply with the required setback, which would require that the water and sewer lines be moved.

Mr. Pretak talked about the changes that have been made to mobile homes – fire retardant requirements and energy efficiency measures to meet the current Code. He stated that the new homes are safer.

With regard to placing the home farther into the property so that it complies with the setback, Mr. Pretak stated that they spoke with excavators, none of whom would give a specific estimate because there are some rock outcroppings on the property. Mr. Pretak stated that they don't know exactly where the water lines are and, therefore, if they move the home forward they don't know what they will run into.

Mr. Pretak stated that they will put a slab under the new home. He explained that if they move the home forward, where the land is lower, they will have to cut that area. He stated that if they stay on the existing footprint, there is very little that will have to be changed. Mr. Pretak stated that the overall cost is probably around \$5,000, which is pretty significant and is something that the applicant has not broached with her financing institution. He stated that the applicant does not know if that is something she would be able to do. He stated that it may make the difference for the applicant between being able to replace the home or not. Mr. Pretak suggested that he does not think moving the home the additional 5 ft. would change things a lot.

Mr. Pretak reported that there is 33 ft. between the existing house and the proposed new mobile home. He stated that if the new home is moved closer to the house, it will reduce the yard area and won't make much of a difference from the road. He stated that he understands that if the adjoining property owner were to subdivide her property, this is an R2 zone. He pointed out that if someone were to build a home on a new lot, it is unlikely that the house would be located close to the property line.

Mr. Pretak stated that this new mobile home will improve the site and will be a benefit to the neighborhood.

Due to the fact that Ms. Dickerson did not publish notice of this hearing in the newspaper, Board members agreed to schedule a special meeting on Thurs. 8/6/09 to complete the hearing. Ms. Dickerson will publish the required notice in The Poughkeepsie Journal. Board

members agreed to open and adjourn the Public Hearing and to discuss the application but delay a vote till the special meeting on 8/6/09.

Mr. Dunn asked where the water and sewer lines enter and exit the current trailer. Mr. Pretak explained that because the existing trailer is so old and so close to the ground, that he has not yet taken the skirting off to discover where those services are located. He stated that, looking from Melville Road, the well is on the right hand side of the house and the septic is on the left.

Mr. Dunn advised Mr. Pretak that the ZBA is required to grant the least variance possible. He stated that the Board does not want to make Mrs. Cimorelli go through hardship with additional costs. However, he stated that even if they can move the house 2 ft. this would be preferable. Mr. Pretak stated that he will check out where the water and sewer pipes are currently located. Mr. Dunn stated that he visited the site and knocked on the door, but no one answered.

Mr. Maucher asked what the total cost will be for the project. Mr. Pretak stated that it will cost \$71,000, which includes demolition of the old trailer and installation of the new mobile home. Mr. Maucher asked if there is any assessed value on the existing trailer. Mrs. Cimorelli stated that there is one assessment on the entire property. Mr. Maucher stated that he is looking at the stipulation in the Code that limits the increase to 50% of the value of the existing structure. He asked if there is an assessed value of the existing trailer. Mr. Pretak stated that for tax purposes, the trailer is not assessed separately. Mr. Maucher asked if the trailer is insured. Mrs. Cimorelli stated that her house is insured but that she could not get insurance on the mobile home.

Public Hearing was opened.

Ms. Mary Whalen, 1245 Main Street, Ruby, NY 12475 was sworn in. She stated that she has no problem at all with the applicant's request. She stated that the only thing she would like is some kind of screening – landscaping or vegetation – between the two properties behind the trailer on the rear property line. She suggested evergreen trees or bushes that are full year around. Mr. Dunn stated that that is not something that the ZBA can enforce. Ms. Whalen stated that she does not have any problem if the applicant wants to put the new mobile home on the same footprint as the old trailer.

Mr. Feldweg asked if Ms. Whalen has a home on the adjoining property. Ms. Whalen responded no, that the land is agricultural – hay field. Mr. Feldweg asked if her concern is for the future possibility of subdividing the land and building a home adjacent to the Cimorelli property. Ms. Whalen confirmed that this is her concern.

Mr. Feldweg: **MOTION TO ADJOURN THE PUBLIC HEARING; SECONDED BY T. GERSTNER; VOTE TAKEN AND APPROVED 5-0-0**

Mr. Gerstner asked if the trailer has been occupied continuously since Mrs. Cimorelli has owned the property. Mrs. Cimorelli stated that they purchased the property in 1994. She stated that someone was living in it before she purchased the property and that it has been occupied all the time that she has owned the property. Mr. Feldweg stated that the trailer has been on that property forever.

Ms. Rubenstein stated that the only thing before the ZBA is an application to alter a non-conforming building and the current request is for permission to put the new structure in the same location as the old one. She noted that the appeal is for a 5.5 ft. area variance.

Mr. Dunn asked the applicant to look into moving the proposed new home 1 or 2 or 3 feet closer to the house in order to reduce the non-conformity. Mr. Pretak stated that he will check that out. Ms. Rubenstein noted that they will have to put down a slab for the new home, in any event, and it may just be a matter of relocating the utilities and services. Mr. Dunn noted that it would be a different story if they have to blast down through rock in order to move it forward.

Next steps: Ms. Dickerson will poll the Board members to make sure that there will be a quorum for a special meeting on Thurs. 8/6/09. If a quorum will be available for that date, Ms. Dickerson will publish notice of the hearing in The Poughkeepsie Journal. The Public Hearing is adjourned to 8/6/09.

Mr. Maucher asked about the bulk requirements for living areas. Mr. Feldweg stated that it does not apply because they are moving a non-conforming situation to a less non-conforming situation. Mr. Maucher asked if they have to request a variance. Mr. Feldweg stated that he never saw it that way and referenced a previous appeal regarding a derelict mobile home in Netherwood Plaza that was still being lived in. He stated that they upgraded it to something that was near to conforming, which at the time was done with a building permit. Mr. Feldweg explained that he is fiercely protective of non-conforming uses. He stated that he thinks they should be protected because they are a legitimate part of any ordinance. He stated that his attitude is to give them anything that you can because most of the time it is an improvement. He stated that all the non-conforming uses in Town, when they come in to change something, 90% of them are upgrading one way or another.

Mr. Feldweg commented on the previous discussion regarding the restriction of 50% increase in cost. He stated that he thinks that can be applied to buildings but that it cannot be done on something like a mobile home because they depreciate to a point where they are worth nothing. He stated that the cost restriction does not work well on mobile homes or cars or things like that that depreciate rapidly. He stated that if you increase a house by 50% in value, then that's substantial.

Ms. Rubenstein stated that if they were not increasing the size of the mobile home – if they were putting the new mobile home on the exact same footprint – they probably would not need a variance at all. She stated that she thinks this was done off of Creek Road where the building was placed in the exact same footprint. She stated that she does not want to push them hard into moving the new home, because she is not sure they have to do anything. Mr. Dunn pointed out that it is the Board's job to grant the least variance possible without causing hardship to the applicant. Board members commented that if the adjacent property owner chooses to subdivide, then she can put up the requested screening. Mr. Feldweg stated that any time you can get rid of an old mobile home, you've done a good thing. Mr. Maucher stated that he's surprised a 50-year old trailer is still standing.

2. HOMELAND TOWER – SPECIAL USE PERMIT

Ms. Rubenstein asked for confirmation that the Town Board has approved their waiver request. Ms. Dickerson responded yes, the waiver was approved. Ms. Rubenstein suggested

that this appeal needs to be put on the ZBA agenda to determine the next steps. She noted that the Board has a full application from Homeland Towers, has received the radiofrequency engineer's report, has received Morris Associates report. Mr. Dunn mentioned the letter from NYS Parks and Recreation that asks for additional documentation. Ms. Dickerson affirmed that the applicant has received a copy of the letter from Parks and Rec and that the applicant has not responded to it.

Board agreed to ask Homeland Towers to come to the 8/27/09 Board meeting for discussion only and to hold the public hearing at the September 2009 meeting. Ms. Dickerson will poll Board members to confirm that a quorum will be available. Ms. Rubenstein explained that the Board needs to be clear on the procedure and stated that she will communicate with attorney Nelson for a memo that describes the next steps.

Mr. Maucher asked for clarification of whether it is normal legal procedure approaching it this way and not holding it as a public meeting. Ms. Rubenstein stated that it is a regular meeting, they are on agenda. Mr. Maucher stated that usually an appeal is on the agenda to get an application approved. Ms. Rubenstein stated that normally none of the ZBA applications are this complicated and normally the public hearings are held the same night. However, she stated that if the ZBA does not think it's done, the Board will extend it. Mr. Maucher stated that he does not want to affect people's perceptions about what the ZBA is doing, about whether it is above board or not. Ms. Rubenstein stated that it is a public meeting and they are on the agenda. She stated that it is only a public hearing if the Board opens it to the public, and the Board would not want to open it to the public until it is prepared to take the public comment. She stated that she's not ready to take public comment without getting guidance from the Board's attorney on what it being approved because chances are good that when the ZBA reviews all the SEQRA material, it will issue a negative declaration because there is no environmental impact other than visual. She stated that she read the radiofrequency engineer's report that says the applicant needs to have the tower. She stated that she does not think the visual impact outweighs their need to have the tower. She also pointed out that the Board has approved other Towers and nobody objected, so it would be difficult to say that this one blights the landscape.

Mr. Gerstner stated that, in his opinion, it is not a very good location for a cell tower because it is a boy scout camp and there will be 12 year old boys throwing things over the fence and climbing the fence to see if they can get in there. Mr. Maucher agreed. Mr. Gerstner noted that there are campsites 30 ft. away on one side and 60 ft. away on another side. Ms. Rubenstein stated that they may end up having to move their camp sites to make it safer for the children.

Ms. Rubenstein stated that the Board now has a fully realized Special Use Permit application and that, before the Board makes a decision on the Permit, it must make a decision on whether there is a positive or negative environmental impact under SEQRA. She stated that the applicant has agreed to let the ZBA have a combined Public Hearing on both of those issues. She stated that before the Board makes any decision it would probably issue a negative declaration and approve the Permit with whatever conditions the Board wants to include. She stated that she feels the applicant should be on the next agenda for discussion to clarify next steps. Ms. Rubenstein will e-mail the Board's attorney for guidance on next steps.

Mr. Maucher asked whether the public hearing was left open at the last meeting. Ms. Rubenstein stated that, at that time, there was no official application in front of the Board because they did not have a waiver from the moratorium. She recalled that the Board did take public input because there were a lot of people present at the meeting, but that the public was advised that they had to return for the formal Public Hearing to put their comments on the record.

Ms. Dickerson asked if she should list this application on the August 2009 agenda as "Discussion Only – No Public Hearing." Board members concurred.

3. MINUTES

Mr. Feldweg: **MOTION TO APPROVE THE MINUTES, AS SUBMITTED, OF THE JUNE 25, 2009 MEETING; SECONDED J. DUNN; VOTE TAKEN 5-0-0**

Meeting was adjourned at 8:30 p.m.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represents unofficial minutes of the July 23, 2009, Pleasant Valley Zoning Board of Appeals meeting. They are not official and should not be construed as the official minutes until approved.

_____ Approved as read

_____ Approved as corrected with deletions/additions

PLEASANT VALLEY ZONING BOARD OF APPEALS

August 6, 2009

This meeting of the Pleasant Valley Zoning Board of Appeals took place on August 6, 2009, at the Pleasant Valley Town Hall, Route 44, Pleasant Valley, New York. Chairman John Dunn called the meeting to order at 7:34 p.m.

Members present: John Dunn, Chair
 Tim Gerstner
 Bob Maucher
 Ronald Vogt
 Steve Kish, Alternate
 Ed Feldweg, Alternate

Absent: Lisa Rubenstein
 Christina Perkins
 Helene Czech

1. MINUTES

Mr. Feldweg: **MOTION TO APPROVE THE MINUTES, AS WRITTEN, OF THE 7/23/09 ZBA MEETING; SECONDED BY T. GERSTNER; VOTE TAKEN AND APPROVED 4-0-0**

2. APPEAL #945 – CIMORELLI – AREA VARIANCE Grid #6264-02-995636 51 Melville Road

Mr. Dunn noted that this appeal for an area variance to replace an existing mobile home with a new mobile home is continued from the July 2009 ZBA meeting due to the fact that the official notice of the hearing was not published in The Poughkeepsie Journal in time for that meeting. He stated that publication in The Poughkeepsie Journal was done for this hearing.

Mr. Dunn read from the Zoning Administrator's Administrative Decision dated 6/26/09: "As per Section 98-30, all alterations and reconstructions built under these provisions must conform to all regulations of the district in which said use would be conforming. Increase in size does not exceed 50% of original dwelling. A variance of 5.5' is needed for the rear yard."

Mr. Dunn noted that the file contains the following:

- Affidavit of publication in The Poughkeepsie Journal dated 7/30/09
- Surve map and aerial photo of the property
- List of adjacent property owners who have been notified by registered mail
- Referral from DC Department of Planning: local concern
- Referral from the Fire Advisory Board: no position
- Referral from the Planning Board: negative recommendation – adequate area on the property to allow for placement of the new mobile home in compliance with required setbacks

Mr. Dunn stated that the ZBA had asked Mr. Pretak, who represents Ms. Cimorelli, if it would be possible to place the mobile home a few feet farther away from the rear property line – in an effort to grant the smallest variance possible.

Mr. Pretak reviewed the details of the project:

- To replace a 50 year old mobile home with a new home
- The new home will be newer and safer and more energy efficient

Mr. Pretak reported that the estimated cost to move the mobile forward so that it meets the required setback would be between \$3,000 to \$5,000. He stated that grading and excavation of rock in the area will be required to move the home forward, which may be cost prohibitive for the applicant. He explained that financing is difficult to get on a mobile home due to its rapid depreciation. He also explained that the new home will be placed on a slab.

Mr. Pretak stated that the skirting on the old home is all wood and that he had a guy pop it off and investigate the location of the water and sewer hook ups. He stated that they found that the hook ups are pretty close together and are 3 ft. from the back of the home. He stated that, theoretically, it would be possible to move the home 3 ft. forward. However, he suggested moving the home 1.5 ft. forward. In this way, he explained that the requested variance would be reduced from 5.5 ft. to 4 ft. Further, he explained that this would give a little bit of space from where the skirting which helps protect the hook ups from freezing from cold wind.

Mr. Pretak stated that they spoke with the adjacent property owners. He stated that the neighbors across the street are in favor of this improvement. He noted that Mrs. Whalen attended the ZBA meeting in July and, at that time, requested that landscaping be placed on the rear property line to provide visual screening for any further subdivision and development on her land.

Mr. Pretak stated that the new home will improve the site, that the new homes look very good, and that the vinyl siding will last for many years before deteriorating.

Mr. Pretak formally asked to amend the application to request a 4 ft. variance from the rear setback.

Mr. Dunn expressed his appreciation to Mr. Pretak and Mrs. Cimorelli for making that accommodation and reducing the variance. He asked Mr. Pretak if there would be a problem with the water or sewer. Mr. Pretak responded no, because there would still be 1.5 ft. clearance to the skirting and the sewer will still be inside the skirting.

Mr. Feldweg asked if the hook ups on the new unit are in the same place as the old one. Mr. Pretak stated that he does not know. Mr. Feldweg stated that, when he talks about not moving the hook ups, he assuming they will be compatible with the new unit. Mr. Pretak explained that when the slab is installed, the water and sewer penetrations will still be within the framework of the slab. He stated that, relative to the particular new home, he does not know where the drops are for the services. He stated that the drops may be 30 ft. away for the water, in which case it is heat taped. He explained that the hook ups that exist in the ground are left where they are and the hook ups from the house are brought to the ones in the ground.

Mr. Feldweg stated that he has no problem with the request to move the home 1.5 ft. and asked Mr. Pretak if he would be ok with one or two of the ZBA members making a site visit when he's doing the installation. Mr. Pretak agreed to a site visit. Mr. Feldweg explained that it would be good to put something in the record that responds to the Planning Board's concern.

Mr. Pretak stated that his usual practice is to take a picture of the site before the start, to stake the site, and to take a picture after the old home has been removed. He explained that after the home has been removed it is possible that they may discover that the drops are in a different location.

Mr. Dunn asked what the new mobile home will cost. Mrs. Cimorelli stated that with everything, including the slab, it will be \$71,000. Mr. Dunn estimated that excavating and grading would add an additional 7-8% to that cost to bring the home farther forward and meet the required setback. Mr. Pretak also added that Mrs. Cimorelli may not be able to get financing for that additional cost and the appraisal would not reflect that additional cost, either.

Mr. Dunn stated that the appeal is now amended to request a 4 ft. variance from the rear setback.

Public Hearing had been adjourned from the July ZBA hearing. Mr. Dunn noted that no members of the public were present at this hearing. Public Hearing was closed.

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DISCUSSION

APPEAL #945 – CIMORELLI – AREA VARIANCE

Mr. Feldweg reiterated the stipulation that a member or two of the ZBA be invited to do a site visit when the old home has been removed and prior to installation of the new home, then. He volunteered to make that site visit along with Mr. Vogt, who also agreed to go.

Mr. Feldweg stated his disagreement with the adjacent property owner's request that the applicant put in landscaping to visually screen the rear of her property. He stated that it is vacant land. He stated that he is a strong advocate of non-conforming uses and considers it an improvement that the 50-year-old mobile home is being replaced with a new mobile home. Further, he stated that if the adjacent property owner subdivides and someone moves on a lot next to Mrs. Cimorelli and does not like to look at the mobile home, then that person can plant the trees. He stated that he does not think that that is something that this applicant is obliged to do because somebody might not want to look at it. He stated that if a person does not want to look at it, then they should plant the trees. Mr. Dunn concurred. Mr. Gerstner and Mr. Vogt also agreed.

Mr. Dunn read into the record the: **Area Variance: Resolution with Record of Findings to grant the 4 ft. area variance with the following conditions:**

- **Payment of all applicable fees**
- **Board member(s) to review site prior to placement of the new mobile home**

SECONDED BY E. FELDWEG

VOTE TAKEN AND APPROVED 6-0-0

	<u>Yes</u>	<u>No</u>
J. Dunn	X	
T. Gerstner	X	
R. Maucher	X	
R. Vogt	X	
S. Kish	X	
E. Feldweg	X	

Meeting was adjourned at 8:05 p.m.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represents unofficial minutes of the August 6, 2009, Pleasant Valley Zoning Board of Appeals meeting. They are not official and should not be construed as the official minutes until approved.

_____ Approved as read

_____ Approved as corrected with deletions/additions

PLEASANT VALLEY ZONING BOARD OF APPEALS

August 27, 2009

This meeting of the Pleasant Valley Zoning Board of Appeals took place on August 27, 2009, at the Pleasant Valley Town Hall, Route 44, Pleasant Valley, New York. Chairman John Dunn called the meeting to order at 7:32 p.m.

Members present: John Dunn, Chair
 Bob Maucher
 Ronald Vogt
 Lisa Rubenstein
 Steve Kish, Alternate

Absent: Ed Feldweg, Alternate
 Helene Czech
 Tim Gerstner

1. **APPEAL #935 – HOMELAND TOWERS, LLC – SPECIAL USE PERMIT**
 Grid #6565-03-131274
 22 Camp Nooteeming Road, Pleasant Valley, NY 12569

It was determined that the purpose of tonight's hearing is to set a date for the Public Hearing and to determine who should be notified of that Hearing.

Mr. Dunn reported that this is an application for a Special Use Permit for the construction of a cell tower with co-location of at least 6 wireless telecommunication facilities. Verizon will install 12 panel antennas on the structure and a 360 sq. ft. equipment shelter at the base of the tower. He noted that this is on the agenda for discussion only and is not a public hearing.

Mr. Robert Gaudio, Snyder & Snyder, attorney for Homeland Towers, was present and as an officer of the court is always under oath. He stated that this evening they are seeking to schedule the Public Hearing. He stated that they were last before the Board in April 2009 at which time the Public Hearing was closed because it was not proper at that time. He stated that since that time, Homeland Towers has received a waiver from the Town moratorium. Further, he noted that the Board has received the consultant reports.

Ms. Rubenstein stated that it is her understanding that the ZBA has received reports from all of the consultants stating their conclusions that the application is complete and that they have reviewed the applicant's submissions and that that information is correct. She asked if Mr. Gaudio has received copies of all that material. Mr. Gaudio responded that they have received all material.

Ms. Rubenstein stated that this meeting is just to set the date for the Public Hearing. She stated that it is a Public Hearing on the Special Use Permit application and on the Environmental Assessment Form (EAF). Mr. Gaudio agreed. Ms. Rubenstein stated that as part of the public comment the ZBA will permit comment on the EAF.

Mr. Gaudio noted that, in May 2009, the ZBA circulated its intent to act as lead agency and that there were no objections to it. He suggested that the ZBA may wish to declare itself lead agency at tonight's meeting.

Ms. Rubenstein: **RESOLUTION THAT AUTHORIZES THE ZBA TO ACT AS LEAD AGENCY ON THIS APPLICATION; SECONDED BY J. DUNN**

Discussion: One response to the circulation to act as lead agency was received from NYS Parks and Recreation but they did not object to the ZBA acting as lead agency. Mr. Gaudioso received a copy of this letter on 6/30/09 and requested an additional copy. Ms. Dickerson will fax additional copy of this letter to Mr. Gaudioso. Ms. Rubenstein stated that since no one objected to the ZBA acting as lead agency, the Board is cleared to declare itself lead agency.

VOTE TAKEN AND APPROVED 5-0-0

Ms. Rubenstein stated that the Public Hearing will be on the application for a Special Use Permit and the long EAF. Ms. Dickerson stated that she will publicize for the Public Hearing at the 9/24/09 ZBA meeting. Notices will be publicized in The Poughkeepsie Journal. Notices will be mailed to the adjacent property owners. A notice will be posted on the Pleasant Valley Library bulletin board and notices will be sent to all agencies and individuals who received the notice of the Board's intent to act as lead agency. Also, a notice will be posted in the Salt Point Post Office.

**2. APPEAL #947 – TUROWSKI – AREA VARIANCE
Grid #6364-04-628320
Location: 5 Clover Way**

Mr. Dunn reported that this is an application for a 12' area variance from the side setback for construction of a barn. The applicant stated that he has removed a 75-year-old shed on the site and proposes to construct a 24' x 40' pole barn. The applicant proposes to locate the barn 3' from the side lot line, whereas the Code requires 15'. The file contains:

- Notarized letter from Mr. Turowski appointing Mr. Fred Schaeffer to represent him at this meeting.
- DC Department of Planning: no comment – matter of local concern
- Affidavit of publication in The Poughkeepsie Journal dated 8/20/09
- PV Planning Board: negative recommendation – room exists on the site to locate the barn 5' from the property line. Planning Board thinks the proposed barn will be an improvement over what was previously there. Planning Board also asks the ZBA to look at Sections 98-30 and 98-33 to determine whether this is a reconstruction or a restoration, which will determine the allowable size of the building.
- Fire Advisory Board: no position
- List of adjacent property owners who were notified of this hearing.
- Notarized letter from Brian and Amy Rickard: they oppose the barn - issues of views and potential decrease in value of their property.

Mr. Fred Schaeffer, attorney for the applicant, was present and as an officer of the court is always under oath. He explained that Mr. Turowski had prior plans for vacation in North Carolina and cannot be at this evening's meeting. He stated that originally this property was 7-8 acres and was broken up into 3 lots. He stated that two of the lots are flag lots and that his client has one of those lots. He stated that there were 3 outbuildings on the property along the driveway, all of which have been removed. He stated that the applicant wishes to replace one of those old buildings. He stated that, if he heard the neighbor's letter correctly,

they purchased their property in October 2008 at which time the original building that Mr. Turowski wishes to replace was standing then.

Mr. Schaeffer stated that the proposed barn is a standard type of barn for this area. He stated that he has lived in Pleasant Valley for over 40 years and has seen these type of pole barns all over the place. He stated that they fit in with the rural character of Pleasant Valley. He stated that 24' x 40' is not exceptionally large and is about the same size of the previous building. He stated that it will not change the character of the neighborhood and will not adversely affect the community. He stated that his client has 1.7 acres and the proposed structure fits in with the ability to have a house and a barn and a place to store some things. He stated that Mr. Turowski has hobbies and is a full-time employee of Verizon and that his wife also works for Verizon. He stated that they have a lot of machinery to take care of the land and have a few antique cars. He stated that Mr. Turowski's son is building another car and that they need some place to keep things inside. He mentioned that it would be a lot worse if the applicant were to keep things outside and on the ground. He stated that the proposed barn will be a nice addition to the property, fits in with the character of the property, will not devalue their property at all and will probably increase the value.

Mr. Schaeffer stated that the request is for a 12' variance and needs the room so that the structure fits in with the landscape. He stated that it is adjacent to only a driveway and is not opposite to anyone's house. He stated that he is not sure where the Rickard's house is located but that the proposed barn will not block anyone's view or ruin the neighborhood. He stated that this is the only available location for the structure. He explained that, although it's a fairly good-sized lot, the septic field is opposite the proposed location of the new barn.

Mr. Schaeffer displayed a survey map that shows an intermittent pond on the other side of the septic system that prevents him from moving the building anywhere on the other side of the septic system. Further, he explained that at the back of the property there are slopes going up the hill and it would cost a substantial amount of money to cut into those slopes, which would also put the new barn in front of the house on the adjacent property and block it's view. Overall, Mr. Schaeffer stated that based on the existing lots and the current houses, the proposed location is the best for the new barn.

Mr. Schaeffer stated that, as mentioned by the Planning Board, the applicant is just replacing an old structure. He noted that, in hindsight, the applicant probably should not have torn down the old structure. He stated that he thinks it should be taken into consideration that the old structure was there, originally, and that it is not a surprise to the neighbors that there was a structure on that site. He stated that he thinks the applicant is entitled to replace it.

Mr. Schaeffer stated that the applicant is requesting the 12 ft. variance even though Mr. Turowski said, at the Planning Board meeting, that he could live with a 10 ft. variance. He stated that the building that is shown in the plans is not to scale – it was something that the applicant took off the Internet and does not accurately represent the proposed structure. He stated that the barn will be 13 ft. tall and the doors will be 10 ft. tall. He stated that this will not adversely impact the neighborhood or the neighbors and will improve the property.

Mr. Vogt asked about two temporary storage structures located directly behind the house that are currently housing equipment. He stated that that would be an ideal location for the proposed barn because it would be off the lot line and would not need a variance. He stated

that the applicant is already using it for storage. Mr. Schaeffer stated that there is a boat in one of them. Mr. Vogt reiterated that that would be the perfect site for the pole barn and no variance would be needed. Mr. Schaeffer stated that the applicant would have to build a foundation and that the hill starts right behind it. He stated that Mr. Turowski is using it as temporary storage right now but that it is very close to his house. Also, it would partially block the house behind. Mr. Schaeffer reiterated that the best location for the new barn is where the old barns were.

Mr. Vogt stated that all he sees is a hole right next to the driveway and that he does not know where the old structure was located – there is no footprint, no markings, no foundation where they say the old structure was located. He stated that it is invisible. Mr. Schaeffer stated that there is an aerial photograph of where the old barn was located. Board members noted that they did not receive that photo.

Mr. Dunn asked what the size of the old structure was. Mr. Schaeffer stated that Mr. Turowski filled out the application himself. However, he stated that Mr. Turowski came into the Town Hall and looked at an aerial photograph of his property that showed the location of the old structure. Ms. Rubenstein noted that nothing in the application shows the size of the old structure

Mr. Kish asked for clarification of Mr. Turowski's intention to move the new barn back to the footprint of the old barn. Mr. Schaeffer explained that that is what he told the Planning Board. However, he stated that it would not be the exact footprint but would be 5 ft. off the property line, which is where the original structure was.

Ms. Dickerson read from the minutes of the 8/11/09 Planning Board meeting: the old structure was 20 ft. x 45 ft. and the proposed barn is 24 ft. x 40 ft. She explained that Mr. Turowski stated at the Planning Board meeting that his rationale for making it 24 ft. x 40 ft. is to make better use of the lumber – he does not have to cut off one foot on each board and he gets an extra 60 sq. ft. The original structure was 900 sq. ft.; the proposed structure is 960 sq. ft.

Mr. Rubenstein stated that if he erected a structure on the old footprint, no one on the ZBA would have an argument with him doing that.

Mr. Dunn asked if Mr. Turowski intends to store in the new barn everything that he has in the temporary storage units. He noted that these temporary structures aren't really temporary – that they often stay up for 5-10 years. Mr. Schaeffer noted that those structures are portable garages without sides for his boat and other machinery. He stated that he does not know whether Mr. Turowski will move those things into the proposed barn.

Mr. Dunn asked what the height was of the old building. Mr. Schaeffer stated that the height of the new building will be 13 ft. at the peak and the doors will be 10 ft. It will be a single story structure. Ms. Rubenstein asked how many feet the old building was of the property line. Mr. Schaeffer stated that the old building was 5 ft. off the line and the new building would be 3 ft. off the line. Mr. Dunn noted that the applicant thinks he could make it 5 ft. off the line. Ms. Rubenstein asked about the sheds that are crossed out on the plans. Mr. Schaeffer stated that they have been removed and that Mr. Turowski does not intend to replace them. Ms. Rubenstein asked if the applicant would need a variance on the other side of the new barn. Mr. Schaeffer responded no and stated that the septic fields are in that area.

Mr. Vogt stated that he would like to see exactly where the old structure was located – that he would like to see it staked. He stated that he has no way of measuring, now that the building has been removed, how far it was off the property line. He stated that there's no foundation or pad; that all that is visible is an excavated area by the driveway.

Mr. Vogt stated that he has to produce evidence of the location of the previous structure. Ms. Rubenstein stated that he does have a survey that shows where the old structure was. Mr. Kish asked whether the applicant could proceed without a variance if he could demonstrate the original location as 5 ft. off the line and would consider putting the new barn at the same distance. Ms. Rubenstein suggested that, in that scenario, it would be a replacement of a structure, which would not require a variance if replaced within a year – in the same footprint. Again, she stated that he has survey – the map that Mr. Schaeffer provided at this meeting.

Ms. Dickerson produced a scale from the office; Mr. Vogt measured the distance from the old structure to the line as 10 ft.

Mr. Schaeffer explained that Mr. Turowski wanted a decision tonight – that he wants to get the building constructed before the winter. Board members discussed that, in order for Mr. Turowski to proceed without a variance, he would have to replace the structure on the original footprint at the same size as the original structure. Mr. Vogt stated that if an applicant is replacing exactly what was there, then the ZBA is not needed. He noted that if the applicant modifies the structure, then the ZBA must act on it. Mr. Vogt referenced the situation in trailer parks, where a structure is removed and the exact same size is put in – the non-conforming structure is replaced on the original footprint, no variance is required. Ms. Rubenstein stated that this is under Section 98-33 – a non-conforming building damaged or destroyed. She noted that he took it down because it was falling down. She stated that she does not want to penalize someone for taking it down as a safety measure.

Mr. Schaeffer asked whether the rule for expanding a non-conforming use is 50% of the square footage or 50% of the value. Board agreed that it is square footage. Mr. Schaeffer noted that the old building had no value. Mr. Vogt concurred.

Ms. Rubenstein stated that she does not have a problem with making the new structure 60 sq. ft. bigger than the old one, if he puts it 5 ft. off the line. She noted that Mr. Turowski explained to the Planning Board that it is a more economical way to use the lumber. She stated that it makes sense to build it in conformity with the size of the wood. And if it is 5 ft. off the line like the original structure, she stated that it does not hurt anything. Mr. Schaeffer agreed and stated that it was that way for 75 years. Ms. Rubenstein stated that she does not have a problem with the applicant's application. Mr. Schaeffer stated that the applicant does not want to adjourn the application and hoped to be granted the 10 ft. variance and get it built by winter.

Public Hearing was opened.

Mr. John Terry, 4 Clover Way, Pleasant Valley, was sworn in. He stated that he has a flag shaped property and that he is west and north of Mr. Turowski. He stated that several months ago Mr. Turowski put a letter in his mailbox asking to rent Mr. Terry's barn located down by the road. Mr. Terry declined to rent his barn. He stated that his barn is much small

than the one Mr. Turowski is proposing – that it is 1000 sq. ft almost, which he considers to be the size of a house. Mr. Terry stated that Mr. Turowski had mentioned that he would be applying for a variance and asked Mr. Terry what he thought about that. Mr. Terry stated that he told Mr. Turowski that he'd think about it.

Mr. Terry stated that Mr. Turowski ripped out some sheds that were much smaller than the proposed structure. Mr. Terry stated that he can see how the proposed barn could obstruct somebody's view.

Mr. Terry stated that, although it appears that they all have a lot of acreage, because these are flag lots much of the land is in the flag. He stated that he has 2.3 acres and much of it is a flag – is a driveway. He stated that he probably sits on 1 1/4 - 1/12 acre – same with Mr. Turowski. Therefore, he stated that their properties are really a lot closer than it would seem.

Mr. Terry stated that from time to time there's a noise issue. He stated that Mr. Turowski likes to tinker, which is one issue. He stated that Mr. Turowski is always out there doing something – he has hands of gold. But also there is an issue with Mr. Turowski's son ripping up and down the driveway with the dirt bike. He stated that he sees nothing but problems with this new barn being built. Also, he stated that if you give Mr. Turowski a 1000 sq. ft. to use, he'll need 1500 sq. ft. He stated that Mr. Turowski's property is unsightly now. He stated that he had a guest up to his property recently and coming up the driveway there were smoke pots burning and smoking on Mr. Turowski's property. He stated that his guest noticed and asked what it was. He stated that he's used to it and he does not complain because we all have the same issues of not enough space. He stated that he used to have a 2-car garage, and that he can barely get one car in it now. But, he stated that he's not looking for a variance for another building – that perhaps he should clean out his garage and do the right thing. He stated that he sees Mr. Turowski using all that new space and, perhaps, even for a commercial venture. He stated that if you check with the neighbors there is a noise issue with it, it's unsightly, and if you give Mr. Turowski 1000 sq. ft. building, he will need 1500 sq. ft. He stated that a couple of years from now Mr. Turowski will be back to the ZBA for permission to put a second story on the barn. He stated that this is his opinion.

Ms. Rubenstein clarified that nothing that the ZBA is authorized to do will affect the use of his property. She stated that even if the ZBA turns down the appeal, the applicant is allowed to use his property and make whatever noise he wants. Mr. Terry stated that he understands this and that he wanted to put his opinion on the record. He stated that he understands that everyone shares the same foibles and idiosyncrasies and hobbies. He stated that that is life. He stated that what he sees is something different from what is being proposed on paper. He stated that the proposed building is a monster.

Ms. Rubenstein asked if Mr. Terry lived on his property when the old barn was standing. Mr. Terry responded yes, that he has lived there for 15 years. Ms. Rubenstein asked if it was in pretty bad condition. Mr. Terry responded yes.

Mr. Dunn asked about the size of the 3 structures that were on Mr. Turowski's property that he tore down. He asked if all three were very small. Mr. Terry stated that they were sheds – that you could walk into them – that they were at most 6 ft. tall. He stated that the sheds have been down for a while – that the rooflines sloped down in the back.

Mr. Terry stated that he hopes that there will be no commercial venture on Mr. Turowski's property. Mr. Dunn stated that if he were to attempt a commercial venture he would either have to come to the ZBA for a variance or he would be found to be in violation.

Mr. Roy Arnesen, 55 Smith Road, Pleasant Valley, NY, was sworn in. He stated that he lives right next to Mr. Turowski and is in a direct line of sight. He stated that from his driveway and from his backyard he sees Mr. Turowski's shed all the time. He stated that the original shed is not as tall as the proposed barn. He stated that in the front it was close to 8 ft. and that the back sloped to the ground. He confirmed that Mr. Turowski did have a shed there for 75 years. He stated that it would more of an eyesore if Mr. Turowski put no shed on that sight. He stated he sees Mr. Turowski's property all the time and that there is a lot of equipment on the property and that he needs somewhere to store it. He stated that from his point of view he would be happy if Mr. Turowski had something constructed where the old shed was located – it would look nicer than it did before.

Mr. Dunn asked if he has the house in back with the paved driveway. Mr. Arnesen stated that he's the property right on the road and his is the original house in the original 7-acre parcel.

Ms. Rubenstein asked if Mr. Arnesen would be OK with Mr. Turowski replacing the shed on the same point – that he does not want to see a 2-story building. Mr. Arnesen stated that he would be fine with a 12 ft. structure – whether it is 8 ft. like the original shed or 10-12 ft. would not particularly bother him.

Mr. Dunn noted that there is no way that the ZBA can force the applicant to store the things that are in the temporary structures in the new barn and take down the temporary structures. He noted that Mr. Turowski may very well have the new barn and continue to have the temporary structures at the same time. Ms. Rubenstein stated that that is absolutely true but suggested that the applicant would probably want to store expensive equipment and a car under construction in the new barn.

Mr. Bryan Rickard, 75 Oxford Road, was sworn in. He stated that his wife was the author of the letter, but that it turns out that she was misinformed. He stated that they had misunderstood the location of the new shed. Therefore, he stated that they are withdrawing their opposition to the proposed structure.

Ms. Jackie Veach, 62 Smith Road, was sworn in. She stated that she has lived there for a good many years. She stated that the property was originally one piece and was a chicken farm. She stated that all the buildings that were taken down were chicken coops originally and were not structures that would be called big. She stated that she could walk into them but that she had to stoop down as she walked into the back of the coops. She stated that over the years they became dilapidated. She stated that when the property was divided, the coops were left there. She stated that it was hard on everybody when the property was split up because the lots were not squared off. She stated that those old structures were right on the side of the driveway. She stated that if a new structure is constructed, it will be along the driveway. She stated that the chicken coops were there for some 50 years.

Ms. Rubenstein stated that the plans submitted by the applicant show two smaller structures that were removed and a larger structure. Ms. Veach stated that she does not remember the larger structure. Members of the public discussed the various structures that had been on the

property; some confusion was expressed about whether there was a larger structure on the property. Mr. Arnesen stated that the larger structure was taken down this summer and that the two smaller older structures were taken down some time earlier. He stated that the roof was about 8 ft. high and sloped.

Ms. Rubenstein expressed her wish that Mr. Turowski were present at the meeting to answer these several questions. Mr. Schaeffer agreed and stated that he considered flying back for the meeting. Ms. Rubenstein asked whether Mr. Turowski wants a decision tonight and stated that there does not seem to be any uniformity on the question of whether he could replace what had been there. She stated that if he insists on having a decision tonight, it is not clear that he would get a decision that would help him. Mr. Schaeffer stated that he agreed but that Mr. Turowski stated that he wanted to take his chances on a decision.

Ms. Rubenstein stated that the ZBA has operated under the presumption that an applicant can replace something that had been in existence without coming back to the ZBA. However, she stated that when Mr. Turowski goes to the building inspector, he must establish where the old building was located. Further, she stated that the map that Mr. Schaeffer provided this evening indicates that the old building was 10 ft. off the property line, not 5 ft. Regardless of whatever the ZBA does at this meeting, Ms. Rubenstein stated that Mr. Turowski must identify where the original building was located on the property.

Mr. Kish stated that based on what the Board has seen thus far, if Mr. Turowski follows the footprint that's on the map in scale then there's not a problem and he can go ahead and do it, in his opinion. However, he stated that if he wants to change that, then he must get a variance. Ms. Rubenstein stated that he must mark where the shed was located. Mr. Vogt concurred and pointed out that if the original shed was only 8 ft. high with a sloping roof now he's doubling the height of the structure with a 13 ft. peak. He stated that Mr. Turowski may be using the same footprint, but now he's doubling its height and the cubic measurement will be more than the 50% rule with the height increase. Mr. Kish asked if the calculation is done on volume. Board members stated that it is not. Mr. Vogt stated that he does not have a problem with the applicant replacing the shed; but that if he is building a garage, it is not a shed anymore.

Mr. Dunn suggested that the Public Hearing be adjourned to next month on 9/24/09. He advised Mr. Schaeffer that if Mr. Turowski does not wish to appear, that's his business. He stated that if he does not appear before the ZBA some time in the next three meetings, his application will be null and void. Mr. Schaeffer assured the Board that Mr. Turowski will appear at the next meeting. He asked if Mr. Turowski needs to mark where the original shed was located. Board members concurred that there must be evidence of the location of the previous structure. Mr. Vogt stated that he needs something to document – that the map that Mr. Schaeffer produced indicates that the building was 8-10 ft. off the property line. Ms. Rubenstein stated that if the map is the only proof provided to the Board, it does not indicate that the building was 5 ft. of the line. Mr. Kish stated that the Board needs numbers on the map – the location needs to be shown on the map with measurements of setbacks from property lines. Ms. Rubenstein concurred that the applicant needs to document where the old structure was located.

Mr. Schaeffer noted that Mr. Turowski is aware that he cannot use this structure for a commercial venture and that he has assured Mr. Schaeffer that he has no plans to do so. Mr.

Schaeffer stated that Mr. Turowski works full-time for Verizon and that he is a tinkerer and just wants the barn for storage. He stated that it is definitely not a commercial structure.

Mr. Schaeffer stated that he will inform Mr. Turowski that the hearing will be adjourned to next month.

Mr. Maucher stated that, unless Mr. Turowski can provide documentation to substantiate the 5 ft. claim, he would rely on what is on the map. Other Board members agreed.

Mr. Terry stated that he did not know until tonight specifically where Mr. Turowski was intending to construct the barn. He stated that if it is to be where the sheds were that he took down, he would be buying himself more space if he built a building there. He stated that he might be in favor of some construction if Mr. Turowski would scale down the height of the structure to 10 ft. instead of 13 ft. He stated that he would be getting a place to store things.

Ms. Rubenstein stated that the ZBA does not do "let's make a deal" with the applicants and the neighbors. However, she suggested that Mr. Terry talk with Mr. Schaeffer and Mr. Turowski about his concerns. Mr. Kish stated that the sketch that Mr. Turowski submitted does not serve because it makes it look like it's one and a half story that's much larger.

Public Hearing is adjourned.

**3. APPEAL #948 – NETHERWOOD BAPTIST CHURCH – AREA VARIANCE
Grid #6465-01-019560
Location: 1211 Netherwood Road, Salt Point**

Mr. Dunn reported that this application is for an area variance for a sign for the Netherwood Baptist Church. The proposed sign will be 4 ft. x 6 ft. for 24 sq. ft. The Code permits 6 sq. ft. in a residential zone. The file contains:

- Affidavit of publication in The Poughkeepsie Journal dated 8/20/09
- Referral from Planning Board to ZBA: positive recommendation – if approved, must return to Planning Board for full sign application review
- Referral from Fire Advisory Board: no position
- Referral from DC Planning: conditional with recommendations
- List of adjacent property owners who were notified of this hearing

Mr. Quentin Johnson, chair of the church's Trustees and treasurer, 15 Eleanor Drive, Salt Point, was present and was sworn in. He stated that he is a Dutchess County native and a 17-year resident of Pleasant Valley. He stated that two days ago he received a copy of the DC Planning comment letter and has not had proper time to respond to it. However, he stated that he objects to certain comments in that letter. Specifically, he stated that the letter states that the proposed sign is 4 times larger than what is allowed by Code. He stated that his understanding is that they would be allowed the same size sign as their existing sign. Therefore, it would not be 4 times larger but would be 2.4 times larger. He stated that the existing sign is 9.85 sq. ft.

Also, the DC Planning letter stated that the existing sign is not internally lit. However, Mr. Johnson stated that it is internally lit but is not functioning.

Further, Mr. Johnson stated that DC Planning identifies Netherwood Road as a quiet, rural road. However, he stated that depending on the time of day Netherwood Road can be very busy. He stated that there are a number of accidents near the church on that S curve.

Mr. Johnson stated that he has not had adequate time to respond to the DC Planning comment letter and has tried to be in touch with the sign fabricator. He submitted a to-scale rendering of the proposed sign showing the sign at the site.

Mr. Johnson stated that he would like to use the Traver Road School sign as a precedent. He stated that it is 24 sq. ft., is over 7 ft. tall, and is internally lit. He stated that based on his conversations with someone at the school, the sign was installed less than 2 years ago and it did not replace an existing sign. Ms. Rubenstein explained that the ZBA has no approval authority over any of the schools. Mr. Vogt agreed. Ms. Rubenstein stated that schools are exempted from local zoning. Mr. Johnson asked if churches are also exempted. Ms. Rubenstein stated that they are not exempt. Mr. Vogt agreed and stated that schools are governed by certain municipal regulations. Similarly, he stated that the Fire Department is governed by other regulations. Ms. Rubenstein stated that when schools want to build another building, they do not come to the ZBA for approval.

Mr. Maucher asked what the size of the existing sign is. Mr. Johnson stated that it is 9.85 sq. ft. Ms. Rubenstein asked if that also includes the historic sign on the property. Mr. Johnson stated that it does not and explained that it is not an official historic sign. He stated that they will take it down. Mr. Maucher asked whether the brackets of the existing sign are included in the 9.85 sq. ft. measurement. Mr. Johnson stated that the measurement includes just the frame and not the posts – 33 x 43.

Mr. Johnson stated that the reason he went around and measured and photographed other signs at churches and schools is because they live and die by variable messages. He stated that according to the DC Planning letter, that seems to be the nail in the coffin for them for approval. He stated that there are a number of messages that they need to be able to change on the sign on a semi-frequent basis. Specifically, he stated that their worship times change through the year. Also, he stated that their pastor changes, although not often. He stated that these are things that they would not want to replace their sign for. He stated that their events change frequently. He stated that he reviewed the draft sign code, which would allow them to apply for a temporary permit for 90 days.

Mr. Johnson stated that they do not object to any of the recommendations in the DC Planning letter. He noted that they would have to get rid of any event sign and move that content to a separate sign. He stated that the issue is changing the pastor's name and perhaps their affiliation in the future, which may never happen. The problem is the issue of the sign being internally lit. He stated that exterior lighting will reflect off the glass and make it impossible to read the sign. He stated that they need the glass, otherwise kids will come by and take the lettering off. He referenced a sign that he passes daily on his way to work that is externally lit with changeable letters and is very difficult to read. He stated that they would agree to the limitations listed in the DC Planning letter except for the requirement for external lighting because of the need for changeable lettering. He asked about the possibility of having a changeable, temporary panel – two lines - that would hang from the permanent sign and be taken down when the event was over. He stated that the sign manufacturer informed him that it would not be effective to externally light a glass enclosure, which protects the changeable lettering. He stated that they could create a metal sign and engrave the Netherwood Baptist

Church across the top with plastic lettering for messages. Mr. Vogt referred Mr. Johnson to what the Fire Department has – a fluorescent plastic on both sides. Mr. Johnson stated that the lettering would be permanently attached but not engraved. For instance, he stated that they don't have Sunday school during the summer, so they would like to remove that message during the summer.

Mr. Dunn asked about the house that is directly across the street from the church. Mr. Johnson stated that it is the parsonage. Mr. Dunn noted that there is no one to the west and to the east is the place that has the yard sale. He stated that the reason he mentions this is that the ZBA strongly prefers not to have internally lit signs because of light intrusion on the neighbors. However, he noted that the only house near the church is the pastor's house. Mr. Johnson stated that the neighbors who live around the corner are members of the church. Mr. Vogt pointed out that there is no one present at the meeting to object to the application.

Mr. Kish asked if the church would have a need for the sandwich board sign and the historical sign. Mr. Johnson stated that a member of the Planning Board suggested that they hang the historical sign on the building. He explained that it is not a real historical marker; that it was made a few years ago.

Mr. Dunn noted that they plan on having the new sign vertical to the road as opposed to horizontal. Mr. Johnson concurred. Mr. Dunn stated that he understands the church's desire to have a sign that big and explained that the ZBA is required to grant the least variance possible to meet the applicant's needs. He noted that the existing sign is only 50% larger than the allowed 6 sq. ft. per Code. Also, he noted that the ZBA is stringent on enforcing the Code on signs. Mr. Vogt stated that the only variances the ZBA grants on signs are when the proposed non-conforming sign is smaller than the existing non-conforming sign – thereby reducing the non-conformity. He stated that the sign ordinance in the Town is very important to create uniformity in the Town and, further, the ZBA is averse to setting a precedent that others will use to rationalize their non-conforming signs.

Ms. Rubenstein stated that the Traver Road sign is 24 sq. ft., which is the same size that the applicant is applying for. She stated that she can see the need to turn the sign vertical to the road for easier reading. However, she stated that the problem with the Traver Road sign is that if it ever came to the ZBA for approval the Board would have turned it down. She stated that the Traver Road sign is an eyesore and is so huge given the size of the Traver Road school and is ugly. She stated that a huge sign like that in front of the applicant's lovely church – that she could never support that size sign in front of the church.

Mr. Johnson asked whether the Board would consider the recommendations made by DC Planning – 16 sq. ft. Ms. Rubenstein stated that she does not know – that the ZBA would have to have a really good reason to permit that because the ZBA has never approved a sign variance. She stated that the ZBA did not approve one for the nursery school. Mr. Johnson asked how the United Methodist Church got permission for their 15 sq. ft. sign in a residential zone. Board members speculated that it was non-conforming prior to zoning, which allows them to replace and upgrade their signs.

Mr. Kish asked if the church can rotate the sign 90 degrees without a variance. Board members agreed that he can. Mr. Vogt stated that the existing sign can be rotated with no issues – nothing in the sign ordinance says that the existing sign cannot be moved or turned.

Ms. Rubenstein noted that the Netherwood Baptist Church wants people to know that they are there and to know about their events and worship times. She stated that the question is whether the church can accomplish some of the things it wants by a smaller variation of the large proposed sign. Mr. Johnson stated that Gloede gave him a rendering of a 6 sq. ft. sign that is not even worth talking about. He stated that they also gave him a rendering for a sign that is the same size as the existing sign. He stated that the 4 inch letters is what is needed for that design speed on that road. He stated that anything smaller than that is not visible.

Mr. Rubenstein stated that, if the applicant's chief interest is in making sure people know that there is a church there, then the name of the church is the most important message on the sign. She noted that she attends Vassar Temple, which has a sign with a glass enclosure that lists the time of services and the rabbi's name. She stated that it is not possible to see that from the road, but it is adequate for people who are interested to go look at the tiny letters to read the message. She stated that the question is what is most important – to get the church's name known so that if someone is interested they can inquire further. Mr. Johnson asked again about the 16 sq. ft. recommended by the DC Planning.

Mr. Vogt asked if the applicant had thought of reducing the letters to 3 inches, which would give a couple of extra rows. He noted that 4 inch letters are used for 911, so even the visually impaired can see them.

Ms. Rubenstein asked how the ZBA would distinguish this application from any other application the Board has received for a sign variance. Board discussed history of ZBA rulings on previous appeals for sign variances. Mr. Johnson questioned the spirit of the Code for 6 sq. ft. for a church. Mr. Vogt stated that the Code does not differentiate – that it is 6 sq. ft. in a residential zone for any permitted use. He stated that the limiting factor is that they are not in a commercial zone. He stated that the ZBA understands that the church has an existing sign and is trying to work with what is on site at this time. He stated that if they turn the sign he will not have any problem with them making it a double-sided sign.

Mr. Rubenstein recited the applications that the ZBA has denied: a nursery school, a shopping plaza, a hair salon, and a pharmacist. She stated that everyone has reasons for wanting a bigger sign. She stated that the ZBA turned them down because the Board wanted to limit the hideous nature of signs in the community. She noted that the Board has been unable to do something about some of them. She also noted that there is now a huge sprouting of temporary signs, which are illegal.

Mr. Dunn explained that if the ZBA voted contrary to the County's recommendations, the ZBA must pass their approval by a super majority of the Board – which is 5 members. He reviewed the County's recommendation: not grant the area variance unless the square footage is reduced to a minimum necessary or to 16 sq. ft., the sign is styled as a lower monument sign with an overall height of no more than 6 ft., the sign is not internally lit, the sign incorporates light letters on a dark background. Board would have to have a super majority to vote in favor of a sign that is contrary to the County's recommendations.

Mr. Johnson asked about the timeline on the draft sign code. Board members estimated that it is tied in with the new comprehensive plan and the new zoning codes. Board members estimated another month or two. Ms. Rubenstein stated that, if she had an indication that the draft sign code would be approved, the ZBA could approve a 16 sq. ft. sign based on the fact that is what appears to be approvable by the Town Code under the draft zoning code. She

stated that that is a way to distinguish it, but she does not have a sense of certainty that that is getting approved.

Ms. Dickerson offered the information that the Town Board is voting this month to extend the moratorium to 12/25/09 in order to provide enough time for the Town Board to complete its deliberations on the comp plan and the zoning code. Ms. Rubenstein stated that the procedure is that the comprehensive plan is approved first and then the zoning code would be approved. Additionally, she noted that there will be two new members on the Town Board in January 2010.

Mr. Vogt stated that this gives the applicant some time to consider the options. Ms. Rubenstein stated that if she knew they were going to approve the draft sign code, then it would be a different situation for the ZBA to vote on a resolution that would be in conformity with the draft sign code. However, the ZBA has no assurance that this will happen and, therefore, has nothing to base such an approval on at this time.

Mr. Kish stated that at the last Town Board meeting, they stated that the best they can do is a month if everything were lined up to get it closed out. He stated that it appears from discussions that as soon as the paperwork was completed the Board would vote on it. He stated that it looked like somewhere around November it would be passed and that Mr. Susczynski's hope is to have it done before he leaves office. Ms. Rubenstein stated that that is a very good idea because it would be starting from scratch if it goes into the New Year with a new Town supervisor and a new Town Board.

Mr. Dunn noted that the ZBA can keep the public portion of the hearing open – that once the public portion of the hearing is closed the ZBA has 60 days to reach its decision. Mr. Vogt suggested that the applicant could return in October 2009, at which time there may be more clarity on what is happening with the draft sign code. Ms. Rubenstein noted that Mr. Johnson can come back in September 2009, but advised him that the cell tower public hearing will be held that month. Further, she stated that it is unlikely that the ZBA will know anything by then about the comp plan and the sign code. Ms. Dickerson asked what the purpose would be of putting this application on the agenda in October. Ms. Rubenstein stated that it would be to find out if the ZBA has any better sense of whether the Town Board would approve the comp plan and the sign code.

Ms. Rubenstein explained that the entire hearing this evening is the public hearing, which will be adjourned to the October ZBA meeting. Mr. Vogt suggested that Mr. Johnson submit two sign designs: one that is the possible proposed 16 sq. ft., and one that is the same size as the existing sign. Mr. Dunn reminded the applicant that the Planning Board is looking for a monument sign. Mr. Johnson asked what that means. Mr. Dunn stated that it is what they have now – on the ground in a planter with a base.

4. **GASPARRO – 1325 DUTCHESS TURNPIKE PROFESSIONAL BLDG.**
Grid #6363-03-443019 & 447030 & 453036
Location: 1325 Dutchess Turnpike

Ms. Rubenstein asked if there is an application from Gasparro that is in front of the ZBA. Ms. Dickerson responded no. Ms. Rubenstein stated that, therefore, the ZBA does not get to comment on the Planning Board's intent to act as lead agency. Ms. Dickerson stated that the Planning Board has notified the chair of the ZBA, as an interested agency, of its intention to

act as lead agency in the SEQR review of Gasparro's application regarding construction of a professional building.

Ms. Rubenstein stated that she does not know what the application is for and knows nothing about it. Therefore, she stated that she cannot make a comment on who should be lead agency. She stated that if the Planning Board wants to be lead agency, the ZBA does not have enough information to suggest that some other entity be lead agency.

Mr. Dunn stated that the ZBA does not have any objections to the Planning Board acting as lead agency. Ms. Rubenstein concurred and asked why the ZBA is even considered an interested agency.

Ms. Dickerson asked if the Board members want her to send a memo to the Planning Board stating that the ZBA has no objection to the Planning Board acting as lead agency. Ms. Rubenstein and Board members responded yes. Ms. Rubenstein stated that she would appreciate receiving a copy of the application so that the ZBA could see if there is something of concern to this Board. Ms. Dickerson reported that the attorney for the Planning Board, Jim Nelson, identified the involved agencies as NYS DOT, NYS DEC, and the Department of Health. Interested agencies and individuals are the Zoning Administrator, the CAC, the Fire Advisory Board, and the ZBA. She noted that the application is for a professional building on Route 44 and that it was denied a variance under the moratorium. Further, under the moratorium law he is allowed to go forward with SEQR at his own risk, which is where this application is at the moment – that the applicant cannot go forward to site plan until the moratorium has expired.

Ms. Rubenstein stated that the ZBA has no objection to the Planning Board acting as lead agency and requested to receive a copy of the application. Ms. Dickerson will send her a copy and asked who else on the ZBA would like to see a copy. No other member of the Board requested a copy.

5. MORATORIUM LAW – EXTENSION TO 12/25/09

Board discussed the need to extend the moratorium so that the Town Board can complete its review and take a vote on the comprehensive plan and the draft zoning code. Mr. Kish recommended letting the moratorium expire. He stated that if it expires, then applicants can start submitting again but that the applications won't be accepted because as soon as the new code passes they will have to abide by the new code. Ms. Rubenstein and other Board members did not agree. She stated that if an application is accepted under the old Code, then it is under the old Code. Mr. Kish stated that what is disappointing to him is that, if the moratorium is extended, the Town is telling the community that it failed. He stated that the Town promised the community that it would be done by September and after 3 ½ years working on the plan, the Town still didn't make it in the 9 months that it said. He stated that that is a credibility issue. He stated that during the Town Board meeting people were saying that other Towns always extend their moratoriums, but that once again it is a credibility problem. Mr. Maucher suggested that there is rationale for needing the extension – that there was more work involved than was anticipated. Mr. Vogt stated that there is a delay of a couple of months because of some ambiguity with the Town's people at one of the meetings, which required that an extra meeting be held to clarify some issues.

Ms. Rubenstein: **MOTION TO SUPPORT THE EXTENSION OF THE MORATORIUM BECAUSE THE ZBA DOES NOT WANT THEIR HARD WORK TO GO TO WASTE**

Discussion: Mr. Kish pointed out that the resolution to extend the moratorium states that as soon as the comprehensive plan is approved, the moratorium will expire. Board members agreed that that makes sense.

SECONDED BY R. VOGT

VOTE TAKEN AND APPROVED 4-1-0 (Mr. Kish opposed)

6. ZBA RESOLUTIONS

Ms. Rubenstein stated that she did not have a chance to look at the resolution forms. Mr. Kish stated that he does not know why the long form is required. Ms. Dickerson explained that the long form deals with details about flood hazard that pertain to certain properties in the Town. Mr. Vogt stated that he glanced at the forms and that they look adequate. Mr. Dunn stated that he did not have a chance to review the forms. Ms. Rubenstein asked if Jim Nelson drafted them. Ms. Dickerson responded yes. Mr. Maucher stated that he has not looked at the resolutions yet. Ms. Rubenstein, Mr. Dunn, and Mr. Maucher stated that they will review the forms.

7. MINUTES – 8/6/09

Mr. Dunn: **MOTION TO APPROVE THE MINUTES OF THE 8/6/09 MEETING AS WRITTEN; SECONDED BY R. MAUCHER; VOTE TAKEN AND APPROVED 3-1-2 (Ms. Rubenstein & Mr. Kish abstain).**

Meeting was adjourned at 9:40 p.m.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represents unofficial minutes of the August 27, 2009, Pleasant Valley Zoning Board of Appeals meeting. They are not official and should not be construed as the official minutes until approved.

_____ Approved as read

_____ Approved as corrected with deletions/additions

PLEASANT VALLEY ZONING BOARD OF APPEALS
September 24, 2009

This meeting of the Pleasant Valley Zoning Board of Appeals took place on September 24, 2009, at the Pleasant Valley Town Hall, Route 44, Pleasant Valley, New York. Chairman John Dunn called the meeting to order at 7:28 p.m.

Members present: John Dunn, Chair
 Bob Maucher
 Lisa Rubenstein
 Helene Czech
 Steve Kish
 Tim Gerstner

Absent: Ronald Vogt
 Ed Feldweg, Alternate

Also present: Bruce Donegan, Zoning Administrator

1. APPEAL #935 – HOMELAND TOWERS, LLC – SPECIAL USE PERMIT
Grid #6565-03-131274
22 Camp Nooteeming Road, Pleasant Valley, NY 12569

Mr. Dunn reported that this is an application for a Special Use Permit for construction of a 150 ft. antenna support structure (cell tower) to allow co-location of at least 6 wireless telecommunication facilities. Verizon Wireless will install 12 panel antennas on the structure and a 360 sq. ft. equipment shelter at the base thereof. The file contains:

- Referral from the DC Department of Planning (original on file): local concern with due consideration of the Department's comments; must have guarantee of no visibility from the Taconic Parkway
- Affidavit of publication in The Poughkeepsie Journal dated 9/18/09
- List of adjacent property owners who were notified of this hearing
- Referral from Fire Advisory Board: no position and request that when the project goes to the Planning Board for site plan review, the plans come back to the Fire Advisory Board for review
- Notarized letter from adjacent landowner, J. S. Dervan (original on file): opposes the cell tower, concern for reduction in property values, concern for radiation from cell tower and family members who will not visit due to health concerns

Robert Gaudioso, attorney with the firm Snyder and Snyder, representing the applicant Homeland Towers, was present. He stated that also present are Manny Vicente, president of Homeland Towers, and Rick Andras, radiofrequency engineer for Verizon Wireless, which is the co-applicant on this application. Mr. Gaudioso described the facility, the procedural history of the application, and some of the materials submitted thus far.

Mr. Gaudioso stated that this is a Special Use Permit application and if, ultimately, this application is approved, it will then go before the Planning Board for full site plan review. He reported that they filed this application on 1/19/09 at which time the Town had a moratorium in place on development. Therefore, they applied to the Town Board for a waiver from the moratorium, which was granted. He stated that, in April 2009, they

scheduled the balloon test with the Board's assistance in picking viewpoints. He stated that they conducted the balloon test on 4/5/09. He stated that they brought a crane to the site, raised it up to 150 ft. in height, put a 4 ft. x 6 ft. flag at the 150 ft. height and floated a 4 ft. in diameter balloon at 156 ft. height to make sure that they had full visibility. He stated that they took photographs from 24 viewpoints from the surrounding area based on input from the Board and its consultants. He stated that they also did 9 additional line of sight renderings from 9 locations and did computer animation to show the Board what the tower would look like in the few locations where it was visible.

Mr. Gaudioso noted that the ZBA referred the application to a number of different agencies and consultants, including the Fire Advisory Board and to the Town engineer, Morris Associates. He stated that the applicant has addressed the comments from Morris Associates regarding minor changes on the EAF. He stated that the ZBA declared itself lead agency for the coordinated SEQRA review with the Planning Board. He pointed out two notable changes: they documented the fact that they performed full research with the DEC on threatened and endangered species which came back with no record on the site of such species. They also did a full application filing pursuant to Federal law with the NYS Historic Preservation Office. He stated that the original analysis that was sent to that office included a viewpoint map where the historian actually looked. After that, he stated that they did a visual analysis and provided that to the NYS Historic Preservation Office and, based on that analysis, that office signed off on the fact of no visibility from the Taconic Parkway.

Mr. Gaudioso stated that the visual analysis up and down the Taconic showing no visibility was done in April with no leaves on the trees – worst-case scenario. He stated that it did include long views on the Taconic. He stated that viewpoint 5 was 3.2 miles away and viewpoint 6 was 5.9 miles away.

Mr. Gaudioso stated that they agreed with Morris Associates that under the Town's zoning code they must do a full structural set of plans. They also agreed with the Town's engineer and have been working with the Town's attorney on a road maintenance agreement and a removal agreement with a line of credit to remove the tower should it become obsolete. He stated that they are happy to comply with that.

Mr. Gaudioso stated that they revised the plans to include the finish of the 360 sq. ft. shelter with stone aggregate. He stated that it is a heavily wooded site. He noted that per Town Code the Planning Board will make the final decision on the finish on the pole. He stated that they added additional silt fencing, clarified the driveway location, and added construction details. He stated that they added a note per the consultant's comment that keys to all locks will be provided to the Fire Department.

Mr. Gaudioso noted that the ZBA retained its own radiofrequency engineer, Mark Hutchins, to review all the materials they submitted. He noted that Mr. Hutchins confirmed the applicant's data and agreed that this site will remedy gaps in coverage for Verizon and other carriers, that the site will be attractive for future co-location, that there are no existing structures that would be feasible from a technological standpoint, that the site does not cause radiofrequency interference, and also agreed that the facility would be in compliance with Federal regulations regarding radiofrequency emissions – that the facility would be safe. Also, Mr. Gaudioso reported that Mr. Hutchins agreed that the facility does not require FAA lighting or marking.

Mr. Gaudioso stated, in summary, they have submitted required and additional documents as required and requested by the ZBA. He stated that they are here for a public hearing and would be happy to answer any questions from the Board and from members of the public.

Mr. Dunn asked for confirmation that the balloon and the flag were not visible from the Taconic Parkway. Mr. Gaudioso confirmed that that is correct. He stated that it could be possible that someone could cut down a tree in the future or new development could happen or someone not driving in a car could find a spot through the trees that somehow they could see the balloon – he stated that he cannot say that these things could not happen. However, he stated that from the rigorous analysis they did and the documents they submitted, they do not believe that the facility will be visible. Further, he stated that mere visibility under the law is not the criteria; rather it is adverse effect. He stated that SHPPO determined, based on all submissions, that there will be no adverse effect on the public.

Mr. Kish asked whether line of sight is absolutely necessary to get a good signal. Mr. Gaudioso stated that Mr. Hutchins report does a good job explaining this. He stated that it is considered line of sight technology, but the signal will go through trees and will go through sticks. He stated that the signal is degraded by those obstructions and that the signal will curve slightly around topography – not a lot, however. He stated that it is still considered line of sight technology, but not like laser beam. Mr. Gaudioso pointed out that it will be 2,000 ft. from the property line at the Taconic line on a large 240 acre parcel, which gives them great separation – over 1500 ft. from Scout Road.

Mr. Dunn asked how close the tower will be to the closest property line. Mr. Gaudioso stated that they are 2000 ft. from Scout Road. He reviewed the plans and stated that they are 737 ft. from the pole to the rear property line to the south. In other directions it is 1445 ft. and 2127 ft. and 5128 ft. He pointed out that the Zoning Code requires a setback of 1.5 times the height of the pole – $1.5 \times 150 = 225$.

Mr. Kish asked about noise from the equipment shelter – vibration or humming. Mr. Gaudioso stated that the only noise would be from the air conditioners in the 360 sq. ft. equipment shelter. He stated that the a/c is similar to a residential home a/c. He stated that it is not a substantial amount of noise. He stated that the facility is unmanned and there will be no water or sewage disposal on site and no lighting on the tower. He stated that there will be a small motion detector light on the equipment shelter in case someone had to go out there at night. He explained that it is remotely monitored 24 hours 7 days a week from a remote station, and they perform maintenance once a month.

Mr. Kish asked how the power gets into the equipment shed. Mr. Gaudioso stated that Homeland Towers is proposing to bring power up through the existing utility poles on the property, up the access drive. He stated that they will bring in enough power – roughly 100 amps for each carrier for a maximum of 600 amps at maximum build out on the tower. He stated that the application is proposed for Verizon to co-locate with other carriers to minimize the proliferation of future towers. He stated that on Pine Hill that was not the case, so that there are multiple towers on one location.

Ms. Rubenstein asked how many carriers will fit on this proposed tower. Mr. Gaudioso stated that it is designed for 6 carriers and will also accommodate any municipal agency WIP antenna for public safety.

Mr. Kish asked if there is a rental agreement with the Boy Scouts of America. Mr. Gaudioso stated that they have a lease agreement with the Boy Scouts. Mr. Kish asked if they will benefit from this financially. Mr. Gaudioso responded yes. He noted that the Boy Scouts' Executive Council's testimony at the Town Board was that one of the conditions they had was that the rental income from this lease would benefit this site and would not be used for other Boy Scout camps – but would be used for the maintenance and operation of the Hudson Valley Council of the Boy Scouts.

Mr. Gerstner asked whether they were concerned about safety with the campsites that are closest to the tower. Mr. Gaudioso responded no, that they are required by Code to install an 8 ft. fence around the equipment shelter. He stated that the equipment shelter is fully locked and will be monitored 24/7 so that if someone opened the door, they would know immediately. Mr. Gerstner asked if there are windows and noted that 12-year-old kids use the camp. Mr. Gaudioso stated that there are no windows.

Mr. Maucher asked how it is monitored. Mr. Gaudioso stated that it is through the landline to a 24-hour operations center. Mr. Maucher asked if they are using motion detectors to monitor. Mr. Gaudioso stated that there is a monitor on the equipment and on the door. Mr. Maucher asked if there is an alarm that will notify them if someone gets inside the fence. Mr. Gaudioso responded no, but that inside the fence does not get you any place.

Mr. Kish asked if there is coverage overlap with the Pine Hill site. Mr. Gaudioso responded slightly, enough as Mr. Hutchins noted in his report. He stated that you want to have some overlaps for seamless coverage while traveling, but not too much overlap where it is redundant. Mr. Kish asked where the next tower north is located. Mr. Gaudioso stated that there is one in Clinton and there is also the Police tower.

Ms. Rubenstein noted that the ZBA has approved 3 towers and only 2 have been built. She noted that the Town was assured at the time those towers were approved that it would be possible for carriers to co-locate and limit the number of towers, but now this is the 4th tower being proposed. She asked for confirmation that the proposed co-location on this tower is not intended to take the carriers from the existing towers but rather is intended to improve their service in this area. Mr. Gaudioso stated that that is correct. He stated that the tower on Pine Hill does not cover this portion of the Town and, as Mr. Hutchins pointed out, this is the right location for this tower to provide coverage for this part of Town.

Ms. Rubenstein asked how many carriers are on the existing two towers at this time. Mr. Gaudioso stated that he does not know the exact information. He stated that AT&T is on one and Verizon is on the other. Ms. Rubenstein asked if there are now enough towers. Mr. Gaudioso stated that the answer to that is that each site covers a specific geographic area. He stated that coverage is never perfect, particularly in this type of area. He stated that the point of this proposed tower is to provide enough towers for this part of the Town. He stated that they propose to build this tower with enough co-location spaces so that no additional tower will be needed. He stated that they are trying to avoid what happened on Pine Hill where they had to build a second tower. Ms. Rubenstein stated that she does not want to see someone else come and propose an additional tower next to this tower. Mr. Gaudioso stated that the Town Code provides protection. He stated that he does not think the Code was in effect when the first tower was built, but that it was in effect when the second tower was built. He stated that the Code now requires that an applicant prove that the carrier cannot go on an existing tower. Ms. Rubenstein asked for confirmation that they cannot go on the

existing towers because it does not address the coverage need. Mr. Gaudioso confirmed that that is accurate.

Public Hearing was opened.

Ms. J.S. Dervan, 166 Davis Road, Salt Point, NY, P. O. Box 257, was sworn in. She stated that she thinks she understood Mr. Gaudioso to say that her property is 640 ft. from the tower. Mr. Gaudioso corrected that information – her property is 737 ft. from the proposed tower. She stated that she would rather not have the tower built on the Boy Scout property.

Ms. Margaret Soloway, 25 Bellot Road, Ringwood, NJ, was sworn in. Ms. Soloway is Ms. Dervan's daughter. Ms. Soloway asked where exactly the tower will be built on the property. She asked that when the balloon test was done whether any viewpoints were done from the residents' perspective. She stated that it is nice that people can come visit and zoom down the Taconic Parkway at 65 mph and not have to see the cell tower, but asked what about folks who live there and want to sit on their back porch and look out at the pond and the hill and trees and right there is a cell tower staring up at the thing. She stated that a tower would make the whole back deck of her mother's house obsolete as far as enjoying the environment and sitting and relaxing.

Mr. Dunn reported on his experience of the balloon test and the portion of the Town that he attempted to view the tower from with binoculars. He stated that he does not know if anyone was over in Ms. Soloway's part of Town specifically. Ms. Soloway stated that she's very concerned because the house is in a hill and looks down into a little dip. She stated that it is one of the highest points in the area and sits higher than where the tower base will be located and then the tower will rise up. She stated that she cannot see how it would not become visible from there. She stated that that is not even from the other house that is on the property, which is on the peak of the hill. She stated that she does not think it is right that their view should be compromised like that any more than the Taconic Parkway view. She stated that that is part of the reason why they built there and that they have been there for eons. Part of the reason was that her mother knew that the Taconic Parkway would be protected and they would be kind of included in that. She stated that it seems like now they are just looking from one side and are not looking from what the residents will have to look at. She stated that she is sure that, when they put the tower up, there will be residents who will turn around and look out their back window and, oh my god, there it is. She stated that they will wish that they had come to these meetings and said something.

Mr. Kish asked if Ms. Soloway had an opportunity to view the balloon test when the crane was there to see if it was visible from her back yard. Ms. Soloway stated that her mother was not in the area at the time, but that she could have come to Pleasant Valley if she had been notified of the balloon test. Ms. Dervan stated that she was not notified of the balloon test. She stated that the tower will devalue her property. She stated that she pays over \$11,000 in taxes and that she does not appreciate it. She stated that you may be able to see it from her back deck of her house. She stated that she has two houses on her property and that she does not like it. She stated that she did not want it on her property and she does not see why she should have to put up with it. She stated that 1,000 ft. is not far enough. Ms. Soloway stated that it depends on what that 1,000 ft. is – is it 1,000 ft. going up the hill or will it be down in the trench. She stated that she does not see how it would be practical. She stated that she would like to see the balloon test. She repeated that it is nice that strangers passing by on the

Taconic are being considered, but people who live here and bought property many years ago were ignored and it is just not right.

Ms. Dervan stated that her deceased husband applied for a windmill years ago and it was denied. She stated that he had a degree in electrical engineering and he had his own dream of just supplying their own power, but that it was denied. She stated that she believes that they have the highest point.

Ms. Rubenstein offered that the visual EAF that the applicant prepared has all the photos taken of the balloon test from all the viewpoints and is available in the office in Town Hall. She also noted that there was one delivered to the Pleasant Valley Town Hall and the Town Clerk's office. She noted that all are welcome to come to the office and review these photos and the file. Ms. Soloway again stated that they were not consulted and neither were the rest of their neighbors.

Ms. Rubenstein stated that the purpose of tonight's hearing is to solicit comments from everyone. She stated that Ms. Soloway and Ms. Dervan must have received notification of this hearing by certified mail. She stated that when this matter was first brought to the ZBA before the applicant had received a waiver from the moratorium, the notification was sent to all the neighbors at that time and that there were a lot of people present at that meeting. She stated that the ZBA and the office did what the Code required in terms of making sure that people had notice of meeting. She stated that the locations that were chosen for the balloon test – the viewpoints that were chosen from which to take photos – there were suggestions made by people at that meeting of where to take photos. She stated that it was not just something that the applicant came up with, that there were lots of suggestions.

Ms. Soloway stated that she's commenting on the end result. She stated that her mom, Ms. Dervan, who owns 40 acres there, she was not called or notified of the balloon test. Ms. Rubenstein noted that she has been notified of the meetings, which is why they are here. Ms. Soloway agreed that she was notified of the meetings, but not of the balloon test and other considerations.

Ms. Soloway stated that her other question was about the sound. She stated that she does not know if they have made improvements on these cell towers. She stated that where she lives in New Jersey there is a cell tower, which is about 700 ft. from her girlfriend's house. She stated that she can sit there and feel the deck vibrating and hear the hum over the crickets. She stated that it was kind of an after the fact thing, that everybody in the area was concerned and that it keeps them up at night because they cannot sleep. She stated that they had to get used to it and develop new sleep patterns because the hum was so loud. She noted that this was 12 years ago and is hoping that in 12 years they have made a lot of improvements in the technology. She asked how many megahertz of power will be coming out of the tower. Ms. Rubenstein stated that the Board will ask the applicants to provide that information. Ms. Soloway stated that she will be interested to know if it is close to what is received from a power line. She stated that it has been proven to cause cancer and other health issues, living by power lines. She stated that having it so close is deceiving – you think it is 700 ft. but there is about 20 or 30 ft. that is a straight drop. She stated that it is about a 30-40% slope. She stated that it looks like it's 700 ft., but it's really 30 ft. up. She stated that you have to go there and see where they're going to put it and see the topography.

Mr. Dunn stated that the concern the Board has and the reason the Board asks about the distance from the property line is that the Code provides protection for neighboring properties if the tower ever fell. He stated that it has never happened and nobody anticipates that it would happen, however if the tower ever fell the Board must ensure that it would never affect anyone else's property.

Mr. Dunn asked the applicant to address the question of the amount of power being emitted by the proposed tower. Mr. Gaudioso stated that that was addressed and that we may be confusing the issues a little bit. He stated that the 737 ft. is to the closest property line and is as the crow flies. So, whether it is a slope or not, he explained that that is the worst-case scenario. He stated that the power output is in the study from the antenna and was confirmed by Mr. Hutchins. He stated that it is an issue that is federally granted. He stated that their study was for more than Verizon – it was done from the perspective of all the antennas that could potentially be on the tower were on the tower.

Ms. Rubenstein stated that the neighbor's question was about the noise from the shelter. Mr. Gaudioso noted that she was also asking about the radiofrequency emissions. Ms. Soloway stated that it was both. Mr. Gaudioso stated that their study showed that the output complies with the federal regulations. He stated that, more importantly, when you add up the potential from all six carriers, it is still about one-half of one percent of the allowable emissions. He stated that it is perfectly safe.

Mr. Gaudioso stated that with regard to the decibel levels from the equipment shelter – it is an air conditioner unit. He stated that he does not know what site the neighbor is referring to in another state, but that it is probably a generator. He stated that this proposed tower has an equipment shelter with air conditioners that are similar to residential type conditioners. He stated that the equipment shelter is only 360 sq. ft. Ms. Soloway asked if there will be any generators. Mr. Gaudioso stated that there is no external generator; that the generator is internally-mounted in the shelter and baffled. He stated that in the old days they would put the generator outside on the equipment pad, which would make a considerable amount of noise. Mr. Kish asked if the generator is for backup purposes. Mr. Gaudioso stated that it is for emergencies. Mr. Dunn asked for confirmation that it would not be running all the time. Mr. Kish asked if it is limited usage. Mr. Gaudioso stated, yes, it is for power outages. He stated that a purpose of wireless is to keep families connected and business efficient and that really in times of emergency wireless is essential. If the power should go out in a storm or some other tragic event, he stated that Verizon has the ability to turn on the generator and have back up power to run the facility. Mr. Kish asked if it is fueled by LP gas that cycles on a monthly basis. Mr. Gaudioso stated that it is diesel. Mr. Kish asked if it cycles on a monthly basis. Mr. Vicente stated that it cycles once a week during the day during business hours. Mr. Kish asked if there is a decibel reading on that for when it does run. Mr. Vicente stated that it is inside the shelter so there is very little noise externally. Mr. Gaudioso stated that they can look into this. Ms. Soloway stated that it can be amplified. Mr. Dunn also noted that the exhaust gas has to be put somewhere, that it cannot remain inside the shelter, and noise could be picked up from that. He noted that the question is how loud it will be.

Ms. Rubenstein asked the applicant to provide an answer to that question. Mr. Gaudioso stated that they will be happy to address this even though, arguably, it is a site plan issue. Ms. Rubenstein stated that the ZBA needs to know if there is a noise concern – if the ZBA can say that the decibel level is equivalent to your neighbor's air conditioner, then that gives the Board the ability to say that there is no adverse impact, which alleviates them having to

address that at the Planning Board. She stated that the Board would like to have a letter that documents the decibel level and compares it to a window air conditioner. Mr. Maucher suggested that the manufacturer would provide that information.

Mr. Nunzio Virgilio, 38 Gleason Blvd, Pleasant Valley, NY was sworn in. He asked what's wrong with the antenna farm on Pine Hill. Mr. Dunn stated that it does not provide complete coverage. Mr. Virgilio asked coverage for what – the Taconic Parkway. Mr. Dunn responded that it does not provide coverage for the Taconic Parkway and part of Town as well. He stated that he has no problem with Verizon and that there are a couple of dead spots that he lives with. He asked about the Town's moratorium on building. Mr. Dunn explained that the Town Board granted the applicant a waiver from the moratorium. Ms. Rubenstein stated that the applicant received a waiver to proceed with their application for the tower. Mr. Virgilio asked if they pay taxes on the property or if they are just paying the Boy Scouts. Mr. Dunn stated that he does not know. Mr. Maucher suggested that the applicant will be renting the property and not paying taxes. Mr. Dunn concurred.

Mr. Kurt Schollmeyer, 515 Clinton Hollow Road, Salt Point, NY was sworn in. He submitted a written copy of his comments with photos (original on file). He stated that he's a resident of Salt Point and is an engineer and is also a scout volunteer and has spent countless hours at Camp Nooteeming trying to improve the facility. He stated that this camp has been serving the community since 1926 and that hundreds and sometimes thousands youth use the facility. He stated that on 10/2/09 there will be 400 scouts at the camp in the area of the proposed cell tower. He stated that the bucolic beauty of the property has changed little in the last 83 years and suggested that the proposed commercial use of the property must be given careful consideration. He stated that the proposed cell tower will provide revenue that can be used to maintain and improve the property. He stated that improvements are necessary. However, he stated that the proposed tower will create practical and aesthetic conflicts with the principal use of the property, which conflicts should be considered by both Zoning and Planning Boards so that the necessary mitigating measures can be taken on behalf of the youth who use the property.

Mr. Schollmeyer stated that the location of the proposed cell tower is in the vicinity of several campsites and other facilities. He stated that a grouping of huts and lean-tos is immediately adjacent to the proposed tower. He stated that these areas are used by the scouts and are not shown on the applicant's site plan.

Mr. Schollmeyer provided a map to the Board that the boy scouts use on their weekends that shows the layout of the facilities at the camp. He stated that he added in red the proposed location of the tower. He stated that the proposed tower will visually impact the scout facilities. He displayed photos that he took during the balloon test from the sites on the scout camp. He stated that photo #1 was taken from the Berkshire lean-tos, and photo #2 was taken from the area adjacent to another lean-to. He requested that the Zoning and Planning Boards assess the significance of the visual impact to the youth who use this area weekly.

Mr. Schollmeyer stated that Mr. Hutchins' report noted a concern about the proximity of the cell tower to the individuals. He read from Mr. Hutchins' report that stated that access must be restricted and appropriate warning signs should be displayed. He requested that the Boards define the significance of this statement and the potential impact on the use of the scouting facilities, especially the Hudson lean-to site.

Mr. Schollmeyer also asked that the Board look into the noise generated and its impact to the scouting facilities and the immediate vicinity. He noted that for years they have been complaining about the noise from the Taconic Parkway.

Mr. Schollmeyer stated that conflicts from the two uses of the property include traffic and security. He noted that construction and maintenance of the tower facility should take into the account the numbers of scouts that use the facility during the summer and avoid placing vehicles on camp roads when children are on site. He stated that when camp is in session NYS Health Department requires that all visitors sign in.

Mr. Schollmeyer reviewed the number of Boy Scout and Cub Scout troops who use the camp on the weekends. He stated that an 8 ft. high chain link fence and a 150 ft. tower may represent a challenge to some boys and entice them to overcome the obstacles. He requested that the safety of the youth be considered.

Mr. Schollmeyer stated that, as a local resident, he is concerned about the tower's impact on the community. He provided photos of the balloon test that were not included in the applicant's visual analysis: photo #3 a view looking east from North Avenue in the vicinity of Terhune Orchards. Mr. Dunn stated that he, specifically, was at that spot to view the balloon test from that location. Mr. Schollmeyer stated that photo #4 was taken of the view looking north from Davis Road in front of the Agnot residence. He suggested that these views will be significantly impacted by tower construction.

Mr. Schollmeyer mentioned the impact the proposed cell tower will have on the value of the parcel. He noted that Scout Councils throughout the nation have found it necessary to sell camp property in order to pay for program needs. He stated that the Dutchess County Council nearly sold the camp in 1979. He mentioned that most of the 270 acres on this property consists of ledges, steep slopes, and wetlands, which results in the best lands for future home sites being north, south, & east of the proposed cell tower. He suggested that the Town should consider the impact of this cell tower on future development of Nootemung.

Mr. Schollmeyer stated that it is not clear that the proposed location of this tower is optimal given a comment Hutchins' report that terrain blocks the path.

Finally, Mr. Schollmeyer suggested that the Board may wish to consider alternative locations on the camp property where overall impacts may be less. And he thanked the Board for the opportunity to comment.

Mr. Dunn asked for clarification of Mr. Schollmeyer's connection with the Boy Scouts. Mr. Schollmeyer stated that he is a volunteer with the Boy Scouts.

Ms. Rubenstein stated that the ZBA is not empowered to tell the Boy Scouts how to use their own property internally. She noted that they can redesign their camp to avoid this location. She stated that the ZBA is not in a position to tell them to move their campsites. Mr. Schollmeyer stated that the ZBA is in a position to make sure that safety and health are being taken care. Ms. Rubenstein stated that the Board cannot tell them where to put their lean-tos. Mr. Schollmeyer stated that the lean-tos are there and it is the tower that is new to the site plan. Ms. Rubenstein stated that the ZBA treads a very fine line because the Federal government has taken away most authority to regulate these towers. Mr. Schollmeyer stated

that he is well aware of that, but that there are more remote locations on the 270-acre property that may provide even better cell service coverage.

Mr. Kish asked whether anyone from the Boy Scouts organization was involved in the discussions when the location of the tower was selected.

Ms. Rubenstein asked if color copies of Mr. Schollmeyer's photos could be made available to the applicant. Ms. Dickerson confirmed that she will make the copies and mail them to Mr. Gaudio. Mr. Gaudio asked what type of lens was used on the camera.

Mr. Schollmeyer stated that the Boy Scout professionals were brought up to speed on locations, but the deal made with the cell tower goes back a few years before it became public to the scouters who were involved, such as himself.

Ms. Rubenstein asked Mr. Schollmeyer for information on the lens and type of camera he used. Mr. Schollmeyer stated that the camera was a Cannon digital SLR. Mr. Gaudio asked what the setting was on the lens. Mr. Schollmeyer stated that he does not know that information. Ms. Rubenstein stated that we're just trying to make sure that we're comparing apples to apples. Mr. Schollmeyer stated that the photos in the camp were not shot with a telephoto lens.

Mr. Schollmeyer stated that he realizes the Board's hands are tied but that many youth are at stake and someone needs to look out for them, which is why he came to the meeting tonight.

Mr. Kish asked if he is speaking on behalf of the Boy Scouts of America. Mr. Schollmeyer stated that he is not speaking on behalf of the Boy Scouts.

Mr. Gerstner stated that he shares a lot of Mr. Schollmeyer's concerns. He stated that the first time he visited the site he was worried about the lean-tos and the proximity and the curiosity of the children trying climb a fence and throw rocks. He stated that he was surprised by the whole process in the end with the Boy Scouts. He asked whether Mr. Schollmeyer has gone before the Boy Scouts Council. Mr. Schollmeyer stated that he has talked to the current Council executive and the previous Council executive. Mr. Gerstner asked if he has received any satisfaction from them. Mr. Schollmeyer stated that he said he would have a discussion with Homeland Towers and that, basically, the deal was made. He stated that the Boy Scouts hands were tied on this matter. Mr. Schollmeyer stated that that is more hearsay than anything else.

Mr. Gerstner asked if it was the Boy Scouts of America and not the Hudson Valley Council that offered the property for this cell tower. Mr. Schollmeyer confirmed that that is accurate. Mr. Gerstner stated that he also is concerned about the proximity to the campsites. Mr. Schollmeyer stated that the Hudson Valley Council just constructed 6 new mini-cabins at the cost of \$60,000 plus some additional costs for site work, which may have totaled as much as \$80,000. He noted that relocating campsites is very expensive for the Boy Scouts.

Mr. Schollmeyer stated that he's asking the ZBA and the Planning Board to take into consideration the effect that this proposed location has on the existing scouting facilities. Mr. Gerstner stated that the ZBA is certainly doing that and wondered if he had more information from the Boy Scout Council. Mr. Schollmeyer stated that he will let the applicant and Hudson Valley Council speak for themselves. He stated that everything he has

is second or third-hand conjecture; that he is just a volunteer. He stated that he's looking forward to seeing continued improvements on the camp so that it is a viable open space for the community.

Mr. Gaudioso stated that some important points were raised regarding sight collection. He stated that there's always balance and no tower is invisible. He stated that visibility is not the criteria; rather it is adverse effect. He stated that he thinks they have picked a site that is about as distant as you can get given the size of the property. He stated that it is on Boy Scout property and that comes with certain concerns. He stated that they tried to pick a location on the property that the Council – the landowner – is comfortable with and is also a site that they can build. He stated that there were concerns about traffic. He stated that the site is unmanned but more importantly they are using an existing access drive without modifications to it. He stated that they will use the existing access drive once a month and during construction. He stated that they have shown that the site is constructible – that they have already brought in a crane to the site for the balloon test. Therefore, he stated that they will not have to make major impact upon the internal portion of the property. He stated that there will be a minimal amount of trees taken down – 6 – because of the location. He stated that it is in the center of the property, and very well buffered from all four sides, particularly Davis Road. He stated that they did not photograph from Davis Road. With regard to safety issues, he stated that the tower is not climbable for an average human being. He stated that if someone brought out a 20 ft. he could climb the tower. He stated that it is remotely monitored and that an 8 ft. fence is required by the Code. He stated that if the Board felt that something more was appropriate, they would be happy to consider that. However, he stated that they think an 8 ft. fence is more than sufficient. He stated that inside the compound is all secured.

Mr. Gaudioso stated that Mr. Hutchins' report stated that the signage should be within 5 – 10 ft. of the antennas.

With regard to the Boy Scouts of America Hudson Valley Council, Mr. Gaudioso stated that there was a statement read to the Town Board in support of the waiver request. Mr. Gaudioso read this letter into the record. He stated that it is on behalf of Jason Barlow, Council President, and Stephen Gray, Scout Executive and Secretary, and David Abramson: “At the Council Board of Directors' meeting on April 27, 2007, the Executive Board of the Hudson Valley Council passed a motion to enter into negotiations with Homeland Towers to build a cell tower at the camp property in Pleasant Valley, New York. At the executive board meeting on October 26, 2007, the executive board unanimously passed a resolution to enter into a lease of land for the tower.” He stated that details of this resolution are:

1. Homeland Towers is to build a tower in the immediate vicinity of the camp
2. The revenue from this agreement will be used solely and exclusively for the maintenance and improvement of this camp.

Mr. Gaudioso underscored that the money generated here will stay here to support this camp. He pointed out that someone just testified that it cost \$60,000 to build certain cabins and that this will be revenue that will help the camp. He noted the fact that the Board unanimously approved the cell tower project, the same Board was very well represented by residents of Dutchess County and made a statement that they approve and support Homeland Towers proposal to build a cell tower on the property of the camp. Further, he quoted from the document: “While we are aware that there is always opposition to change, the Hudson Valley Council of the Boy Scouts of America recommends approval of the cell tower to be

located at Camp Nooteming.” Mr. Gaudioso stated that it’s a very clear statement that lays out their reasoning and is well thought out. He stated that it was a long process that was not completed overnight and the selection at that particular location was based on the access, the ability to build it, being able to keep the facility at a point where it provides the necessary coverage and be able to work in conjunction with the Boy Scouts internal operations.

Mr. Manuel Vicente, 179 Waccabuc Road, Goldens Bridge, NY was sworn in. He stated that he is the president of Homeland Towers. He stated that this was a long process - that it took a year from their initial discussions and meetings with the Boy Scouts to the point where they approved the lease and executed the agreement. He reported that they made several site visits with several members of the Boy Scouts. He stated that choosing a site for this project means looking at all the factors and trying to create the right balance. He stated that considerations are access to the site and utilities to the site, which have a big impact on the property. He stated that they selected a location that would minimize that impact. He stated that this could potentially improve utility access to the Boy Scouts and cabins and campsites. He stated that there are a lot of benefits considered in the balancing.

Mr. Vicente stated that the other factor was sighting for visual purposes. He stated that by locating the proposed tower in the middle of the property, rather than at one end or the other, they tried to buffer the visibility as much as possible. He stated that he thinks they have achieved that and that the visual analysis shows that. He stated that there are a lot of buffers for the Taconic and the local residences as well. He stated that if you go too far north or south, it is much closer to the local residences. He stated that they wanted to pick a location and that it was important to the Boy Scouts as well trying to be good neighbors in selecting a site, to pick a location that they thought would minimize the visibility. He stated that there were a lot of factors that went into the choice of the location and the Boy Scouts did express concerns about locating it in certain sections or close to certain campgrounds. He stated that this was not a quick decision, but was one that was well thought out, and it was a very long decision-making process.

Ms. Dervan stated that she is totally confused and that she thought the Boy Scouts was a charitable organization and that they don’t have to pay taxes. She wondered if the taxpayers will have to pay for snow removal. Mr. Dunn stated that it is not a public road and asked if she is talking about snow removal in the camp for them to get to the tower. Ms. Dervan stated that she knows enough about it because when she was approached about putting the tower on her property she had to provide maintenance on her road. She stated that the Boy Scouts is a charitable institution and asked if they pay taxes. She stated that she’s asking the Board to protect her interests.

Mr. Nunzio asked the names of the people on the board of the Boy Scouts. Mr. Gaudioso stated that their names are Jason Barlow, Council President, and Stephen Gray, Scout Executive and Secretary of the Hudson Valley Council. Mr. Nunzio asked where they sit. Board members responded Newburgh. Mr. Nunzio mentioned other names of people who are involved with local Boy Scout troupes. He asked who those people work for. Mr. Dunn responded that the Board does not have that information. Mr. Nunzio stated that they work for Verizon. Mr. Dunn stated that that is something that the ZBA does not have a concern with.

Ms. Soloway stated that once the tower is in place her mother will have to sell her property and it won’t bring in as much taxes when the property is devalued.

Mr. Paul Stolarski, 37 Shaker Lane, Hyde Park, NY was sworn in. He stated that he is a volunteer scoutmaster of a troop in Hyde Park and spends a lot of time at Camp Nooteeing. He stated that he was able to attend the balloon test when it was conducted. He stated that he and his wife both attended and walked the whole camp during the test. He stated that a lot of people were invited, but that he did not see anybody else there. He stated that they walked the whole camp and saw very little visual impact from the different locations here and there. He stated that from a safety standpoint he does not get any cell service at Camp Nooteeing when he is camping with the boys. He stated that he has to scout around to different spots to get a bar or two on his cell phone. He stated that from his perspective it would be an advantage for them as far as safety for the boys, should someone get hurt on the property. He also stated that the income to the Boy Scouts is also a benefit. He stated that he sees cell towers going in all over, and if it's going to be erected somewhere he does not see why the Boy Scouts shouldn't get a little benefit. He stated that the lean-tos that the tower will be close to are in disrepair anyway. He stated that he does not know whether the tower would impact them all that much – that he does not know how well used it is. He stated that from the other spots in the camp, the impact seemed minimal to him.

Mr. Dunn stated that during the balloon test he was observing from other areas in the Town and not from inside the Boy Scout property. He stated that his assumption was that since this was on Boy Scout land and the Boy Scouts were getting the benefit of the rental that it would have been beneficial to them and if it were an outright eyesore they would not have offered to rent the space. He explained that that is why he did not observe the balloon test from the Boy Scout property directly and chose to observe from other parts of Town.

Ms. Rubenstein inquired whether there will be better cell service at the Boy Scout camp, whether there will be cell service at the camp. Mr. Gaudio responded yes, absolutely.

Ms. Dervan asked if it is fair that the Boy Scout camp property will go up because of the cell tower and her property will go down because she does not have the tower. She stated that it is not fair.

Ms. Soloway asked for clarification on what Mr. Schollmeyer said about the Council members who don't even use Camp Nooteeing making a decision to rent out the property without even letting the locals know about it and slip it in under the wire. She stated that it sounded like the deal was done and the property was rented before the locals knew about it. Mr. Dunn stated that it appears to him that the Boy Scouts are the property owners and they have the right to rent out their property. Ms. Soloway stated that technically they are but legitimately they are not the property users. She stated that it's a technical thing because the Boy Scout Council is making a decision for the local council. Ms. Rubenstein suggested that if there are questions about how the Boy Scouts came to their decision, they may have to contact the Boy Scouts. She explained that the ZBA has a legitimate application before the Board from the owner of the property and that the Board's job is to review the application. She explained that the ZBA cannot go behind the application to ask them to get everyone's agreement with the organization. She stated that as long as it is a legitimate application, the Boy Scouts are left to their own decision-making and it is not something that the ZBA can do anything about. Ms. Soloway stated that she was not inferring that and that the point is that Mr. Schollmeyer was one of the locals and was not consulted and does not like the idea and that it is being shoved down their throats. She stated that it sounds like he did not get satisfaction from the Council and the other recourse for him and other people is if the ZBA

were to deny this particular application so that then they would have to find a different location. Ms. Rubenstein stated that their recourse is within the Boy Scouts because the ZBA does not have the authority to deny an application because a property user, who is not the owner, does not like the application. She explained that the ZBA has to review this application according to the guidelines that govern the Board under the Town Code and the ZBA is not allowed to go interview everyone who uses the property to ask them whether they agree. Ms. Soloway stated that perhaps she is not making herself clear. Ms. Rubenstein stated that she is making herself clear and that her answer is that she understands Ms. Soloway's concern but that's not something the ZBA can address. She stated that the ZBA is taking into account the questions and concerns and that the ZBA thinks there are very legitimate concerns and is taking them into account along with everything else that is in front of the Board as well as taking into account everything that everyone is saying. However, she explained that if the ZBA were to deny an application based upon the fact that users of the property did not agree with the owner, the ZBA would be in court and the Town would be paying all kinds of attorneys' fees to defend an indefensible position. She stated that the ZBA's job is to look at the application according to the guidelines under which the Board is permitted to review it and that is not one of them. Therefore, she stated that if there is a concern on the part of users, they have to go to the Boy Scouts to make their concerns known. Ms. Soloway stated that she was looking at the users more as residents. Ms. Rubenstein stated that the ZBA is certainly listening to all of the comments, but that you have to be aware that the Boy Scouts are legitimately leasing their property and they are the landowner and have given permission to this applicant to come forward and the ZBA cannot deny it on the basis that there are volunteers for the organization that don't like it. Ms. Soloway stated just taking into consideration the points that have been brought up and that it not only impacts the Boy Scouts but also the entire community. Ms. Rubenstein stated that the Board is certainly listening to all the concerns raised.

Mr. Schollmeyer stated that he wanted to restate his purpose here tonight. He stated that his purpose is not looking for a denial of application. He stated that his purpose is to fill in where he thinks the Hudson Valley Council may have dropped the ball in planning. He stated that they don't have a series of professional planners; they don't have the brain power that the Town of Pleasant Valley has before it. He stated that he looking for good planning to happen here with respect to the tower. Mr. Dunn stated that this is the first hurdle that they face. Mr. Schollmeyer stated that he is bringing this up at this point so that it is early in the process. Mr. Dunn stated that he understands. Mr. Schollmeyer stated that nobody wants to upset the apple cart, that this is very important for the Boy Scouts and it is also very important for the boys who are there.

Mr. Gaudioso asked if the Board wants them to submit in writing the information about the decibel level. Mr. Dunn responded yes. Mr. Gaudioso suggested that the ZBA close the public portion of the hearing subject to written comment. Ms. Rubenstein suggested that the Board receive this written comment and then close the public hearing at the next meeting on 10/22/09. Mr. Gaudioso stated they will comment on the decibel level from the facility and try to compare it to something else.

Ms. Rubenstein asked Mr. Vicente whether there were any other specific locations on the property that they looked at. She stated that she understands the general issues he raised regarding siting and putting it as far away from certain places. She stated that when they came down to choosing something, they must have looked at more than one site on the property. Mr. Vicente stated that yes, they looked at more than one site. He stated that there

were definitely certain locations that the Boy Scouts made clear to him that they did not want the tower, and particularly they did not want it close to the borders of the property. He stated that they did look at other locations and does not remember every single one, but that they did spend quite some time out there looking at other locations. He stated that trying to balance everything together was difficult and noted that not every location was acceptable or that a road or utilities could be brought to. He stated that they definitely wanted a buffer for the neighbors.

Ms. Rubenstein stated that if they were only looking at building the tower on the exact perfect spot, if they did not have to consider neighbors or an existing road, is that spot likely to have been the one they would have chosen. Mr. Vicente stated that it is hard to subjectively say that this is the perfect spot. But, he stated that he thinks they did a very good job considering the Boy Scouts' interests, Homeland Towers' interests, the impacts on the property in locating the facility. He stated that if they were to do it all over again, they would probably come to the same conclusion. He stated that they spent some time out there and that it was a fairly long process. He stated that they had a lot of interaction back and forth with information with the Boy Scouts in deciding the final location. So, he stated that it was not a rushed decision. Mr. Gaudioso asked if the Boy Scouts were represented by anyone during the process as well. Mr. Vicente stated that they were, that their counsel and other folks were involved in that decision-making. He stated that they produced site plans – 3 different site plans for them to evaluate – and this was the one that was selected. He stated that the other areas were considered inappropriate for a number of different reasons. He stated that they did do a thorough job.

Mr. Kish asked if Homeland Towers is paying rental fees to the Boy Scouts now. Mr. Gaudioso stated that there is an option and a lease agreement and that there are certain commencement dates based on various different legal requirements.

PUBLIC HEARING REMAINS OPEN

Mr. Dunn noted that **the Public Hearing will remain open** until such time as the Board receives the information. He advised the public present at the meeting that the next ZBA meeting will be on 10/22/09. Ms. Dickerson stated that the public will not receive another letter notifying them of the next hearing. Mr. Dunn stated that they must remember that date if they want to be here to offer any additional input. Ms. Rubenstein stated that all of the materials are in the Zoning Office and can be accessed there during business hours. Mr. Dunn stated that the office is open 9 a.m. – 4 p.m. Monday through Friday.

2. APPEAL #946 – MILLER – AREA VARIANCE – PUBLIC HEARING Grid #6363-03-370166 Location: 37 Gleason Blvd.

Mr. Dunn stated that this is an application for a variance from the Area and Bulk Requirements for the location of a gazebo. He stated that the Code requires 60 ft. setback from the center of the road and that the gazebo is located 40 ft. from the center of the road – a 20 ft. variance is requested. He stated that the file contains:

- Referral from the Planning Board: negative recommendation, as there is sufficient land on the parcel to allow this gazebo to be placed while preserving all of the necessary setbacks.
- Referral from the Fire Advisory Board: no position as it does not involve any fire or safety issues

- Affidavit of publication in The Poughkeepsie Journal dated 9/18/09
- Referral from the DC Dept. of Planning: matter of local concern
- List of adjacent property owners who have been notified of this hearing

Mr. William Miller, 37 Gleason Blvd., Pleasant Valley, NY was sworn in. Mr. Miller explained that when he first applied for this variance he stated that the gazebo was 40 ft. from the center. Since that time, he stated that he has measured the distance and discovered that it is 42 ft. 6 inches. Board members computed that the requested variance is 17.5 ft.

Mr. Miller submitted additional photographs of the gazebo and the property. He stated that they put the gazebo where they did because of the section of trees that appear to have been planted there in order for a gazebo to be put in the middle of them. He stated that it is in the most attractive place on their property, but it also is out of the soccer field and the baseball field and the place where the kids make forts when the leaves fall. He stated that it is not in the middle of the property but is away from where those sports are played. He stated that they raised two daughters there and he knows that the field is good for baseball and soccer. He stated that there are several neighbors with children and that they have already made that lot available to them to play and, in fact, there's a swing set that they put up for the little ones and there's another swing set for little older ones on the property as well. He stated that they put the gazebo where they did because it is convenient to their house and it is out of the way given the way that they use the property. He stated that if they were to move it he is sure that it would be very expensive and that they would rather get rid of it than have to move it. He stated that they also have 3 grandchildren who spend considerable time playing in the side yard. He stated that, fortunately for him, two of them are identical twin boys who are 3 years old and one of them has his name. He stated that he cannot say that that is why the gazebo is where it is, but it probably has something to do with it. He asked that the ZBA grant the variance.

Mr. Miller stated that a couple of neighbors came to the meeting tonight, but that it has gotten to late for them and they could not stay. He stated that there are a couple of gentlemen that are still here and they may have some negative or positive comments to make.

Mr. Dunn asked how long the gazebo has been in place. Mr. Miller stated that it has not been there very long at all. He stated that he did all the labor. He stated that they bought it in the middle of May and it was delivered on June 26, 2009. Mr. Dunn asked if it is anchored down. Mr. Miller stated that it is not anchored. Mr. Dunn stated that he saw some plates coming down from the bottom of it and, therefore, thought it was anchored. Mr. Miller stated that he put those plates on so that he could put the wood chips around it and make it look decent. He stated that as far as he is aware, and he saw them put it down, there is nothing driven into the ground.

Mr. Dunn asked how much it weighs and explained that he was wondering how much of a problem it would be to move the gazebo – if it would require trucks and such to move. Mr. Miller stated that that is how they brought it in – on a truck – and his assumption is that that is how it would have to be moved. He stated that the problem with that is that it dug up the yard. He stated that in order to get the truck in he had to remove fence and after they dug the yard up, he had to fix the yard. He stated that when he put the fence back in, he put it right where it was and used new fencing. He displayed the brochure for the gazebo to the Board.

Mr. Maucher asked if a building permit is required for the gazebo. Mr. Miller stated that he did not think there was, that it was pre-built when delivered. Ms. Dickerson explained that he will need a building permit.

Mr. Kish asked if Mr. Miller owns the adjacent property. Mr. Miller responded yes. Mr. Kish asked if he has had any objections from the neighbors to the gazebo. Mr. Miller stated that the only objection he's had is that he put it on his own property and not across the street in his neighbor's front yard. He stated that he was hoping she would be here to tell the Board that, but she had to leave.

Mr. Miller stated that he is a retired college professor and that he likes to read. He stated that on one occasion he went out to the gazebo with a book with the idea of sitting there to read. As he got closer, he stated that he noticed that there was some noise and when he got to the door it was full with neighbors. He stated that he ended up turning around and going back into the house and was asked to bring some wine back out to the gathering, which he did. He stated that in all seriousness he did not put the gazebo where he did with the intention of cheating the Town out of taxes or anything like that. He stated that one of the things he taught was design and that he felt like it was designed to be put where he put it.

Mr. Dunn asked Mr. Donegan, Zoning Administrator, who caught this. Mr. Donegan stated that he thought it was the Building Department that realized there was no building permit for the gazebo. Mr. Dunn stated that Mr. Miller should have applied for a building permit and then been told that he needed to request a variance. Mr. Dunn stated that however this turns out Mr. Miller will need a building permit for the gazebo. Mr. Donegan concurred. Ms. Rubenstein offered that, as a condition of approval of the variance, the applicant be required to get a building permit within a certain period of time.

Mr. Miller stated that he did not build anything and wondered why he would need a building permit. Mr. Dunn stated that it is a building and that's why he needs a building permit. Mr. Miller stated that he cannot provide any information on the materials used, etc. Mr. Dunn advised him to provide the brochure to the Building Department when he applies for a building permit.

Public Hearing was opened.

Mr. John Raffaele, 41 Gleason Blvd., Pleasant Valley, NY was sworn in. He stated that Mr. and Mrs. Miller are fantastic neighbors. He stated that they extended use of their yards for use by their kids. He stated that to put the gazebo anywhere else would disrupt his family's and his kids' lives. He stated that they put it in a spot that is absolutely perfect for it. He stated that he hopes that the ZBA will grant the variance requested.

Mr. Nunzio Virgilio, 38 Gleason Blvd., Pleasant Valley, NY was sworn in. He stated that he lives across the street from Mr. & Mrs. Miller. He stated that he saw the Millers' daughters grow up and he looks at the house every day and the gazebo does not bother him. He stated that it's a beautiful spot for it – like it was meant to be. He stated that 42 ft. from the road does not bother him and it shouldn't bother the Board.

Public Hearing was closed.

3. APPEAL #947 – TUROWSKI – AREA VARIANCE

Grid #6364-04-628320

Location: 5 Clover Way

Mr. Dunn stated that this is the continuation of the Public Hearing on this appeal – it was adjourned from the August 2009 ZBA meeting. He stated that it is an application for a 12 ft. area variance from the side setback for construction of 24 ft. x 40 ft. pole barn. He stated that DC Department of Planning considers this to be a matter of local concern and all the other legalities have been met as far as publication and notification of this hearing. He noted that the Fire Advisory Board takes no position on this appeal.

Mr. Michael Turowski, 5 Clover Way, Pleasant Valley, NY was sworn in. He stated that he needs to clear up a couple of things. He stated that with his application he submitted a picture of a barn that he downloaded from the Internet. He stated that this picture is not an accurate representation of what he wants to build. He stated that he is not trying to build a barn, and that the words “pole barn” only represent a type of construction. He stated that the building looks like any other garage that you would see anywhere and the picture that he handed in was only to show the type of siding and roofing that he will use and it is not representative of what he wants to build.

Mr. Dunn stated that he has a concern, personally, that he now has made the mark where he wants the structure to be; he has put boards sitting up on buckets. Mr. Turowski stated that that photo is his attempt to reassemble the old shed – the footprint of the old shed. Mr. Dunn asked if that is what that is where the boards are sitting up on buckets. Mr. Turowski responded yes and explained that the reason for the buckets is to show that he removed 2 ft. of soil that was under the old shed. He stated that that was key for his thinking that he could build a higher building and still be within the same height as the old building. Mr. Dunn asked if it is correct that he has therefore come down 2 ft. from the rest of the land. Mr. Turowski responded that that is correct. He stated that if you look at some of the photos of the old shed you can see that it was raised up above the driveway. Ms. Rubenstein confirmed that if you look at the photo with snow on the ground you can see that it was raised.

Mr. Kish asked whether the height of the boards represents the floor of the old shed. Mr. Turowski responded yes. Mr. Kish also asked whether the boards represent the physical outline of the shed. Mr. Turowski responded yes. Mr. Dunn asked what the measurements were of the old shed. Mr. Turowski stated that he has been able to measure the old shed using the satellite view from the tax assessor and that he has used the house and the pool and whatever else is in the picture that he can measure today as a scale to measure the old shed. He stated that he thinks it was 20.9 ft. x 45 ft. Mr. Dunn stated that the end roofline of the old shed measures 20 ft. 10 inches. Mr. Turowski stated that that measurement is the width.

Mr. Kish asked if the old structure was a garage or a shed or for any other purpose. Mr. Turowski explained that the land was a 6-acre farm that was subdivided into three lots. He stated that there were 3 buildings that were left over from the old farm. He stated that this building had 2 stalls at one end inside, maybe for ponies, and the rest of it he thinks had chickens in it.

Mr. Kish asked whether the garage that is on the right hand side when you enter the property belongs to Mr. Turowski or to his neighbor. Mr. Turowski stated that it belongs to the lot behind him and that he believes it is also left over from the old farm and is one of the original buildings.

Ms. Rubenstein stated that the proposed building is 24 ft. x 40 ft. and will be a little wider and a little shorter than the old building. Mr. Kish asked how the two buildings compare in square footage. Mr. Turowski stated that the new building will be 60 sq. ft. bigger. Mr. Dunn stated that it is not quite that. Mr. Kish asked when he tore down the old shed. Mr. Turowski stated that it was either April or May of 2009.

Mr. Turowski stated that he was under the impression that he could just replace the old shed. He stated that he thought he could just take it down and put it back up and then realized that he needed a building permit. Mr. Kish stated that direct replacement is different from enlarging, which is the difference the Board is considering. Mr. Turowski stated that he has no problem losing the 20 sq. ft. if that's what he has to do. Mr. Dunn stated that really the difference in square footage is 22.5 ft. – that the proposed structure will be 22.5 ft. larger. Mr. Kish stated that, therefore, the discussion is 22.5 ft. Mr. Dunn stated that that is allowable under the Code – that you can increase your square footage.

Ms. Rubenstein asked if Mr. Turowski will move the stuff that is outside now under the blue tarps and put it in the shed – is that the plan. Mr. Turowski responded yes, that is the plan. Mr. Kish stated the stuff that's in the blue tarp – Ms. Rubenstein asked if it will be put in the shed. Mr. Turowski responded yes. Ms. Rubenstein asked whether there will be a blue tarp and a new shed. Mr. Turowski responded no. Mr. Turowski's daughter, Alison, stated that that stuff was in the old shed.

Board members concurred that it is a really small difference in size. Mr. Dunn stated that he does not need a variance from the lot line because he's replacing a building that previously existed. Ms. Rubenstein concurred because he's not getting any closer to the lot line than he was before. She stated that you can go closer to the driveway but not closer to the lot line. Ms. Rubenstein stated that the applicant is before the Board and if the Board is inclined to grant the side variance, then it creates clear title if he wants to sell the property and eliminates later questions. She stated that, therefore, if the Board is inclined to grant the variance, the Board may want to grant the variance in order to provide clear information on what action was taken on the property.

Mr. Turowski stated that he needs to clear up something. He stated that he originally applied to be 3 ft. off the property line, which would be a 12 ft. variance. However, he stated that his intention now is to be 5 ft. off the property line. He stated that he set out to prove that the old shed was 5 ft. from the property line, that's why he took all kinds of measurements. Ms. Rubenstein asked for confirmation that Mr. Turowski is amending his application to request a 10 ft. variance instead of 12 ft. She again stated that, if the Board is inclined to grant the variance and if the variance is granted, it clears the applicant's record and there's never any later question as to why and how the structure got built. Ms. Czech suggested that if the Board grants it, a note can be written that he is replacing an existing structure within the language of the Code. Ms. Rubenstein suggested that the Board could make a motion that the Board has reviewed the application and based upon the evidence the applicant is replacing the existing structure at its original distance from the side property line, so therefore he does not need variance as he is replacing a structure.

Public Hearing was opened.

Mr. John Terry, 4 Clover Way, Pleasant Valley, NY was sworn in. He asked Mr. Turowski for his assurance that he will not be running a business out of the barn. Mr. Turowski responded that he will not be running a business. Mr. Terry asked whether the proposed square footage is 960 sq. ft. He stated that it is a big building and with a 13 ft. peak – and asked Mr. Turowski if this is correct. Mr. Turowski responded that the roof will be 13 ft. but not the ceiling. He stated that with a 10 ft. ceiling the highest peak would be 13 ft. He explained that he has gained 2 ft. already, that the highest part of the old building was 9 ft. He stated that by excavating the 2 ft. of earth, he now has 11 ft. Mr. Terry stated that it is an issue of scale as well, that it is as big as a house. He stated that if you put another floor on it, it would be a 2000 sq. ft. house, which is pretty big.

Mr. Terry stated that the other issue is noise on Mr. Turowski's property. He stated that since the last ZBA meeting, he has had occasion to call the sheriff because there were firecrackers being lit on the property. He stated that Mike is good with his hands, and he probably has hands of gold. He stated that he suspects that if you give Mr. Turowski that much square footage, he's going to be in there not just tinkering, as his lawyer said at the last meeting, there could be pretty substantial work being done. He stated that compounded with the noise factor on the property, he suspects that it will exacerbate it. He stated that smaller is better.

Mr. Dunn stated that if Mr. Turowski is found to be operating a business, then he will be cited for it. He stated that the ZBA understands that, as a neighbor, he has concerns. Mr. Terry stated that his concerns are based on past performance. Mr. Dunn stated again that if he is operating a business from there, then he will be cited for that and told to cease and desist. He noted that the Zoning Administrator cannot be out looking in everybody's yard, however. Mr. Terry stated that he does not expect him to. Mr. Dunn stated that he understands that Mr. Terry is saying that the proposed size of the building would make it easier for the applicant to have a business. Mr. Terry suggested that he may go inside and do work that he's never done before – that we all have our dreams. Mr. Dunn stated that that is not the ZBA's purview at this time. Mr. Terry responded that he understands. Mr. Dunn stated that the Board's purview at this point is to determine whether he is allowed to have that building based on what was there previously and does it abide by the Code.

Mr. Terry stated that after the last meeting he spoke with a neighbor of theirs, Roy Arnesen. He stated that he and Roy both agree that it affects Roy's property, too. Mr. Terry explained that he is in back of Mr. Turowski and Roy is on the side. He stated that they both agreed that if he would scale it down a bit, it could be more acceptable. Ms. Czech asked how long the old structures were there. Mr. Terry stated that they bought in 1994-1995 and they were there then. He stated that there were two old sheds, as he remembers. Mr. Dunn suggested that they were one day older than sand – that they had been there a long time. Ms. Czech stated that they have been there – the same size shed. Mr. Dunn stated that the Board's concern at this point would be that he maintains the distance from the property line that he says he's going to and that this is something that the neighbors can talk to him about. Mr. Dunn stated that it is not within the Board's purview to say that it cannot be any higher than 9 ft. or 11 ft.

Ms. Czech stated that, in her opinion, Mr. Turowski does not need to be before the ZBA, that he does not need to apply for a variance. She stated that he is replacing an existing structure within the Code, so he does not need to be before the ZBA. She stated that there may be

other issues that are outside of the Zoning Board. She stated that she hopes her point was taken that the structure has been there and that he is replacing a structure.

Ms. Rubenstein stated that the Code stipulates that the distance from the property line dictates the height of the building. She stated that if the height on the old building was 9 ft., then if he's talking about replacing the building, the proposed new building cannot be more than 9 ft. She stated that if the applicant wants to make the new building higher than the original building, then he does need a variance. She stated that she thinks this was what Mr. Vogt, Board member who is not here tonight, was saying last month – the concern being how high the building was and whether we're still in a replacement mode or we're into something slightly different.

Mr. Gerstner asked if it was 9 ft. Mr. Dunn stated that it was going to be 11 ft. to the peak but the applicant excavated down 2 ft. so now it will be about 9 ft. to the peak from driveway level. Mr. Kish stated that it was 9 ft. and now it will be 11 ft. Mr. Turowski explained that the highest point of the old building was 9 ft. at that time that the land existed. He stated that underneath the building he excavated 2 ft., so now the highest point of the old building was 11 ft. Mr. Dunn asked if he can live with that. Mr. Turowski asked if he can live with that. Mr. Turowski responded no, that it would give him a 7.5 ft. ceiling. He stated that he could consider an 8 ft. ceiling. He stated that the old building was useless, but the roof was a shed roof. He stated that the interior of the building was up to the roof. He stated that when you build a building now, it is just dead space inside the roof – you are not using anything above the ceiling height, that it is all just trusses. Ms. Rubenstein stated that from an aesthetic point of view you would rather see a peaked structure. Mr. Kish noted that the original structure did not have a peaked roof – it was flat. Mr. Turowski stated that the Town would not approve a permit to rebuild the old building – it would not pass the Code he guesses. Mr. Kish stated that he could probably rebuild it, but that he'd have to build it to present construction standards. Mr. Turowski asked if that would be a modern roof. Board members did not know.

Mr. Kish asked if the other shed is on Mr. Terry's property. Mr. Terry stated that there is nothing on his property. Mr. Dunn asked what there is as you pull in the driveway. Mr. Terry stated that he has an old chicken barn down by the road.

Ms. Jacqueline Terry, 4 Clover Way, Pleasant Valley, NY was sworn in. She stated that they have been living in the house since 1994 and that they are the house on the hill and have a separate garage. She stated that there were two sheds on Mr. Turowski's property. Mr. Turowski stated that there were 3. Ms. Terry stated that there were 2 that she knows of and that she's been living there a lot longer than he has been. She stated that she and her husband feel that the building is too big and is out of scale. She stated that it is like dropping another house. She stated that she has no objections to a shed being there, because the other shed was beat up. She stated that the old sheds were beat up but they weren't that big. She stated that the proposed shed is the size of her garage and that it could be an apartment or a one level house. She stated that it is not going to be attractive and it is going to be high. She stated that it would be more appropriate to the area if it were scaled down. She stated that Mr. Turowski asked to rent her barn, which she declined. She stated that the main thing is the size. She stated that if it is for storage, fine, but if he's going to go in there and work in there and make noise – she stated that they have enough noise from that property. She stated that his garage doors to his house are always open – like he works there a lot and fixes things and does whatever. She stated that it is not an enjoyable atmosphere anymore like it was.

She stated that the difficulty, mainly, is the size and that it should not be a shed that is going to be worked in. She stated that they bought a beautiful house on the hill and that they are entitled to enjoy it. She stated that they are considerate of their neighbors and respectful and they wish it would be that way on the other side. She stated that it would be much better if it were a better scale.

Mr. Dunn stated that by Code – none of us has seen that series of buildings whatever it was at the time – nobody here recalls seeing it before it came down. Ms. Terry stated that they saw the building. Mr. Dunn stated that Mr. Turowski has testified to the measurements of the buildings and he is saying it under oath. He stated that Mr. Turowski risks perjuring himself if that is not the truth. Ms. Rubenstein pointed out that Mr. Turowski based his assumption upon the size of other things that he could actually measure and compared it to old photographs. Therefore, she stated that it is hard to argue that that is not correct. Ms. Terry stated that it was not that big, that it was not 24 ft. x 40 ft. She stated that it was an old falling apart country shed. Mr. Gerstner stated that he measured it to be 21 ft. x 45 ft. Ms. Terry responded whatever, it is the size of her garage. Mr. Dunn stated that if it was 21 ft. x 45 ft., Code allows him to actually go 50% larger. Ms. Terry asked whether you can just drop things on your property and it does not matter. Mr. Dunn stated that it does matter, that if you remove a building you can replace a building according to Code and that is what the Code allows. Ms. Terry stated that if you remove a building without permission you can replace a building that is definitely going to be bigger. She stated that she's been living there 15 years and those sheds were not high and were not that big and were not obtrusive.

Mr. Dunn stated that it seems that the concern here about the height of the building. Ms. Terry said that the size is also a concern – that it is bigger than the size of her garage. Mr. Dunn stated that the applicant testified that the old building was 20 ft. x 45 ft. and he is replacing it with a 24 ft. x 40 ft. and he is perfectly within the Code to do that. He suggested that as neighbors they sit down and try to figure something out. Ms. Terry stated that she's on a hill and has a view.

Mr. Dunn asked the Board how far they can go as far as height is concerned. Ms. Rubenstein stated that perhaps the applicant wants to compromise a little on size and perhaps reduce the peak a little bit. She suggested that he is not really replacing exactly what was there because he wants to put a peak on the building and he needs a variance because of the height. Board discussed how to calculate the allowable distance from the property line. Mr. Dunn stated that it is 1.5 times the height but you don't consider the height right up to the ridge you consider half way between the ceiling and the ridge. Ms. Rubenstein calculated that the peak it is 13 ft. and the ceiling is 9 ft. Mr. Dunn calculated, therefore, that 11 ft. would be considered to be the height. Ms. Rubenstein stated that normally you would be required to be 15 ft. off the property line, so he would need a variance in that situation and it would be treated like a side yard variance based upon the peak. Therefore, she noted that he would be 5 ft. off the side lot line and he would need to be 15 ft. off the line – you would treat it as a regular side variance.

Ms. Czech pointed out that if he replaced the building and he was at the same height he would not need to be before the ZBA at all. Ms. Rubenstein stated that that is correct but that he is not doing that and that is the whole point that came out in testimony – every single person who testified stated that it was a flat building, part of it was a chicken coop, it wasn't the same height as what is being proposed. She stated that what is disturbing to the neighbors is that the perception will be of a much bigger structure even if it is the same size

because it now has a peak, which it did not have before. Mr. Kish stated that based on the structure of the building, it is 9 ft. to the bottom of the ceiling.

Mr. Turowski stated that the highest point of the old shed was 9 ft. before he removed 2 ft. of dirt. Therefore, he stated that if he put the shed back in mid air where it was right now, the highest point would be 11 ft. He stated that the Board just came up with a formula that if you cut the gable in half, that's where you measure the height. He stated that on a 9 ft. ceiling it would give you 11 ft. He stated that he thinks the Board answered its own question. Mr. Dunn concurred. Mr. Gerstner stated that the 13 ft. peak would be acceptable because he knocked 2 ft. off of it by excavating the dirt. Ms. Czech stated that it is allowable based on what was there.

Ms. Terry stated that she thinks Ms. Rubenstein had it right about shortening it and putting it more into scale, that the neighbors would be happier. She stated that she had it right – that they want it to be smaller and they don't want it to look so big and stick out like that. She stated that she knows that the other one was not that high. She stated that she cannot prove it. Mr. Kish noted that the size of the structure is obtrusive to the neighbors and the problem is that from the zoning requirements he's allowed to replicate what he had on his property. He stated that if that's the size of it based upon the aerial photography that he measured out, then that's what he has. He mentioned that perhaps they could talk it over and come to an agreement to make it a bit more neighbor friendly, that's another option.

Ms. Rubenstein stated that this is the Board's opportunity to hear the public speak to the Board and that the Board understands everyone's comments. She stated that it is now up to the Board to deliberate on how we will address. Ms. Terry stated that if the Board members came to her house – and that they are all invited – that they would not want the new structure. She stated that she wanted to make it clear that she has no objection to the shed but that she does want to know if there is going to be tinkering in it. Ms. Rubenstein stated that the ZBA does not tell people what to do inside their garages. Ms. Terry stated that this is really an above ground basement and is not really a garage. Ms. Rubenstein stated that, nevertheless, no one on the ZBA can tell Ms. Terry what to do in her garage and certainly will not tell the applicant what to do in his garage. She stated that Mr. Dunn addressed the options the public can take if she thinks it is improper business use, which can be addressed with the Zoning Administrator. She stated that the ZBA is not approving businesses. Ms. Terry stated that she wanted it on the record anyway. She stated that she measured the side of her garage and it is huge compared to the little sheds and that they weren't high. She stated that she goes up her driveway and that she's on top of the hill.

Mr. Dunn stated that he understands that we all have neighbors. He stated that if this is approved, then the applicant and the neighbors need to find something that you all can live with. Ms. Terry stated that Mr. Turowski may be an immovable person because he knows no boundaries. Ms. Rubenstein and Board members agreed that it was time to move on. She stated that she does not want to listen to a lot of personal stuff because it is not appropriate. Ms. Terry asked how she will hear about the Board's decision. Mr. Dunn stated that if the Board does not make a decision tonight, it will be made at the next meeting. He stated that if there is any more testimony, he will take it and that once he closes the public portion of the hearing, the Board has 60 days to make its decision. Ms. Terry asked if she should call someone. Mr. Dunn advised her to call Ms. Dickerson.

No one else from the public spoke.

Mr. Turowski stated that he does not have a garage right now, that he only has garage doors going into the basement of this house. He stated that he's trying to put back the same size building that he had in the same place. He stated that he's not starting a business and not building a house. He stated that he's not even going to have lights in the structure, more than likely. He stated that it's just for storage and is not bigger and will look a whole lot better than what was there.

Public Hearing was closed.

**4. APPEAL #949 – PFLEGER – AREA VARIANCE – PUBLIC HEARING
Grid #6363-12-829707
Location: 22 Barbara Lane**

Mr. Dunn stated that this is an application for a variance from Area and Bulk Requirements to install ground-mounted solar panels. The Code requires 15 ft. setback from the side property line and the applicant is requesting a 5 ft. variance. He noted that the file contains:

- A list of adjacent property owners who have notified of this hearing
- Referral from the Planning Board: positive recommendation
- Referral from the Fire Advisory Board: no position taken
- Affidavit of publication in The Poughkeepsie Journal dated 9/18/09
- Referral from DC Department of Planning: a matter of local concern

Todd and Rose Pflieger, 22 Barbara Lane, Pleasant Valley, NY were present and were sworn in. Mr. Pflieger stated that they intend to install the solar panels to help defray their electrical expenses on their property. He stated that they have applied for a NYS Department of Energy and Research approval, which was granted. He explained that NYSRTA grants a portion of the money in order to help fund the solar panels because they are rather expensive. He stated that in order to obtain the NYSRTA approval, they had to come up with a location on the property in order to have optimal sunlight throughout the year. He stated that his contractor, Vincent Ricata, came to their property with a device in order to determine where that best location on the property would be. He stated that in the packet of information that was submitted with the application, there is a photo that shows where there was a swimming pool in the back of the house. He stated that it was a 24 ft. round pool, but that the whole footprint including the splash over areas was about 30 ft. Therefore, he stated that they are looking to increase approximately 4-5 ft. on the one side of where the former pool was located in order to retain that optimal location on the property.

Mr. Pflieger explained that if they were to go to the other side of where the pool was located, moving it the 4-5 ft. to the other side of the property, there is a grade drop off on that part of the property, which drops about 2.5 to 3 ft. Therefore, he explained that they would have to either do some building up of the property in order to accommodate for the same height or do something with the structure, which would entail additional funding in order to install this device.

Mr. Pflieger explained, therefore, that their hope is that they can obtain a 5 ft. area variance so that they can locate the solar panels where it has been determined to be optimally placed.

Mr. Kish asked if this is planned for in the rear of the house. Mr. Pflieger responded yes, that it is directly behind the house. He stated that there are two properties that adjoin them. He

stated that to the northeast there is a property but that there is a bunch of trees in the area and that it is not noticeable at all from that property. He stated that to the west there is an empty parcel of land that is basically an access to property behind their house. He stated that mature trees buffer the property behind them. He stated that even if they were to build something in the back, they would not be able to see it.

Mr. Pflieger stated that there is property that is directly to the east of them and is a vacant piece of property. He stated that it is a 75 ft. swath of land and just to the east of that is the other piece of property where there's a garage that's facing them. He stated that the whole side of that house is a garage.

Mr. Kish asked if they are stationary panels. Mr. Pflieger responded yes.

Ms. Rubenstein asked for clarification of one of the drawings that was submitted with the application. Board discussed the array – that the panels are tilted and do not move. Mr. Pflieger explained that they are angled to optimally receive the sunlight throughout the year. He explained that the entire panel array will be 34 ft. long and 11.3 ft. wide. He stated that the overall height off the ground when it is constructed will be 9 ft. 6 inches.

Ms. Czech asked whether these panels are typically on the roof and not on the ground. Mr. Pflieger stated that the roof has to be strong enough and also has to be southerly facing. He stated that the way his house is constructed, the rear of the house is east and west facing, not southerly. Therefore, he explained that's why they had to end up placing the panels on the ground.

Mr. Kish asked what kind of current they expect out of this unit. Mr. Pflieger stated that it is a DC current and that it is rated by kilowatts. He stated that it is a 5 kilowatt system.

Ms. Rubenstein asked if the applicants' neighbors know that they are doing this and she noted that they are not here at the meeting. Mr. Pflieger stated that their neighbor is not here at the meeting and the ones that they have spoken to, which are the ones that are the closest to them, have no objections. Mr. Dunn stated that he's specifically concerned about the people who are up on the hill with the drive that faces the applicant. Board members noted that they are not here.

Mr. Dunn stated that he asked the applicants about moving 5 ft. down. He stated that the applicants said that they would not catch the optimal sun and the grant that they are getting is based on the exact proposed location. Mr. Pflieger explained that if the panel were moved over it would change the percentage of the efficiency of the panels and, therefore, reduce what their allowance would be from NYSRTA. He stated that it is not only the rebates that are offered but it is also the reduced interest rates for the loan that they have to obtain. He stated that the loan amount would go up and the amount that they would be receiving from NYSRTA would go down, and they also would not have the optimal benefit from getting the maximum amount of sunlight and, therefore, energy.

Mr. Kish stated that this is new technology coming in and asked if there is any protection that is required around it like fencing or anything else that's needed for any safety reasons. He asked if there are any safety issues. Mr. Pflieger stated that it is not something that can be climbed, per se. He stated that it is on private property and is in the back of the property and is surrounded by private property. Mr. Kish noted that the Code requires fences around

pools and wondered if there is any danger. Mr. Pflieger stated that an inspector will electrically inspect the array. Mr. Kish asked if the cabling is buried. Mr. Pflieger responded yes, that it is in conduit and will be buried in the ground according to the proper codes. He stated that an electrical contractor who is licensed is installing it. Mr. Kish asked if it makes any noise. Mr. Pflieger stated that it makes no noise. Ms. Rubenstein stated that this is the greenest thing that the ZBA has done in a while. Mr. Pflieger stated that it is also very beneficial for the environment, as well, which is one of the reasons they are going for this – to reduce the carbon dioxide in the area.

Public Hearing was opened. No one spoke. Public Hearing was closed.

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DISCUSSION

1. APPEAL #949 – PFLEGER – AREA VARIANCE

Ms. Rubenstein: **MOTION TO GRANT THE 5 FT. VARIANCE FROM THE SIDE LOT SETBACK. THE BENEFIT TO THE APPLICANT IS GREATER THAN THE NEGATIVE IMPACT TO THE COMMUNITY, AND IN FACT THERE IS NO NEGATIVE IMPACT TO THE COMMUNITY BECAUSE IT IS A PROJECT DESIGNED TO REDUCE THE HOMEOWNER'S CARBON FOOTPRINT.**

SECONDED BY S. KISH

Discussion: Mr. Dunn asked the applicant if it would be possible, if it came to it, to put up some screening on the west side – some evergreens or something of that nature. He stated that if the neighbors had a problem with it, they would be here at the hearing. He suggested that if the neighbors had a problem, planting some pine trees would resolve it. Mr. Pflieger stated that if that's what is needed in order to grant the variance, he would be more than happy to accommodate. Mr. Gerstner stated that they could not be tall trees because then they will cast shade on the solar panel array. Mr. Dunn stated that that's why he's asking. Mr. Pflieger stated that they would have to be lower shrubs or trees so that they would not block the sunlight. Mr. Dunn noted that it would not work anyway because that house is up on a hill and rescinded his suggestion for screening.

Mr. Maucher stated his personal opinion, that he would probably vote against it. He stated that he has no problem with people doing things to take on a project for their own homes. He explained that he opposes paying for it from his pocket, that this is a tax-funded project and he would be personally opposed to it. Mr. Dunn stated that that is not what the ZBA is here for. Mr. Maucher stated that NYSRTA is a tax-funded organization. Mr. Dunn stated that the government makes no money, that everything is tax funded, everything is paid for by your pocket; we're not debating that. Mr. Dunn stated that the test when reviewing an application is whether the project is more beneficial to them than it is negative to the community. Ms. Rubenstein stated that it is a land use issue. Mr. Maucher stated that it is negative to the community because it is tax funded.

VOTE TAKEN AND APPROVED 6-1-0 (Mr. Maucher voted no)

2. APPEAL #946 – MILLER – AREA VARIANCE

Ms. Czech: **RESOLUTION TO GRANT THE 17 FOOT 6 INCH AREA VARIANCE FROM THE CENTER OF THE ROAD SETBACK.** (Ms. Czech read into the record the resolution - original on file).

SECONDED BY J. DUNN

VOTE TAKEN AND APPROVED 6-0-0

RESOLUTION AMENDED TO ADD THE CONDITIONS THAT THE APPLICANT PAYS ALL APPLICABLE FEES AND MUST OBTAIN A BUILDING PERMIT WITHIN 60 DAYS.

SECONDED BY J. DUNN

VOTE TAKEN AND APPROVED 6-0-0

3. APPEAL #947 – TUROWSKI – AREA VARIANCE

Mr. Dunn stated that this is a gray area. Ms. Rubenstein suggested that the Board determine what the actual variance application is, if it is one. Mr. Gerstner stated that he's of the opinion that he does not need to be before the ZBA and that he should get a refund on his application fee. Ms. Rubenstein stated that the issue for her is that it is not a direct replacement because the height of the proposed structure will be different from the original. She noted that Mr. Vogt, ZBA member who is not present at this meeting, would be strenuously concerned about that issue. Ms. Czech stated that she feels that it is an insignificant change in the size.

Mr. Donegan, Zoning Administrator, explained that he gave an administrative determination on this appeal. He stated that he did a site visit with Mr. Turowski and that the building that he is proposing is bigger than the original footprint of the original building. He stated that, even though the Code says you can increase 50% of the assessed value and up to 50% of the original floor size, unless changed to a conforming use – which it isn't because it is a bigger footprint. He stated that the last sentence of that portion of the Code says "All alterations and reconstructions built under these provisions must conform to all regulations of the district in which said use will be conforming." He stated that the regulation for that district is 15 ft., and therefore that is why he made the administrative determination. He noted that the applicant is now talking about a 10 ft. variance.

Ms. Czech asked whether the applicant has a pre-existing non-conforming. She stated that it has been there and the subdivision was done and it was there. Ms. Rubenstein stated that the applicant is not replacing the shed that was there; that he is replacing a structure that was there. She stated that he could build a shed with a flat roof if he wanted, but that he wants to build a shed with a peaked roof. She stated that she does not have a problem with giving him the variance to do it, but that she thinks the ZBA has to regulate in some way the peak. She stated that the problem is that there would be nothing to stop him from putting it on the same footprint and the applicant is telling the Board that it will be 13 ft. but he could go way higher because there is nothing that regulates that.

Mr. Maucher asked whether he needs to get a building permit, which would layout the exact size of what he builds. Ms. Rubenstein responded yes, but unless the ZBA regulates it by

giving him a side yard variance that addressed how high the Board is permitting the peak to be, there is nothing to regulate it and then they will end up with a 2-story building there. She stated that there's no reason to reject it unless the Board puts in a requirement. She stated that if the applicant says that it's going to be 11 ft. or 13 ft. or whatever, then the ZBA gives him a side yard variance to build to the 13 ft. height. She stated that she goes back to her original thought of granting him a variance, describe the size of the building that the ZBA is permitting him to build, and then he gets his building permit. Mr. Gerstner and Ms. Czech agreed that that makes sense. Ms. Rubenstein stated that then there is a way to regulate it. She stated that it is a big structure and that he is perfectly entitled to do it; but if they come back in and complain that he has put up a 2-story building, the Board will have done nothing to stop that.

Mr. Kish stated that it is only footprint in the regulations and it's not volume – that it's not a volumetric measurement of the building, which would be the height. Ms. Rubenstein stated that that is correct and that the height is addressed by the variance – by giving him a certain amount of variance is how you address the height it is allowed to be. She stated that that is her proposal and if the Board does not do that, you are not regulating the height at all.

Ms. Czech stated that when they calculated the formula, he did not need a variance for the height. She asked if that is correct. Ms. Rubenstein stated that she does not agree with that. Ms. Rubenstein stated that if he is going to rebuild it with a flat roof, then he does not need a variance. But if he is building something different, she stated that the Board needs to address it because it is very close to the property line and is a very big structure. She stated that as a matter of general principle if the applicant is willing to say how tall it will be, then the Board needs to make him stick to it.

Mr. Kish stated, therefore, that the argument isn't square footage, it is height. Ms. Rubenstein agreed and stated that it is a little bit bigger. Mr. Kish stated that it is not significant. Ms. Czech agreed. Ms. Rubenstein agreed but stated that it should be addressed; otherwise the Board is telling people to go put up their building as big as they want and as high as they want. Ms. Czech responded true. Ms. Rubenstein stated that given the hostility there in that neighborhood, she does not want to create a worse situation by having them be mad at the Board.

Mr. Gerstner stated that the footprint is going to move a little bit, that the applicant now says that the structure is closer to 5 ft. off the property line. He asked if it is possible to move it even further away from the property line to make it less of a variance. Mr. Turowski stated that if he builds the building that he thought they agreed on tonight, he still has to shift the driveway a little. He stated that if he gets less of a variance, he will have to shift the driveway even more.

Ms. Rubenstein stated that the variance that is being requested is a 10 ft. variance. Board members agreed. Ms. Rubenstein stated that the size of the building to be constructed is 24 ft. x 40 ft. and the height would be 13 ft. from the floor to the peak. Mr. Kish recommended that it stipulate "no greater than 13 ft."

Ms. Rubenstein asked Mr. Dunn to review the circumstances of this appeal. Mr. Dunn stated that the applicant has torn down an old building that was 937.5 sq. ft. and he is putting in a new building that is 960 sq. ft. Consequently, he stated that the applicant is allowed 50% square footage, which the dimensions fall within. Further, Mr. Dunn stated that if the

applicant were to put the new building in exactly the same place, he would not need a variance because the old building was 3 ft. off the lot line and the new building is even farther (5 ft.) off the line. Mr. Maucher pointed out that the applicant stated that when he checked it the old building was 5 ft. off the line. Ms. Rubenstein agreed.

Ms. Rubenstein asked about the side yard setback for the height. Mr. Dunn stated that the Code requires a setback of 1.5 times the height of the building. He explained that the height of the building is considered to be the first floor plus half of the distance to the peak. Therefore, with a 9 ft. ceiling, then you go 4 ft. to the peak, 4 divided by 2 is 2, and you add 9 and 2 for 11 ft. Ms. Rubenstein stated that the default setback would be 15 ft., so in fact the variance that the ZBA is granting is really addressing the height of the proposed structure. She stated that given the fact that he's replacing a structure, it's a variance due to the height.

Board discussed the method for calculating the required variance. Mr. Donegan asked where in the Code it stipulates that the setback is 1.5 times the height of the building. Ms. Rubenstein read from the Schedule of Area and Bulk Requirements: "If the height of the building exceeds the minimum setback shown in the schedule, the setback required shall be equal to the height of the building." Therefore, Ms. Czech pointed out that the proposed height of the building, which is 13 ft., does not exceed the minimum setback, which is 15 ft.; therefore, he does not need a variance for height. Ms. Czech stated that the building will still be 5 ft. off the lot line and, therefore, does not need a variance. Ms. Rubenstein stated that Mr. Vogt had a good argument for why the applicant needed to appeal for a variance. Mr. Donegan stated that that is how he looked at it. Ms. Czech asked if that it in the minutes from last month and reviewed the minutes.

Board discussed the last sentence of Section 98-30: "If the height of the building exceeds the minimum setback shown in the schedule, the setback required shall be equal to the height of the building." Ms. Czech stated that we're not here for use and that the alternations and construction speaks to the construction of it. Mr. Maucher agreed that it refers to the structural requirements of the Town. Ms. Czech stated that if she were to replace a shed it may not be the exact same shed. Ms. Rubenstein stated that the ZBA has always done the footprint. Mr. Maucher and Ms. Czech pointed out that he's allowed 50% and that the increase in size is nowhere near that. Ms. Rubenstein stated that she's not sure she agrees with that. She stated that the only problem with that, the only thing that made this structure non-conforming was that it was too close to the property line and it was a pre-existing non-conformity. She stated that she does not think the Code is intending that every time you had a pre-existing building because it was too close to the property line that you could just expand it by 50%. She stated that she thinks what the Code is talking about is if she has a building that is commercial in a residential zone, the ability to expand it by 50% is really designed to let people keep their businesses going even though they are zoned incorrectly. Ms. Czech stated that it allows you to expand by 50% if you can. She stated that if you have a rock outcrop, obviously you can't. She stated that this is an insignificant increase in space. Ms. Rubenstein stated that she thinks it is an area variance issue and not a non-conformance issue. She stated that if you take that position, then anybody that's got a building that is too close to the property line, you don't want them to expand their buildings by 50%. She stated that that is not really what it is designed to protect. She stated that she agrees that is it not significant. Ms. Czech stated that he is not going closer to the property line. Ms. Rubenstein stated that the way this Code is written is talking about a non-conforming use, not a non-conforming structure. She stated that a non-conforming structure because it is too close to

the property line ought to be replaced within the footprint; and if it is not going to be replaced within the footprint it needs a variance to be too close to the property line. Ms. Czech stated that Ms. Rubenstein is saying that he should build it exactly to the dimensions it was. Ms. Rubenstein stated unless the Board wants to give him an area variance – that he has asked for an area variance because he wants to make it a little bit bigger.

Ms. Rubenstein stated that the real issue is as long as he doesn't stray any closer to the property line, then he is within the section of the Code that allows you to rebuild something you have taken down within a year. She stated that it does not fall into the category of non-conformity. She stated that perhaps Mr. Vogt was concerned with allowing people to replace a small shed with a taj mahal. Ms. Rubenstein stated that there is no way to restrict it. Ms. Czech stated that there is a way, that's why we're here. She stated that the Board can say that it's insignificant. Ms. Rubenstein stated that if the Board determines that he does not need to appeal for a variance, then there is no way to regulate that. Ms. Czech stated that he has applied and one of the things the Board can do is grant the variance on this appeal and deny the taj mahal, with common sense. She stated that that is part of why the Board exists - to make a choice.

Mr. Gerstner suggested that the Board choose on the side of safety and make the variance. Ms. Czech agreed that it would be safer. Ms. Rubenstein stated that she would rather adjourn this for a time when the Board is able to give it consideration. Mr. Dunn stated that there will be a problem because it's coming into winter and people have to build. Ms. Rubenstein stated that she understands and that she would abstain if the Board votes on it tonight. She stated that she needs more opportunity to understand what it is the Board is discussing.

Ms. Rubenstein noted that it is late – 11:05 p.m. She stated that she prefers that the Board come back and talk about it at another meeting. Mr. Dunn asked how the Board feels about this. Mr. Maucher suggested that there is some basic disagreement on the terms that we are using and what they mean and how they translate into what we need to do. He stated that if you look at the non-conforming use, it does say a building that exists at the time of the enactment of this chapter and doesn't conform to regulations. He stated, therefore, that it is definitely a non-conforming use. He stated that if you look back further in the book, it talks about what they can do or not do in replacing a non-conforming building. Mr. Dunn stated that he thought the Board would resolve it tonight. Mr. Gerstner stated that he's ready to vote on it.

Ms. Rubenstein left at 11:05 p.m. She apologized for leaving but stated that she must be at work very early in the morning. Mr. Gerstner stated that he's getting up at 5:30 a.m. himself.

Mr. Dunn asked if the Board wants to make a decision tonight. Mr. Gerstner noted that the Board members seem to be in favor of granting Mr. Turowski his variance. Mr. Kish stated that if it is match for match and it is a 10 ft. delta that the Board is talking about, he has no problem with it. Mr. Gerstner stated that it is a 10 ft. variance. Ms. Czech and Mr. Maucher stated that they are OK with that. Mr. Gerstner asked if there is enough for a quorum. Mr. Dunn confirmed that there are 5 Board members, which is more than enough for a quorum.

Mr. Gerstner: **MOTION TO GRANT A 10 FT. VARIANCE FROM THE SIDE LOT SETBACK WITH THE CONDITION THAT THE HEIGHT OF THE BUILDING WILL BE NO HIGHER THAN 13 FT. AT THE RIDGE**

SECONDED BY J. DUNN

VOTE TAKEN AND APPROVED 5-0-0

Mr. Dunn encouraged the applicant to speak with the neighbors.

**4. MINUTES – 8/27/09
MOTION TO APPROVE THE MINUTES OF THE 8/27/09 MEETING AS WRITTEN WAS CARRIED UNANIMOUSLY.**

Meeting was adjourned at 11:15 p.m.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represents unofficial minutes of the September 24, 2009, Pleasant Valley Zoning Board of Appeals meeting. They are not official and should not be construed as the official minutes until approved.

_____ Approved as read

_____ Approved as corrected with deletions/additions

PLEASANT VALLEY ZONING BOARD OF APPEALS

October 22, 2009

This meeting of the Pleasant Valley Zoning Board of Appeals took place on October 22, 2009, at the Pleasant Valley Town Hall, Route 44, Pleasant Valley, New York. Chairman John Dunn called the meeting to order at 7:30 p.m.

Members present: John Dunn, Chair
 Bob Maucher
 Lisa Rubenstein
 Steve Kish
 Tim Gerstner
 Ron Vogt

Absent: Helene Czech
 Ed Feldweg, Alternate
 Bruce Donegan, Zoning Administrator

1. **APPEAL #935 – HOMELAND TOWERS, LLC – SPECIAL USE PERMIT**
 Grid #6565-03-131274
 22 Camp Nooteeming Road, Pleasant Valley, NY 12569

Mr. Dunn announced that the Public Hearing on this application has been held over from the September 2009 ZBA hearing. He stated that, when all members of the public who wish to provide testimony on this appeal have spoken, the Public portion of this hearing will be closed. He stated that a decision will not be rendered this evening, as it will require a lengthy resolution, which must be prepared.

Mr. Robert Gaudio, attorney with Snyder and Snyder, representing the applicant was present. He stated that the Public Hearing was held over from the September ZBA meeting for the single issue of noise. He stated that the ZBA asked the applicant to supply a letter from their engineers, which they have done, showing the noise levels at the compound and at the property line and comparing them to common noises in the everyday environment and showing that it was a very low amount of noise and similar to a conversation.

Mr. Gaudio reported that they appeared before the Planning Board for their comments pursuant to the SEQRA process. He noted that the Planning Board had some additional comments, which the applicant responded to in writing - a copy of which was submitted to the Board at tonight's meeting – and summarized their response. He stated that the Planning Board asked them to further baffle the noise from the air conditioners. He stated that they have submitted a letter from their engineers, Tectonic, showing that there is a baffling unit available from the air conditioning manufacturer which will drop it down another 6 decibels.

Mr. Gaudio stated that the Planning Board also raised the question of the safety of the Tower and the campers. He stated that the Town Code requires an 8 ft. fence and the plans show an 8 ft. fence. He stated that they have submitted a letter from Tectonic confirming that they can construct the tower so that there are no climbing pegs for the first 20 ft. of the tower. He stated that it would be very difficult for someone to climb the tower without those climbing pegs. He stated that when the authorized personnel showed up, they would have

either their bucket truck or their ladder with them in order to be able to climb the tower when necessary.

Mr. Gaudioso stated that the Planning Board asked for confirmation from the property owner, the Hudson Valley Boy Scout Council, that they understand the potential impacts from the proposed facility. He stated that they have submitted a letter of support from the Council, similar to a letter that was previously read into the record, and also present at the meeting are members of the Council who would like to make some statements on the record.

Mr. Ralph Heavner, 5 Wayne Avenue, Stony Point, NY 10980, was sworn in. Mr. Heavner stated that he is a volunteer with the Hudson Valley Council of the Boy Scouts of America. He stated that he is also an attorney and, for the last 6 years as a volunteer, has had the pleasure and the honor to serve on the executive board as the Vice President of Properties for the Council overseeing a number of properties in the 5 county Council. With regards to Camp Nooteeming, he stated that he has been involved from the beginning in the negotiations regarding the cell tower. He stated that he has reported to the executive board and the executive committee on a regular basis as to the progress of the negotiations, etc. He stated that this project has received, and has been reiterated on the Council level, unanimous approval from the Boy Scouts as the property owners. He stated that they are all volunteers, but that the property is owned by the Hudson Valley Council of the Boy Scouts of America.

Mr. Heavner stated that they are familiar with the presentation made by Homeland Towers, that they have been very cooperative and helpful in keeping the Council well informed and responding to all of their questions. He stated that they are in full support, up to tonight and throughout the whole process, with the cell tower. He stated that they would like to have the cell tower on their property for a variety of reasons. He stated that one of the reasons is that they would like to have the revenue from the cell tower, because it will be used as per their unanimous resolution for the improvement of this camp. He stated that they will use this money exclusively for Camp Nooteeming – this tower encumbers this property to make significant improvements to the camp over the years. He stated that they are familiar with the issues that have come up with regard to safety and they are pleased with how that has been resolved. He stated that they are also familiar with the issues that came up with regard to sound. He stated that they think the sound issue has been adequately covered from their perspective. He stated that they have approximately 300 acres, so if there is an issue with one small part of their property with regards to the cell tower, they can move buildings and lean-tos and do some other things to put them on a different part of their property. He stated that this is something that they support 100%.

Mr. Dunn asked about moving the lean-tos and noted that that has been a concern of the ZBA. He noted that a member of the public who is a Boy Scout volunteer has testified to the ZBA about this concern. He also expressed a concern for the possibility – although remote – of the tower falling within the vicinity of the lean-tos and what would happen to the children. He asked if they will move the adjacent campsites and lean-tos. Mr. Heavner stated that at this time they don't see the need to move them. He stated that their biggest concern is not the towers falling down, because they think the likelihood of the tower falling down is remote. In addition to that, he noted that these are no full time residences, that typically they are occupied Friday nights, Saturday nights, and they leave on Sunday. He stated that there are many times throughout the weekends that these lean-tos are unoccupied and are not used by anyone. He stated these are not cabins, they are lean-tos. He stated that they have made some very significant improvements to the camp in the last couple of years. He stated that

these lean-tos are relatively small buildings that could be very easily moved. He stated that they are more concerned about noise complaints from the visitors. He stated that if they hear such complaints they will respond to them and perhaps move the lean-tos to another area – a very simple process to address that. He stated that it might be a big concern for the ZBA but it is a small concern for them in light of their overall facilities and what they have to offer their campers.

Ms. Rubenstein stated that there were individual users of the camp who testified at last month's hearing and discussed the fact that they were concerned about the location of the campsites and their proximity to the tower. She asked if they have an internal procedure – who moves the lean-tos – do they have a planning council. Mr. Heavner stated that it would come under his supervision as vice president of properties. He stated that if they have to get some machinery in there to move those things, it's not a big deal.

Ms. Rubenstein asked whether the people who spoke at the last hearing have been in contact with the Council or perhaps they just came to the ZBA to voice their concerns and have not voiced any concerns internally. She stated that they are coming to complain to the ZBA and what the Board wants to be able to do is say to them, here's the person you should talk to from your own organization. She asked if the Council has heard from them. Mr. Heavner stated that they have not heard from them. He stated that he respects anyone who comes before the ZBA whether they are in the scouting program or not to address whatever their concerns are. He stated that he is at the meeting in an official capacity representing approximately 9,000 children and adults that are registered in their program in the 5 counties.

Ms. Rubenstein stated that the people who came to the ZBA to complain are volunteers with the Boy Scouts and asked if they know how to voice their concerns internally and if they know to whom they should talk. She stated that the Board has a couple of names that the Board could give him and he could call them. She explained that she does not want the Board to say to these people that the Board cannot help them, but would like to be able to direct them to the right person and entity. She stated that she does not want to turn these people away and would like to direct them to the person on the Council who can help them. Mr. Heavner stated that if anyone has any issues or questions, his office phone number is 845-429-4637. He stated that he is readily available to everyone and tries to get back to everyone as quickly as possible. He stated that their neighbors' input is very important to them, as is input from their membership. He stated that there's never going to be unanimous support especially when there are 1000's of volunteers, but that they respect everyone's opinion. He stated that the executive board, which is very well represented by people throughout the 5 counties including this area, has unanimously approved this project and are anxious to move ahead.

Ms. Rubenstein stated that if someone comes to the ZBA and complains why the Board approved this project, the Board will direct them to Mr. Heavner. Mr. Heavner stated that he will take any phone calls and that he has done that for 6 years in his capacity as vice president.

Mr. Dunn read the following letters into the record:

1. 10/13/09 letter from Mr. Gaudio, Snyder & Snyder, regarding the aesthetic impact, stating that the DEC does not consider "mere visibility, even startling visibility of a project proposal" as "a threshold for decision making."

2. 10/13/09 letter from Tectonic, the engineer retained by the applicant, responding to the question of sound generated by the proposed tower and stating that there will be minimal noise produced – about 73 decibels.
3. 10/21/09 letter from Tectonic, the engineer retained by the applicant, documenting that there will be additional baffling on the site to bring the noise level down to 67 decibels.
4. 10/20/09 letter from Tectonic, the engineer retained by the applicant, documenting that the monopole “will be constructed such that the climbing pegs will extend no lower than 20 ft. above the ground level at the base of the structure.”
5. 10/16/09 letter from the Hudson Valley Council of the Boy Scouts of America stating that they are unanimously in favor of the tower
6. 10/12/09 letter from the Town of Pleasant Valley Conservation Advisory Council supporting the construction of the tower.

Mr. Gaudioso thanked the Board and stated that they have nothing else to add.

Public Hearing was opened.

Ms. Margaret Soloway, 25 Bellot Road, Ringwood, NJ, was sworn in. She stated that she represents her mother, Joyce Dervan, who lives at 166 Davis Road. She provided photos taken from inside her mother’s living room which, she thinks, demonstrates how visible the tower will be. She stated that she’s not positive that the tower will go right in the middle of her mother’s living room window. She asked if it would be possible to move the tower a little bit.

Ms. Soloway also provided a copy of the town map that shows where the house is situated in relation to the Boy Scout camp. She stated that the whole wall is glass – glass doors – that the whole living room is glass. She stated that it’s not just the view from the deck but it’s the view from the whole house. She stated that she was very happy to hear that the representative from the Boy Scout Council was willing to work with the neighbors. She stated that, as a neighbor, she would like to request that they move it over a little bit or at least consider it. She stated that the way she’s looking at this could, maybe, be wrong. She stated that the way she’s seeing it, it looks like the tower will be right smack in the middle of the window.

Mr. Gaudioso referred her and the Board to Map #4 of the balloon test documentation, which shows the camp and all adjacent properties with the tower location marked on the map. He pointed out that the proposed location of the tower is close to the stand of evergreens. He stated that if they moved the tower further away, they would be moving it away from the evergreen screening and more out into the open where the deciduous woods are. Ms. Soloway stated that the view off the deck is west. Mr. Gaudioso stated that the tower location is to the north. Ms. Soloway concurred that it looks like the tower has been moved. She stated that the house faces west-northwest.

Ms. Rubenstein suggested that, once the tower is up, perhaps the applicant would be willing to take a look at Mrs. Dervan’s deck and plant a tree to partially obstruct the view. Ms. Soloway stated that the sun sets right in middle of her mother’s living room window, right in the middle of the trees. Mr. Gaudioso noted that the tower is to the north. Ms. Rubenstein stated that the tower won’t be in her western view. Ms. Soloway responded OK. Ms.

Rubenstein asked Ms. Dickerson to make a copy of Map #4 for Ms. Soloway. Ms. Dickerson confirmed that she will do so.

Ms. Soloway stated that it's good to know that the tower will be up against the pines and that it's just to the north of those pines.

Ms. Soloway noted that if the property owner is planning on moving the campsites and lean-tos, that is a secondary environmental impact. She stated that she does not know if that is a good thing or a bad thing, but that it is something to think about. She suggested that the Board think about this in the environmental impact.

Mr. Kurt Schollmeyer, 515 Clinton Hollow Road, Salt Point, NY, was sworn in. Mr. Schollmeyer stated that he wants to set the record straight. He stated that he did have discussions with the Boy Scout Council a while ago. He stated that it has been discussed at different levels. He stated that the reason he brings his concerns to the ZBA is because the gentlemen with the Hudson Valley Council are not planners, but that the ZBA is. Mr. Dunn corrected him – the ZBA members are not planners. Mr. Schollmeyer stated that the Planning Board has planners working for them and has the tools at hand. He stated that the Hudson lean-tos are the site that is near the proposed tower, which could be relocated. He stated that they are old and probably need to be rebuilt. He stated that they are 150 ft. away from the tower. He stated that these are wilderness campsite areas. He stated that the Taconic lean-tos - the premier wilderness site that is enjoyed by 100's of boys every winter – will be within 400 ft. of the tower. He stated that the nature pavilion and flag field are all within 300 ft. of this tower. He stated that he's glad to hear that the sound issue is being addressed. He stated that these are issues that have not come up before and that are part of a good site planning process.

Mr. Schollmeyer stated that his purpose for his comments was to try to get the best product for the scouts who use the property. He stated that alternate locations exist on the property and that they could be investigated. He stated that the proposed site seems to be very beneficial to Homeland Towers – it's near a power line and has road access. He stated that it may not be the best location for countless 100's and 1000's of boys who use the property on a regular basis. He stated that there may be other areas on the site that would work perfectly and actually give better signal to Homeland Towers and may come at additional cost to laying infrastructure. He stated that he will leave it to the ZBA to figure out what is the best for this community.

Ms. Soloway stated for the record that she has not made any comments about the radiation and the noise because it is 600-700 ft. from the house and that she figured that it was OK. However, she stated that if the Board is thinking about moving the tower to make sure that it is further away. Mr. Dunn stated that she should not anticipate that they are thinking about moving it. Ms. Soloway stated that she wanted it on the record that she objects to having it moved any closer to their property line. Mr. Dunn stated that the applicant has been very good about providing more noise baffling equipment, removing the climbing pegs so that the children cannot climb the tower. Ms. Soloway concurred that they have been very cooperative. Mr. Dunn stated that neither the Boy Scouts nor Homeland Towers wants to see anybody get hurt there. He stated that he thinks they have gone a goodly distance to ensure that these things don't happen. He stated that he's hoping for Ms. Soloway's mother's sake that isn't going to be intrusively visible from her house.

Mr. Dunn asked if anyone else from the public would like to speak. No one spoke. Mr. Gaudioso stated that they have nothing further to add. Mr. Dunn stated that the Public Hearing would be closed.

Ms. Rubenstein stated that, before the Public Hearing is closed, the ZBA has received a new letter from Tectonic regarding the noise issue – received this evening – and suggested that the Board’s engineer review it. She stated that she has dealt with Tectonic in the past and is sure that their methodology is acceptable, but that she would like to have the Board’s engineer review the documentation. Mr. Maucher asked for clarification of what letter Ms. Rubenstein is referring to. Mr. Dunn stated that he does not see a problem with the letter from Tectonic that refers to additional baffling on the equipment. Ms. Rubenstein stated that there was an earlier letter from Tectonic that analyzed the potential noise levels from the installation, which should be looked at by the Board’s engineer. Mr. Dunn stated that the Board’s radio frequency engineer would not review it. Ms. Rubenstein stated that Morris Associates can look at it to determine whether it is competent methodology and give the Board advice on whether it needs to be referred out for any more review. She stated that she would feel more comfortable if the Board’s engineer were to review it. She stated that she does not have a problem with closing the Public Hearing but, if the engineer states that this is not an adequate letter to address the noise, then she wants the ZBA to be prepared that it will have to address that at a future date. Mr. Dunn noted that the Board can reopen the Public Hearing, if necessary.

Mr. Gaudioso asked that the Board stress to the engineers that the review be done before the next ZBA meeting. Ms. Rubenstein and Mr. Dunn responded that that would be ok. Ms. Dickerson will make sure that Morris Associates has received 10/13/09, 10/20/09, and 10/21/09 Tectonic letters and ask that they review these documents, to make sure that the noise issue that was raised at the Public Hearing was adequately addressed by these letters. Ms. Rubenstein stated that, if Morris Associates determines that it requires review by some other consultant, the Board be notified of this before the next ZBA meeting.

Mr. Dunn stated that he’s sure that the decibel levels that are cited in Tectonic’s letter are accurate. Mr. Gaudioso stated that they recited to the standards that they used to come up with the levels, as well. He asked that they be notified if there is additional information. Ms. Rubenstein stated that usually Morris Associates’ comment letters go right to the applicant. Mr. Gaudioso stated that he only received one memo from them. Ms. Rubenstein stated that that is probably all Morris Associates has done to date. Mr. Gaudioso stated that he has no objection to that.

Mr. Gaudioso asked the date of the next ZBA meeting. Ms. Dickerson stated that it is the week before Thanksgiving, on Thursday 11/19/09. Mr. Dunn stated that the applicant can expect a decision to be rendered on this appeal at the next meeting unless the Board receives some adverse information from Morris Associates.

Mr. Vogt: MOTION TO CLOSE THE PUBLIC HEARING; SECONDED BY T. GERSTNER; VOTE TAKEN AND APPROVED 6-0-0

Ms. Rubenstein asked for clarification on the format of the resolutions. Mr. Gaudioso advised that the Board should do a resolution for Negative Declaration under SEQRA separately from the Special Use Permit resolution.

Mr. Gaudioso thanked the Board for its time. Mr. Dunn extended the Board's thanks to members of the public who were present at the meeting.

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DISCUSSION

1. APPEAL #935 – HOMELAND TOWERS, LLC – SPECIAL USE PERMIT
Grid #6565-03-131274
22 Camp Nootemeing Road, Pleasant Valley, NY 12569

Mr. Maucher asked if the ZBA needs to respond to the Planning Board's comments, that the ZBA looked at their comments and suggestions and have addressed them. He stated that the Planning Board is asking the ZBA to make sure that some things do or don't happen. Mr. Dunn stated that there are some things that are not within the ZBA's purview. Mr. Maucher stated that if it is outside of this Board's responsibility, that's fine. Mr. Dunn stated that as long as the ZBA addresses their comments and it is in the minutes, then the Board has responded. Ms. Rubenstein stated that the applicant went to the Planning Board and the Planning Board asked them to do something more about the noise and then they added the baffling, which is documented in the letter received from Tectonic this evening. She also noted that the Planning Board asked the ZBA to pay attention to the road profiles so that the Board understands the visual impacts. She stated that the ZBA understands that there are visual impacts.

Mr. Maucher stated that the Planning Board expressed some concerns and are asking the ZBA to address them. Mr. Vogt stated that not all of them are under the ZBA's purview. Ms. Rubenstein concurred and added that the ones that are, have been addressed. Mr. Maucher stated that the applicant went to the Planning Board and gave their input to them and the Planning Board decided to give it to the ZBA to let them handle it. Ms. Dickerson stated that the Planning Board provided comments to the ZBA because it is a coordinated review under SEQRA. Ms. Rubenstein concurred that that is why the Planning Board is giving the ZBA its comments.

Ms. Rubenstein stated that the ZBA did a visual impact study to address the visual impact from all of the locations, including the Parkway. She noted that the NYS Historic agency looked at it. Mr. Vogt stated that Board members went out during the balloon study but that he did not drive down the Dervan's driveway because they are ½ mile into the woods off of Davis Road. He noted that there were some impacts from Davis Road – that was the most visible area and that there were two residences where the tower sticks out as if it is sitting in their living room. Ms. Rubenstein concurred but stated that the question is whether it is possible to deny it based on that. Mr. Vogt stated that he cannot see that you could deny based on a visual concern to one or two areas of the town because the detriment to those two people is outweighed by the benefit to the whole community based on other information not just visual. Ms. Rubenstein stated that the real problem the Board has is that the Telecommunications Act does not really give the Board much flexibility. Mr. Vogt concurred that it does not give the Board a lot of latitude.

Mr. Maucher stated that there is no way that the ZBA can meet the Planning Board's request to make sure that it is not visible from the Taconic Parkway. He stated that it could only be done would be if it were in the middle of the winter, when every leaf is off of every tree, and you rode up and down the Taconic and every 50 ft. you did an eye test. Mr. Vogt stated that

he drove the Taconic from Salt Point Turnpike all the way down to Route 44, which should have been the most visible to the Parkway, and it was not visible. Mr. Maucher asked if the ZBA is, therefore, going to ensure that it is not visible. Mr. Vogt stated that during the balloon test it was one of the things that was tested. Mr. Maucher stated that they are asking this Board to do something. Mr. Vogt stated that for the record he is stating that he did drive the Taconic. Mr. Gerstner asked whether it is a NYS law that it not be visible from the Taconic. Mr. Maucher responded that it is not a NYS law. Mr. Gerstner stated that there is something from NYS that requires that the beauty of the Taconic not be compromised. Mr. Maucher stated that it was not a prohibition but rather a request. Ms. Dickerson stated that it is a protected roadway.

Ms. Rubenstein stated that the Board did a visual impact study. Mr. Vogt stated that the ZBA safeguarded it as best it could. Ms. Rubenstein stated that some Board members drove around during the balloon test. Mr. Vogt stated that he went as far as over into Valley Dale because sometimes the farther away you get there will be some property owners where it will be highly visible. Ms. Rubenstein stated that there already is a tower in that area, as well as the transmission lines. Mr. Vogt stated that you did not see this proposed tower during the balloon test because of the topography – it is not a visible entity there. However, he stated that it will be visible to certain people on North Avenue, on Allen Road, and there were one or two spots on Hibernia. Ms. Rubenstein asked if he thinks it will be more visible than the one that's there now across from Dick Czech's. Mr. Vogt responded no because it is a different type of a tower – a monopole. Mr. Kish stated that it will be like the NYS police's tower. Ms. Rubenstein asked whether, because of its location, it will be more visible than the one that's already there. Mr. Vogt responded no because it is further down in. He stated that it will be visible from Dick Czech's also. Mr. Dunn stated that it will be visible with the naked eye from his driveway. Mr. Vogt stated that it is not any more displeasing than the two towers that he's got visible on Pine Hill.

Ms. Rubenstein stated that she does not think there are a lot of choices. Mr. Vogt agreed and stated that he does not think they will change the location. He stated that there are not a lot of choices because the topography will change and they would be going further down the hill and, therefore, need a taller tower to compensate to get the same result. Ms. Rubenstein noted that the Board's radio frequency engineer looked at that location and said that it is the best location. She stated that that is what governs – the best location – under the Federal law. Mr. Vogt stated that the Board is not qualified to say that it should be moved. Ms. Rubenstein suggested that the Board is qualified to say that, but that the Federal government has pre-empted the Board. Mr. Vogt stated that the Board did what it could, it invested its time to safeguard the community by checking for the visibility. He stated that the balloon test was flown for an extra hour and a half because they started late. He stated that he met some of the people as he drove around. He noted that there will be some visibility, but that he did not see anything from the Taconic side. Ms. Rubenstein stated that camouflaging it will not improve it. Mr. Kish agreed that it would make it worse. Ms. Rubenstein agreed.

With reference to the other request from the Planning Board regarding the Boy Scout Council's support of this tower, Ms. Rubenstein stated that the ZBA has addressed this. She noted that the Council has stated its support for the project. Further, she stated that although there has been testimony from a couple of people who are not happy with it, she does not think the ZBA is allowed to deny because individuals don't like it. Mr. Vogt agreed and stated that the people who will be impacted visually by the tower have not been at the public hearings. He stated that he was on their property and discussed it with family members and

they have not come before the ZBA to voice their opinion about the visual impact. He stated that, apparently, from their standpoint it is not an issue.

Ms. Rubenstein also pointed out that the Boy Scouts can relocate the lean-tos. Mr. Vogt stated that they can abandon the lean-tos that are up there. Ms. Rubenstein stated that they can build new ones with the money they will be getting from this project. Mr. Vogt stated that that is exactly what they were saying – that there are improvements that are needed at the camp. Mr. Gerstner stated that ones who are concerned seem to be the ZBA and Mr. Schollmeyer. Mr. Vogt stated that Mr. Schollmeyer can address his concerns to the Boy Scout Council. Mr. Gerstner stated that the Council does not seem to be concerned about this. Ms. Rubenstein agreed and stated that they are the decision-makers. Mr. Vogt stated that it is up to them to abolish their campsites due to their safety concerns because they are making the business decision. He stated that if they make a poor choice it's something they have to live with. Ms. Rubenstein concurred. Mr. Vogt stated that the ZBA is concerned for the safety of the whole township. Ms. Rubenstein stated that you have to assume that it is their property and that they have made a reasoned decision about doing this. Mr. Dunn agreed that they would have to be reasonable because their *raison d'être* is the scouts. Mr. Vogt asked why they would want to do something that's detrimental to their health, safety, or welfare of a growing scout.

Ms. Rubenstein asked the Board whether she should put into the resolution Mr. Heavner's name and phone number for anyone who wants to complain. Board members concurred. Mr. Vogt stated that Mr. Heavner is part of the volunteer Council and that he gave the Board his number and made it known that if anyone has concerns, that's where they should be addressed.

Mr. Maucher noted that Mr. Schollmeyer and the Planning Board expressed their concern for the safety of the boys. He noted that an 8 ft. chain link fence is not going to keep anybody out. Mr. Dunn also noted that the climbing pegs will be 20 ft. off the ground. Mr. Maucher stated that that will only discourage them. Ms. Rubenstein noted that the boys are supervised while they are at the camp. Mr. Kish stated that if someone wants to do it, there's no way you can stop them. Mr. Vogt stated that if the boys are going to take a rowboat out onto the lake unsupervised – there's no difference. Mr. Kish stated that if the climbing pegs are 20 ft. up, the boys will just get a rope and climb up. Mr. Maucher agreed. Ms. Rubenstein stated that there are structures all over town – like the transmission line right in the center of Forest Valley. Mr. Kish asked how many people have climbed the other towers in town. Board members responded none that the Board is aware of. Mr. Kish noted that it is on private property. Mr. Gerstner stated that nobody is up there except a man on a tractor. Mr. Vogt stated that if the Boy Scouts of America Council is aware that children are climbing the tower, then it's their business to approach the owner of the tower to increase the security. Ms. Rubenstein concurred and stated that, in terms of a zoning issue, the Board has addressed the issues adequately. She stated that there is nothing that the Board would do differently for this property than for any other property. She stated that the property owners have to secure their property.

Mr. Gerstner stated that the major concern that the public had was articulated by Mr. Schollmeyer and that the ZBA has addressed those concerns about noise – they put in the noise reduction and made the pegs 20 ft. higher. He stated that the ZBA suggested that Mr. Schollmeyer talk with the Boy Scout Council. Mr. Vogt recalled that he stated that he did a

year and a half ago. Mr. Gerstner noted that, a month ago, Mr. Schollmeyer said that he had not talked to them.

Ms. Rubenstein recalled that there was another member of the public who is also a volunteer who testified in favor of the project – he was happy to see that the camp would be getting income and was very positive towards the fact that the camp was going to benefit from the money. Mr. Vogt stated that the camp needs money to increase benefits and things at the campsite. He stated that you cannot begrudge all of the boys when it's also good for the community. Mr. Gerstner stated as long as safety concerns weren't overlooked. Ms. Rubenstein stated that it's a huge liability concern for the property owners and, therefore, it is hard to imagine that they would not take the concerns seriously. She suggested that the Boy Scouts are probably going to abandon those campsites. Mr. Vogt stated that they have 300 acres and that it is their decision whether they abandon them or not use them as often – that it is not the ZBA's purview.

Ms. Rubenstein mentioned that her children went to summer camp and there were lakes and boats and the children were ok. She stated that they don't generally do stuff. Mr. Vogt stated that there's always one or two that will try stuff and want the merit badge for tower climbing – the monopole merit badge. Ms. Rubenstein suggested that we are overstating the safety concerns. Mr. Maucher stated that kids are kids – they do stuff. Mr. Vogt stated that the Board was interested when the concern was brought to it and the Board addressed it and now we are going to look into the new information about noise reduction. Ms. Rubenstein stated that the ZBA wanted to make sure that the applicant looked at it, and that they have. She stated that she is satisfied. Mr. Kish stated that 67 db – none of the neighbors will hear that – that the birds are louder than that.

Mr. Maucher asked whether it is the ZBA's responsibility to ensure the safety of the children. Ms. Rubenstein responded that you cannot. Mr. Maucher stated that that is not what he is asking – that it is a yes or no question. Mr. Kish stated that the Board is not liable for them. Ms. Rubenstein stated that the ZBA has to look at whether there are safety issues or not. She stated that they have identified ways to address safety and they are the same that would be done for the same type of tower on private property. Mr. Vogt noted that at one of the other sites they added razor wire to the top of the fence. He noted that that is not the ZBA's purview. Ms. Rubenstein noted that it is a site plan issue. Mr. Kish stated that they have to go through the Planning Board for site plan. Mr. Vogt stated that the Planning Board will scrutinize this project. He stated that he would not want to see razor wire on top of that fence with Boy Scouts in the area.

Mr. Maucher asked about the inspection schedule on the site. Mr. Gerstner stated that he thinks it's monthly. Mr. Dunn stated that it would be in the minutes. Ms. Rubenstein stated that she thinks it more frequent than monthly. Mr. Vogt stated that there's a caretaker on the property full time.

Ms. Rubenstein stated that her bigger concern is that she does not want to see any more towers, which is a bigger concern to her than whether some kids climb over the fence. She stated that she does not know how we can ever stop it. Mr. Vogt stated that he does not see where Verizon needs to increase their coverage because he's in Salt Point and the surrounding area every day and there's no place where his Verizon wireless cell phone does not get service. He stated that he's not the radio engineer to make that determination. Mr. Gerstner stated that there's no cell service in the James Baird State Park. Mr. Vogt noted

that the cell tower that was approved by the Taconic was never erected. Ms. Rubenstein recalled that the ZBA approved a camouflaged tower and it was never put up. She stated that you could not see it from anywhere. Mr. Vogt recalled that he and Ed Feldweg drove up to the site in the back of a pick up truck, but that they never built the tower. Mr. Kish stated that eventually they will get saturated. Mr. Vogt noted that some of the other carriers – their cell phone technology does not carry as far – AT&T, Nextel, Sprint.

2. MINUTES

MOTION TO APPROVE THE MINUTES OF THE 9/24/09 MEETING AS WRITTEN WAS CARRIED UNANIMOUSLY.

Meeting was adjourned at 8:40 p.m.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represents unofficial minutes of the October 22, 2009, Pleasant Valley Zoning Board of Appeals meeting. They are not official and should not be construed as the official minutes until approved.

_____ Approved as read

_____ Approved as corrected with deletions/additions

PLEASANT VALLEY ZONING BOARD OF APPEALS

November 19, 2009

This meeting of the Pleasant Valley Zoning Board of Appeals took place on November 19, 2009, at the Pleasant Valley Town Hall, Route 44, Pleasant Valley, New York. Chairman John Dunn called the meeting to order at 7:32 p.m.

Members present: John Dunn, Chair
 Bob Maucher
 Steve Kish
 Tim Gerstner
 Helene Czech
 Ed Feldweg, Alternate

Absent: Lisa Rubenstein
 Ron Vogt

Also present: Bruce Donegan, Zoning Administrator

1. APPEAL #935 – HOMELAND TOWERS, LLC – SPECIAL USE PERMIT
Grid #6565-03-131274
22 Camp Nooteeming Road, Pleasant Valley, NY 12569

Mr. Robert Gaudio, attorney with Snyder & Snyder, was present representing the applicant.

Mr. Dunn noted that the Public Hearing was closed at the October 2009 ZBA meeting. Also, he reported that Morris Associates submitted a letter dated 11/19/09 (original on file) in which they report that all of their previous comments have been addressed and all items have been completed. Therefore, he stated that all of the engineering concerns have been satisfied.

Mr. Dunn read into the record salient portions of the **SEQRA Resolution for Negative Declaration** (original on file).

Mr. Dunn: **MOTION FOR SEQRA RESOLUTION FOR NEGATIVE DECLARATION**

SECONDED BY T. GERSTNER

VOTE TAKEN & APPROVED 6-0-0

B. Maucher	Yes
T. Gerstner	Yes
E. Feldweg	Yes
H. Czech	Yes
S. Kish	Yes
J. Dunn	Yes

With regard to the Resolution to grant the Special Use Permit, Mr. Maucher pointed out that the word "Property" is used throughout the document without being defined in the first paragraph. Ms. Dickerson suggested the correction – to insert ("Property") in the first paragraph following reference to 22 Camp Nootseem Road. The correction was made.

Mr. Dunn read into the record the salient portions of the **Resolution to grant the Special Use Permit**: conditions of approval are as follows

- a. The Site Plan shall be revised to reflect the equipment specified in the revised noise study prepared by Tectonic Engineering & Surveying Consultants, P.C., dated November 6, 2009 and the Verizon Wireless generator shall normally be set to cycle on a weekday during the daytime, except in an emergency or during other special circumstance.
- b. Homeland Towers shall provide a written agreement, secured by a bond, to remove the tower within 180 days if it is no longer used and to restore the property. The amount of the bond will be set by the planning board during site plan review.
- c. Structural Design drawings for the tower shall be submitted with the building permit application and a certification that the tower was constructed as designed shall be submitted prior to the issuance of a Certificate of Compliance in accordance with Section 98-27.2-4(B)(1) of the Zoning Code.
- d. Site Plan approval from the Planning Board in accordance with Section 98-41 of the Zoning Code shall be obtained.
- e. The applicant will obtain all applicable building permits and Certificates of Compliance.
- f. A Driveway Maintenance Agreement shall be provided to the Town.
- g. Payment of all fees.

Mr. Dunn: **MOTION TO GRANT SPECIAL USE PERMIT WITH
CONDITIONS AS LISTED ABOVE**

SECONDED BY E. FELDWEG

VOTE TAKEN AND APPROVED 6-0-0

B. Maucher	Yes
T. Gerstner	Yes
E. Feldweg	Yes
H. Czech	Yes
S. Kish	Yes
J. Dunn	Yes

2. MINUTES

MOTION TO APPROVE THE MINUTES OF THE 10/22/09 MEETING AS WRITTEN WAS CARRIED UNANIMOUSLY.

Meeting was adjourned at 7:45 p.m.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represents unofficial minutes of the November 19, 2009, Pleasant Valley Zoning Board of Appeals meeting. They are not official and should not be construed as the official minutes until approved.

_____ Approved as read

_____ Approved as corrected with deletions/additions