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**REGULAR MEETING OF THE VICTOR PLANNING BOARD, FEBRUARY 10, 2009**

NOTE: Per Robert Freeman Esq., NYS DOS director of Committee for Open Government, addresses of individuals listed in these minutes have been removed. Complete minutes are available in the Town Clerk's office during regular business hours.

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A regular meeting of the Town of Victor Planning Board was held on February 10, 2009 at 7:00 p.m. at the Victor Town Hall at 85 East Main Street, Victor, New York, with the following members present:

**PRESENT:** Robert Davis, Chairman; Dawn Grosso, Vice Chair (late arrival); Joe Logan, Rosemary Graham, Dan Benulis, Ernie Santoro, Heather Zollo

**OTHERS:** Wes Pettee, Town Engineer; John Wilson, Town Attorney; Kim Kinsella, Planning/Zoning Supervisor; Cathy Templar, Planning/Zoning Secretary; Marge Elder, Conservation Board; Donald Young, Mark DeChick, Bonnie Pagano, Sandra Packard, Ruth Lund, Jeff Helfer, Scott Harter, John Billone Jr., Jennifer Brown, Jeff Cody, Sandee Cody

**APPROVAL OF MINUTES**

On motion of Joe Logan, seconded by Rosemary Graham

RESOLVED that the minutes of January 27, 2009 be approved with changes.

|                 |     |
|-----------------|-----|
| Bob Davis       | Aye |
| Joe Logan       | Aye |
| Dan Benulis     | Aye |
| Rosemary Graham | Aye |
| Ernie Santoro   | Aye |
| Heather Zollo   | Aye |

Approved 6 Ayes, 0 Nays,

A request was made by Ms. Zollo and Chairman Davis to include copies of Zoning Board of Appeals decisions and minutes that are related to applications before the Planning Board.

**DECISION**

**WILSON 3 LOT SUBDIVISION**                      8035 County Road 41                      Appl No. 1-MS-09

Applicant would like to subdivide 95 acres into three lots. Lot #1 would consist of 39.339 acres and the existing house and barns. Lot #2 will consist of 54.277 acres and a single family dwelling will be constructed. Lot #3 will consist of 2.009 acres and contain an existing house.

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Chairman Davis – We talked about this at the last meeting. (Chairman Davis asked for any additional comments/questions from the Board and there were none. The SEQR and Resolution were read).

**SEQR**

On motion of Ernie Santoro, seconded by Heather Zollo

WHEREAS, the Town of Victor Planning Board reviewed the Unlisted Action on February 10, 2009 and identified no significant impacts; now, therefore, be it

RESOLVED, that the project, Wilson 3 Lot Subdivision, will not have a significant impact on the environment and that a negative declaration be prepared.

|                 |     |
|-----------------|-----|
| Bob Davis       | Aye |
| Joe Logan       | Aye |
| Dan Benulis     | Aye |
| Rosemary Graham | Aye |
| Ernie Santoro   | Aye |
| Heather Zollo   | Aye |

Approved 6 Ayes, 0 Nays,

(Dawn Grosso arrived at this point)

**RESOLUTION**

On motion of Ernie Santoro, seconded by Joe Logan

WHEREAS the Planning Board made the following findings of fact:

1. An application was received on January 5, 2009 by the Secretary of the Planning Board for a Minor Subdivision entitled Wilson 3 Lot Subdivision.
2. It is the intent of the applicant to subdivide 95 acres into three lots. Lot 1 will consist of 39.339 acres and contain the existing house and barns, lot #2 will consist of 54.277 acres and a single family dwelling will be constructed on the lot and lot #3 will consist of 2.009 acres and contains an existing house.

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3. The application was deemed to be an Unlisted Action pursuant to Section 8 of the New York State Environmental Quality Review Act Regulations and a Short Environmental Assessment Form was prepared.
4. The Conservation Board reviewed the Unlisted Action on January 20, 2009 and identified no significant impacts.
5. The Planning Board, as lead agency, found that there would be no significant impacts to the environment as a result of the action and directed that a negative declaration be prepared.
6. The Ontario County Planning Board reviewed the application administratively and referred the application back with no comments.
7. In a letter dated January 20, 2009, LaBella Associates stated that technical aspects remain to be addressed.

NOW, THEREFORE, BE IT RESOLVED, that the application of James Brush, 3 Old Lyme Road, Pittsford, New York, Minor Subdivision entitled Wilson 3 Lot Subdivision, Subdivision plan drawn by Edwin Summerhays, dated December 31, 2008, Site/Utility & Erosion Control Plan and Detail sheet drawn by Professional Engineering Group, dated January 2009, received by the Planning Board January 5, 2009, Planning Board Application No. 1-MS-09 BE APPROVED WITH THE FOLLOWING CONDITIONS:

**Conditions that must be met prior to the Chairman signing the minor subdivision plan:**

1. That no final signatures will be given on the plans until all legal and engineering fees have been paid as per Fee Reimbursement Local Law adopted November 25, 1996.
2. That the comments in a letter dated January 20, 2009 from LaBella Associates be addressed.
3. That comments from the Fishers Fire District as they relate to subdivision and site plan issues be addressed. All vehicle access points should have a minimum of a 13' height clearance, a 20' width clearance and a 30' radius are desired. For driveways that extend beyond 250', recommend a turn around point near the residence to allow for emergency vehicles to turn around.
4. That before the Planning Board Chairman signs the approved film original(s), the developer should submit three (3) copies of electronic files to the Town, and then one (1) copy should be forwarded to the Town Engineer's office to confirm that the data on the electronic files are the same as the approved subdivision plans.
5. That Section 5.1 Standard Approval Conditions for all Subdivisions (Major & Minor) in the Design & Construction Standards be met.

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**Conditions that are on-going standard conditions that must be adhered to:**

1. That the minor subdivision comply with Town of Victor Design and Construction Standards for Land Development, including Section 5.
2. That approved subdivision maps, including conservation easements, lot consolidations and lot line adjustments shall be submitted in digital format, Autocad 2002, or latest version, effective January 1, 2004 (per Town Board Resolution #193 of June 23, 2003).

AND, BE IT FURTHER RESOLVED, that the Planning Board Secretary distribute the appropriate standard conditions with the Planning Board's approval letter.

|                 |     |
|-----------------|-----|
| Bob Davis       | Aye |
| Dawn Grosso     | Aye |
| Joe Logan       | Aye |
| Dan Benulis     | Aye |
| Rosemary Graham | Aye |
| Ernie Santoro   | Aye |
| Heather Zollo   | Aye |

Approved 7 Ayes, 0 Nays

**INFORMAL DISCUSSION**

**JOHN BILLONE**

Cobblestone Creek - Highland Green Subdivision

Informal discussion for new plan for Lot #629 in Cobblestone Creek

Chairman Davis – I have a letter that came in today from the Attorney representing the developer. So if you didn't get a chance to pull it off of your email, here it is. (the letter was distributed).

Mr. John Billone Jr addressed the Board.

Mr. Billone – I'm John Billone Jr., the son. My Mom and Dad are out of town for a couple of months. As we stated, we were here back in June to present a change in the building lot that my parents purchased. At that time, we were also with Bob Cantwell from BME and we presented that to you. Again, at that time, we were seeking about 4400 sf of additional property which was outside the property. After we left that meeting and we had some meetings with our neighbors, we decided that we would hire an architect to build a house on the property boundaries. We did

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that, we designed a house, we went to the town for some permits and quickly found out that there were also utility easements that cut across my parent's property. In addition to the utility easement, there was a gas main on my parent's property. So it went from a 60 x 80 lot to a 60 x 60 lot. We had the gas main staked out, we had to build 10 ft from the main and at that point, we decided to reconvene with the neighbors. At that point, we were seeking 11 ft of relief so that they could still build the house that was originally designed. I believe you do have that plan. If anyone needs clarification, I would be happy to go over that. It's basically the bottom right hand corner where that utility easement is, that again encroaches on the property.

We met with the neighbors; Jeff and Ruth are with us tonight. Again, what we are seeking to do is get 11 ft of property. Now one of the issues, I think it was a legal issue. We did talk with the developer's attorney Anne Riley. We found out that the declaration could be amended assuming we could get 75% of the lot owners to agree with this amendment. Other than that, we've done absolutely nothing simply because we don't see a lot of benefit moving forward with the engineer, the architect until we at least presented it to this Board for some preliminary direction. Again, after meeting with the neighbors, we believe they will endorse what you are looking at and that the measurements now we are talking about are substantially less than what we were originally looking for.

Chairman Davis – For the Board, the last time we got together, I think we actually suspended our discussion because there was confusion between what people believed was in the HOA and where the HOA stood and had the community actually started to constitute that board or was it still held by Ken Raymond.

Mr. Billone – If I can interrupt you. The Board has been transferred. Ken Raymond no longer is the Board of Directors, that has been transferred to the few homeowners that are up there now. I will say after talking with the attorney, that had no relevance or bearing on the acquisition or lack of acquisition of HOA property because it still represents a 75% vote. Regardless of the Board composition, Ken will still have his vote as the rightful owner of so many lots and every homeowner up there also gets a vote. I only say that because that's what was explained to me. The composition of the Board which we didn't know at the time, but according to the attorney, does not have any relevance with the ability for us to acquire HOA property.

Mr. Wilson – Do you have Attorney Riley's letter, did you get a copy of that?

Mr. Billone – I'm the one that forwarded it to the Board.

Mr. Wilson – I was only going to point out to you that the declaration and her letter observe both, that the requirement is not for 75%, it's for 24 of the lot owners.

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Mr. Wilson – I thought that was 75%, it may not be 75%. I'm well aware of the 24 number, but you are right.

Chairman Davis – As John pointed out, we don't have any jurisdiction over that but I think our point back to everybody was maybe you want to resolve that. Make sure that is locked down before you come in and we talk about what's able to happen within our jurisdiction with that piece of land. If that is all resolved...

Mr. Billone – It's not, simply because to go to that next step requires another investment. I think my parent's position is, "what battle do they want to choose to fight"...maybe that's not a good selection of words. They are trying to build a home on this parcel. They were prepared to do that and then had another obstacle with the gas main. I'm comfortable in speaking with the neighbors. The folks we have talked to so far, I believe the 24 are not going to be an issue. So that's a burden that we have obviously. But also because of the nature in which the last meeting ended, I really didn't feel comfortable at least presenting where we are today to this Board because, again to go down that path, pay for more drawings, architectural work, engineering work to get the endorsement of the neighbors and then to come back and find out that I overlooked something from the Planning Board is certainly not a direction that we care to go. I appreciate the fact that we are not doing any formal voting. I just felt that we at least needed to present to you where we stood today because it's quite a bit different compared to where we were last time we presented.

Chairman Davis asked Mr. Wilson if he had an opinion of the sequence of what should be happening.

Mr. Wilson – I don't think there is a position to formally act until he inquires all of the signatures that are necessary for consent. I'm not insensitive to his desire to see whether the plan is sufficiently different to this Board to be more agreeable. The last time we looked at it, the Board informally expressed (inaudible), they didn't like the proposal. So, it's the Board's will as to whether you care to express informally with this modified proposal or not. But certainly you are not in a position at this point to take formal action on it, in my opinion. I agree with the attorney's interpretation of the declaration, if you will.

Mr. Billone – I just wanted you to know that I didn't expect that either. It was again, maybe for some sort of a better vibe or feeling that we are making a good choice by moving forward, to continue down the path of building this house.

Mr. Jeff Helfer – My name is Jeff Helfer and I live in the house directly across the street from where John's father wants to build. I just have one question (Mr. Helfer asked John Wilson for

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his last name for his record). The question that I was going to raise before was the issue and it has since been clarified by Mr. Wilson and that is what the process would be to go forward. From our perspective and I'm also the Director of the Home Owner's Association as is Ruth Lund behind me. Dr. Sternberg couldn't be here tonight with pneumonia, he's the third member. Talking to Ann Riley, Ken Raymond's attorney, the developer's attorney and talking to Jim Grossman, our HOA attorney, their collective opinion is as Mr. Wilson indicated, there needs to be the approval of 24 homeowners. I raised my question before that point was clarified. But I will say before I turn the mic to John, that as an individual, as a neighbor, we are very much in favor of building a home and also Dr. Sternberg and Dr. Karen Dickinson are both in favor as well also as neighbors and the other 2/3 of the HOA Board. Thank you.

Mr. Wilson – The Board as presently constituted is in favor of this modified proposal?

Mr. Helfer – We understand that it's not a Board issue. We understand that the Board has no standing. In order for the home to be built, that it's up to John and his father to get permission of 24 lot owners. The only influence that I believe we have which from what Ann Riley and Jim Grossman have agreed upon, seems like you agree as well, is that we are homeowners. So we offer our opinion whether for or against as homeowners, not as board members. That's my understanding, that's also Dr. Sternberg and Karen Dickenson's as well. Both of us are in support of, but I can't speak for Ruth Lund who is the third one behind me.

Ms. Graham – So 24 people have to be in approval of this for this house to go forward?

Mr. Logan – For the acquisition of property with the HOA.

Ms. Ruth Lund from (address removed) – Maybe I could clarify it a little bit. The declaration does not empower the HOA to transfer HOA land to a private lot owner. The only way the HOA could be empowered to do so would be to amend the declaration. To amend the declaration, the provision calls for at 24 unit owners to sign the document. Units are defined in the declaration as whole structures. Ann Riley said that 24 lot owners are fine. Lot is a lot whether it is developed or not. So there begs the question, could somebody, if they wanted to, challenge to have the declaration enforced as written. But that aside, assuming that it's just 24 lot owners, Ken Raymond currently owns 12, so on the document, he would sign 12 times. Polidori & Ferri own 7. If they approve, they would sign 7. Then John would have to go to the individual homeowners to get more to make up the 24 that is required. Then I assume that the instrument would be filed with the County Clerk to become effective and at that point the HOA would be empowered to transfer, convey, whatever, the land to the Billones.

Ms. Graham – So the issue isn't those two developers, it's the 5 or 6 homeowners?

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Ms. Lund – I don't know where Polidori & Ferri stand.

Chairman Davis – There are probably 30 to 40 lots up there. How many lots total?

Ms. Lund – There are 29 lots.

Chairman Davis – So any 24 of those 29 constitutes enough to amend the declaration?

Ms. Lund – To amend the declaration to empower the HOA to transfer.

Mr. Santoro – They may have to go to the Attorney General too.

Ms. Lund – I'm not sure legally, I know it has to be filed with the County Clerk. But I don't know legally when it becomes effective so that the HOA could legally transfer so that John could come before you to get permission to have the lot lines changed so that he could get building permits, etc.

Ms. Graham – We really can't do anything until this is settled.

Ms. Lund – I think what John wants to get a sense of is, if the homeowners approve, will you approve? Especially, given the fact that it was 7 to 0 last time around that you were inclined no to approve the plan. I mentioned to John earlier that last time around, even before the meeting, I noticed in the file that the Conservation Board recommended against approving it and that he might want to talk with the Conservation Board and see what their objections or concerns are and perhaps see if they could be addressed if those objections are still relevant.

Chairman Davis – As I think about that and this might sound more insidious than I mean it to be, but if we say we are in favor of it, then is there a discussion that says that “the Planning Board is okay with it, so why shouldn't we sign off on it” or should we just wait until this is legally clean and then bring it back in and then we would comment on it.

Ms. Grosso – It feels like we are being asked to be an advisory board.

Ms. Lund – If I could just say too, that I like John's parents very much and I think they would be lovely neighbors but I'm not prepared to say that I would endorse anything until I actually see what's written because I do have concerns.

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Mr. Logan – I'm a little confused of the ownership path. Do they actually own the property yet or are they looking to buy it and won't buy it until the ability.....

Ms. Lund – They own Lot 629 and they have owned it since December '05 or something like that.

Chairman Davis – And the issue is that you're looking for the HOA to approve building outside the spec of the lot and therefore there is land transference. So it's two things.

Ms. Lund – We want them to pay any taxes on any land they build on so it would involve a formal conveyance.

Mr. Wilson – I think what they have to do, the declaration forbids the conveyance of the common areas and they need to change the declaration. To do that, they need 24 unit owners....has Mr. Grossman, the attorney for the HOA expressed a view as to that acute question that you brought up about lots versus units?

Ms. Lund – Well, Jeff emailed him and he emailed back that he agreed with Ann. But that doesn't mean that another attorney might disagree.

Mr. Helfer – (inaudible) by that position, Billones could never build until (inaudible). It's ludicrous to say that the units wouldn't be (inaudible).

Ms. Lund – It does but they are separately defined and they're never used interchangeably in the document. So again, I'm not trying to suggest that some legal fight might ensue. I'm just saying....

Chairman Davis – This is probably why at the end of the last meeting, we said that you probably want to all lawyer up and get this worked out because there are a lot of different statements made in the different contracts. I didn't want to put us in the middle of trying to figure out whether we were trying to make the right decision at the right time. I think John (Wilson) is very clear that at this point, you have to get to the place where the declaration is amended in such a way that you can take over the land that you are looking to take over. Then we have to give you an opinion of what is going on with that site.

Mr. Billone – We left last meeting with a very clear understanding that this was going absolutely no where. Had we decided not to pursue it or bring suit against the....whatever...there are assumptions that we are making here and I'm assuming based on the fact if we can get 24 signatures on a declaration that is drafted by an attorney, that we have some level of comfort

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knowing that we could present that to this Board and have a fairly good understanding that if we "dotted our i's and crossed our t's" that we would be able to obtain a building permit. I certainly can not ask you to make a comment on something that is not before you, but like I said, when we left last time, clearly you had enough information to have everyone vote to deny it. Again, maybe someone mentioned just more of a sense of.....

Chairman Davis – There wasn't a vote. It was an informal discussion then.

Mr. Billone – That's what I meant.

Mr. Benulis – If you look at that total development, what portion of that is owned by the HOA as compared to the usable area?

Mr. Billone – I don't have a clue. I don't know.

Mr. Benulis – Well it's greater than 50% because it has to be. I was just wondering is it 60 or 70, do we know?

Mr. Billone – Not off the top of my head, I don't.

Mr. Benulis – Is that all Conservation easement? This HOA land that we are talking about.

Mr. Billone – I don't believe so.

Ms. Lund – It's heavily wooded. It's essentially a drainage area. It's a steep slope down where the Billone's will be building.

Mr. Billone – On the development plan because I've seen the plan, it's all common land.

Mr. Benulis – Which is probably open space.

Chairman Davis – None of the language we've seen calls it a Conservation Easement. It says it's "common land" within the HOA. That's probably why, at this time, it probably would be a real good idea to have a discussion with Marge (Elder) and her group (Conservation Board) about what their original objections were and based on the new proposal, how many of those objections stand or don't stand any more.

Ms. Lund – I can just give my true sense as a homeowners because there might be some bearing on a future action that this Board might be called upon to render. A couple of concerns that I

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have; #1 is the idea that depending on how the amendment is worded, it could be used as a precedent so that a future owner could buy the lot next to Billone's and say "Gee my view would be so much better if I had another 12 ft of common area". So they come to the HOA and say "you gave it to them and we want it too" and we say "Well, do an amendment" and they say "You don't have to, you can't treat us any differently than you treated them." We might be in the position where we are forced to either give the land over or go through an expensive legal process to say "no, we don't have to". Again, however, that person comes before the Board. You could see where that woodlands area is kind of really, really shrunken down depending on how many lot owners want to enlarge their lots and believe they are entitled to because the HOA transferred to this...

Chairman Davis – But it seems as though those are issues with the members of the HOA and the declaration of the HOA. It has really not much to do with how we would.....

Ms. Lund – So you are saying, whatever the HOA approves is fine with you?

Chairman Davis – I think within the terms and conditions of the HOA. But then there are *building and design standards* within the town that are not really of issue right now. In some ways, the issues are driven by those *building and design standards* that have forced repositioning of the land and things like that which I think takes us back to where we were at the end of the last meeting that said.....part of the reason I think we were 7/0 about it.....if you really wanted us to vote right now, you really wouldn't like the outcome because there was so much confusion about where this stands legally between the lot and/or house owners and what could or could not be done. I think it was our general opinion, uniformed by council that we shouldn't take an action on this right now.

Mr. Billone – I totally got that. Had we known back then that this lot is sitting between two easements, one's a utility easement and one is the Town of Victor easement for sewer....

Ms. Graham – When you bought the property, wouldn't your attorney point that out to you?

Mr. Billone – To be honest, it was never disclosed to us that there was.....we didn't have any maps....I'm not saying what happened was right...I'm just saying that...

Ms. Graham – But how do you buy something, not looking at a map?

Mr. Billone – I think we had a map. I don't think we had a survey showing the utility easements. We did not have that.

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Ms. Lund – ...it's down in the Building Department and when I checked with Alan Benedict, he said "All of those easements were in place when the subdivision was laid out, including the clipped corners, etc."

Ms. Graham – So once again, it's an issue for their attorney.

Chairman Davis – I think we understand where you are. We would love to have you keep us up to date on how you are progressing here, but I go back to saying that I think you have to fix and get an agreement with the HOA that says everybody is good with the proposal and then come back here. Whatever that entails legally, I don't know. Until that happens, we will take no action here.

Mr. Billone – That's fine. Thank you.

Mr. Helfer – I need to disagree with my neighbor Ruth and that is that Jim Grossman, our attorney when presented with the issue Ruth raised about precedent on giving property to a land owner and what would the next landowner want and so on, he believed that was not a risk. With what we are willing to do for John and his father Jim, he did not consider making this a precedent. For what it's worth.

Chairman Davis – I think we are pretty clear on where we are. We will take no action until you have a complete story that our council has looked at and said that we are in a position to move forward on what our job would then be in helping the Billones put a house up on any lot.

Mr. Billone – Thank you

Mr. Wilson – Looking at the minutes from the previous presentation, there is a reference that there are about 15 plus or minus acres of HOA land.

Mr. Benulis – I wonder what the total land area is. What I'm just getting to is if there is 75% green space, 50% or 56%....I'm just curious.

Chairman Davis – And to what degree is it controlled by anything other than the HOA?

### **DISCUSSION**

Chairman Davis asked Jeff Cody to share results from the Town Board meeting.

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Mr. Cody said the Town Board looked at the **illumination code** and that a small committee was formed to look into this. It was stated that the illumination code that was drafted a few years ago was waiting until the State was bringing something forward regarding this. The Victor code was put on hold until this took place. This is once again being looked at and revised.

Ms. Zollo stated the illumination code that was drafted in 2005 was never voted upon. It was set aside because of a State issue.

Mr. Cody discussed the **Homarama** request. A mass gathering permit was issued for this at Summerset Subdivision. Chairman Davis asked about where people would be parking. Mr. Cody stated that there is an agreement with Eastview Mall and having people shuttled to the site. The Rochester Homeowners Association notified the Town Board that it would take place two weeks during the month of June 2009, but the date has not been finalized.

Mr. Cody stated that a **limit of 2 years was set for Chairman's** for the Planning Board, Zoning Board and Conservation Board.

Mr. Cody stated that the **resolution for a transparent government** was tabled. This would only apply to applicants that have an application currently in the system, not to residents of the town that want to approach their elected or appointed officials to speak with them.

Ms. Grosso – I had a question for you Jeff and I don't know how accurate it is. We all had a recommendation to the Town Board regarding a matter in which we could get a restaurant up at High Point. We actually all agreed on something. I made a recommendation to the Town Board which the Town Board voted 4 to 1 against our recommendation. It was my understanding that the Town Board never received the minutes or recommendation until the day of.

Mr. Cody – You might be right Dawn. I know we did receive them and it may have been the night of the meeting. John (Wilson), I know you and Sheila (Chalifoux) had looked at this and Sheila said that you can't control tenancy with a special use permit. That is not the object of the special use permit. That was something that came from Sheila. John and I looked at this and I know having attended the meeting prior to that, that was the main concern. You guys were all for letting Fred (Rainaldi) have that type of restaurant up there, but you were worried about the next guy. Did that memo get distributed to the Planning Board members from Boylan Brown regarding opinion about the special use permit doesn't control tenancy?

Ms. Kinsella stated that we had not received this memo.

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Mr. Wilson stated that it didn't get distributed within Boylan Brown as he had not seen it either.

Mr. Wilson – I did talk to Sheila about that and I think the point Jeff is speaking to because it came out of my own experience. My wife and I wanted to form a little B&B once in Williamson some years ago. There was nothing in code so they passed a special use permit and they attempted in granting the permit, which they happily did, to limit it to our use with the right to, I guess revoke or not. I did some research back then and typically although many boards think that that can be done, it's the use you can regulate, but not necessarily the owner. There are some provisions, I know Brighton has one, I think he talked to us about that that night. That if there is to be a change, they at least have to provide notice. If the memo came out along those lines, it did reflect my thinking as well as Sheila's. Was that the gist of it?

Mr. Santoro – You can limit the time that this use can go and it has to be renewed.

Ms. Zollo – Wasn't that our intent?

Chairman Davis – I think the issue that has me more bothered is that we spent a long time deliberating that and the Town Board never got the information.

Ms. Grosso – That's actually where I was going with this.

Chairman Davis – That's unacceptable to me. Why do we spend time talking about this stuff?

Ms. Grosso – And my understanding from other Town Board members is that that's a regular problem that you guys encounter. I know that we put together a policy regarding that and I'm just a little shocked that the Town Board is still receiving documents the day of, not even knowing what the Planning Board has done.

Mr. Cody – We did address that again last night. We struggle with that as I know the Planning Board does. We tried to set our deadline for tomorrow for our next meeting. Everything has to be a week and a half. We get a lot of push back from staff saying that a lot of time the documents aren't ready in that period of time.

Mr. Wilson – It's really hard some times.

Ms. Zollo – Can you change your agenda then so that you can have the documents necessary? How can you make a decision if you don't have all of the facts in hand for that particular issue?

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## REGULAR MEETING OF THE VICTOR PLANNING BOARD, FEBRUARY 10, 2009

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Mr. Cody – I attended the meeting, John Palomaki attended the meeting, John Accorso knew. I know that he had been talking to some Planning Board members about what you want to do. John was the one lone vote. I think that was conveyed that the Planning Board was in favor of having that up there.

Chairman Davis – That was half of the argument. We were supportive of Fred, but the other half of the argument was to find the best way to insure precedent doesn't get set in the office building complex because that was pages of arguments in the original High Point that that retail was to stay below and it wasn't to work it's way up. We were very afraid that if you changed the PDD to allow for restaurants up there, it is going to open up for anybody who wants to put a retail shop up there in one of those buildings. That, in fact, would negate all of the work that went into the PDD original.

Ms. Grosso – And our future PDDs

Mix conversation took place at this point.

Chairman Davis – And it's clear to me that that discussion was never had with the Town Board.

Mr. Benulis – I think we suggested a special use permit was probably the better approach. Are you saying that we can't do that? In other words, right now a restaurant is not a permitted use up there, correct? So a special use permit, if approved would allow a restaurant, correct? So what's that got to do with tenancy? I know we can't control tenancy; we are talking about controlling the use.

Mr. Cody – No, I remember the meetings that I attended, you wanted Fred to have this. I don't remember the other crux in which you are talking about.

Chairman Davis – It was in the minutes. If you had gotten the minutes, the more properly articulated argument would have been in front of the Town Board in order to make a decision.

Mr. Santoro – Sheila did say at that meeting that she didn't think the special use permit would fly.

Chairman Davis – What she said to me at least, was the special use permit would cause a timing problem for Fred because they had started down the other direction and not that one was right and one was wrong, but because they had started down this other path, that it was going to cause another 30 day cycle for Fred.

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Ms. Grosso – So we have hindered our future in precedence for a 30 day cycle in my opinion.

Ms. Zollo – And our discussion did include the fact that we were concerned with setting precedent and allowing retail to expand to the top of the hill.

Chairman Davis – And I was questioning whether or not it was a tenancy issue. I went back and as far as the minutes, it was very clear that our argument was not about Fred and the tenancy, it was about the fact that it opened up that entire office complex to other usage other than what was originally intended for the PDD and it's a shame. It's a shame that we spent the amount of time thoughtfully deliberating this and it never got to the Town Board.

Mr. Cody – We didn't go into that lightly.

Ms. Zollo – But what are we going to do about this in the future? That's the concern, that we spend our time deliberating these issues to give recommendation to the Town Board and then the Town Board doesn't have the information that we have provided in our discussion to explain our opinion.

Ms. Grosso – To go one step further than that, not just be selfish about us. I know that I've been saying for several years, I'm sick of getting stuff last minute at the table, we can't make an informed decision and I'm just floored that the Town Board has made decisions without being fully informed of our recommendations.

(Tape changed at this point)

Ms. Grosso - .....that is still accepting. I mean my philosophy would be, either we table it or we vote no if I'm uninformed. From what I understand, many of the Board members went "yea, okay" because they were uninformed.

Mr. Cody – I don't think that is true Dawn.

Ms. Grosso – Well the majority of them.

Chairman Davis – So, that's the concern.

Ms. Grosso – I would like to have that concern expressed back to the Town Board.

Chairman Davis – From my understanding, the Town Board is addressing this because there was a lead agency issue that lapsed last night because they weren't informed either. So the Town

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gave up its lead agency option on the annexation with the Village because the Town Board was never notified that they had received the lead agency note.

Ms. Grosso – Well again, why are we not being informed of that through our liaison?

Chairman Davis – It's up to the Town Board to accept or deny that first, not us in this case.

Ms. Grosso – No but, Jeff is giving us details of what happened at the meeting and I'm getting that from you?

Mr. Cody – I took my notes off of the agenda. That really wasn't an agenda topic so.....

Chairman Davis – That's a true statement though right?

Mr. Cody – Yes, that is true?

Chairman Davis – So it's not just our information not getting to the Town Board. The Town Board is getting spotty, at best, information to make decisions. In fact, they gave up the legal right because somebody didn't pass the information to them.

Ms. Zollo – So, Village Board is lead agency on that then?

Chairman Davis – That's what happens when you don't respond. Abstinance is a yes or a no. They didn't respond so they gave up the right.

Ms. Zollo – And how was the Town Board to be informed of that?

Chairman Davis – I'm not sure how the Town Board's process works that way.

Mr. Wilson – I have not talked to Sheila in any detail about it. She is now left town (on vacation). She explained it to be that the notice that was sent out by the Town Clerk apparently was not sent to the Town Board. Is that accurate Jeff?

Mr. Cody – I believe the notice came into the Town Clerk and was not distributed to the Town Board.

Chairman Davis – So it never got on an agenda?

Ms. Grosso – And no one saw it on the Town Board?

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Chairman Davis – So my point, in bringing that up is it's not just Planning Board information that's not getting there. Thank you Jeff.

### **ARCHITECTURAL REVIEW COMMITTEE**

Mr. Logan reported on the Architectural Review Committee meeting held before the Planning Board meeting.

Mr. Logan – The Architectural Review Committee met with Homewood Suites regarding signage for their facility by the Thruway in Fishers. They asked two things. The original application had a sign on the northwest quadrant. There is a large hill on the quadrant and you can't see anything until the top third floor. So, they decided to eliminate that sign. There was another sign that was proposed over here (near center of back parking lot facing thruway) and it was moved 55 ft from the east so that it could be seen from the thruway. That sign has been lowered to 10 ft from 12.5 ft. I think that was from the Zoning Board. It is green in color instead of blue. This matches a smaller version which is at the entrance at the end of the cul-de-sac coming into that facility.

On the building there are two spots where they are putting the signage. One is on brick facing Main Street Fishers which is a brass version and it's not lit. Another one which is similar, on the gable and its cream and green in color.

This is what was accepted as proposed.

### **DISCUSSION**

Mr. Logan suggested that when reading resolutions, that for the standard conditions, it could be listed as *standard conditions* and then list them. Then list additional *on going conditions* for the special conditions that are meant for the applicant to adhere to. Only the *on going special conditions* would be read during the meeting, but all of the resolution would be put into the minutes and into resolution letter form. Chairman Davis was in agreement with this suggestion.

Mr. Benulis asked about the list of training that was discussed and wanted to know when this would start. This is something that will be looked into. Chairman Davis stated that a record of training for each member and any upcoming training opportunities would be placed in the packets. More discussion took place on the different training schedules.

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On motion of Ernie Santoro, seconded by Joe Logan

RESOLVED that the meeting was adjourned at 8:00 pm

Adopted 7 Ayes, 0 Nays

Cathy Templar, Secretary