

**VILLAGE OF CROTON ON HUDSON  
MINUTES OF THE PLANNING BOARD MEETING  
TUESDAY, January 8, 2012**

Present: Chairman Robert Luntz  
Fran Allen  
Mark Aarons  
Bruce Kauderer  
Steve Krisky

Also Present: Daniel O'Connor, VE

**1. Call to order at 8:30 p.m.**

**2. Approval of Minutes**

Chairman Luntz stated that while the Planning Board waited for the applicant's attorney to arrive, the Board could review the two sets of minutes.

The minutes of November 27, 2012 were approved on a motion by Mr. Aarons, seconded by Mr. Krisky, and carried all in favor 5 - 0.

The minutes of December 11, 2013 were approved on a motion by Mr. Krisky, seconded by Mr. Kauderer, and carried all in favor 5-0.

**3. Old Business**

*a) JF WF Cortlandt LLC -- 57 Old Post Road North (Sec. 67.20, Blk 2 Lot 27) --  
Application for Minor Site Plan Approval, Excavation and Fill Permit, and Tree Removal  
Permit for the construction of a single family residence.*

Bill and Joan Francy, applicants, Mr. Whitney Singleton, partner of Mr. Bob Davis, attorney for the applicant, of Singleton, and Ron Wegner, P.E. were present. Mr. Whitney Singleton, introduced himself but then Mr. Davis arrived and Mr. Singleton handed over the presentation to Mr. Davis. Mr Davis arrived at the meeting at 8:45 p.m..

Chairman Luntz opened the discussion by stating that the Planning Board had spent some time finding out more about the legal issues that arose from the last meeting.

Mr. Davis stated that this was the third meeting and the application has been covered in great detail with a number of changes having been made from the first meeting on October 9, 2012 through November 27, 2012. Based on the site visit, the initial meeting and on the November 27th meeting, Mr. Davis stated that he and Mr. Wegner, P.E. reviewed those changes with the Board. They had discussed the Chazen Engineering comments at great length and Mr. Davis summarized those changes that were made: overall disturbance reduced from 8300 sq. ft to

6850 sq. ft. to 5991 sq. ft to the final 5916 sq. ft presently; 52% of this property will be totally undisturbed; no steep slopes permit is required; only 12% only building coverage versus the 35% permitted; 15% FAR versus the 40% permitted; it is a fully compliant lot--there are no variances required; according to the zoning chart on the site plan it exceeds bulk requirements; the footprint of the house has been reduced to the minimum; the modular house architecturally is designed to reduce the disturbance and time of construction; a landscaping plan will be implemented; a substantial drainage plan will be implemented which is protective of the neighbors' property; this is a type II action and therefore this means there are no significant adverse environmental effects/impact; this is a minor site application subject to 90 day limit which would have expired on January 3rd, yet the applicant had agreed to extend the date to encompass the January meetings.

Mr. Davis stated that Mr. Wegner will discuss each of the Chazen comments and the actions which have been taken in response to those comments. Mr. Davis stated that the applicant has done everything practicable to address reasonable concerns. They are fully protecting the neighbors during and after construction. This is a minor site plan for a very small single family dwelling—each minute detail has been examined. Mr. Davis stated that there is not a single ground for denial of this application and he respectfully requests approval for tonight. He stated that this house is less than a third of an acre; fully protecting the neighbors; improving drainage conditions that are there today. There should be no denial of the application which is contrary to law, and such a denial would be arbitrary and capricious. Mr. Davis respectfully repeated his request for the Planning Board's approval tonight.

Mr. Wegner read aloud and responded to each comment that had been submitted in a letter by William Reim of the Chazen Companies dated November 19, 2012. Mr. Wegner presented again the landscaping plan to the Board. Members of the public requested that Mr. Wegner orient the map so that they too could see the map. Mr. Davis stated that although he had no problem with the public viewing the map, he wanted to remind the Board that this meeting was not a public hearing.

Mr. Wegner discussed the landscaping plan, and in particular, described the two changes that were made that the Planning Board had requested he make: 1) the Board had expressed concern about the arborvitae which subsequently were replaced with more durable trees and 2) the Board had wanted the site plan to indicate more clearly that the disturbed areas are to be seeded.

Mr. Wegner also reviewed the analysis of the calculations of the storm drain pipe and confirmed that the pipe could handle the flow in a 100 year storm. Mr. Kauderer asked the Village Engineer if he was comfortable with these calculations and the Village Engineer responded that he was.

Mr Davis pointed out that Mr. Wegner had discussed and reviewed these comments and changes in the November 27th meeting. Mr. Wegner concurred and stated that he had discussed the Chazen comments at the November meeting. Mr. Wegner's correspondence of

December 21, 2012 (available on the Croton ftp site) addresses Chazen's ten discussion points. Mr. Wegner read aloud his letter, and there was some discussion on the following comments:

Comment and response #3: A notation has been added to the plan regarding providing shoring for the proposed retaining wall construction. Chairman Luntz stated that in his experience a 1:1 slope is quite common as long as it is planted.

Comment and response #4: Mr. Wegner stated that site soil conditions have been discussed in the past three responses as had the shoring of the slopes. Mr. Wegner stated he is trying to reduce any impact on the 16 ft maple. There is a bold note on the site plan regarding the limits of disturbance prior to any site disturbance and this will remain in place until complete. Ms. Allen stated that she would like more elaboration on this. Chairman Luntz said that it has been stated and restated that this plan fits within our code and doesn't require a steep slopes permit. He asked if the Village Engineer agreed with that and the Village Engineer stated he did. Chairman Luntz summarized by saying that the Village Engineer had reviewed the calculations and had determined that they fit within our village code. Chairman Luntz continued to say that, although the initial application did require a steep slopes permit, there were substantial changes in the plan which brought the disturbance down, a result which seems to be the whole point of the steep slopes law.

Comment and response #5: Mr. Wegner responded to Chazen's comment that off-site disturbance driveway/sidewalk do not appear to be included in disturbance limits. Mr. Davis stated that it is not the practice of the village to include off-site areas. Mr. Davis stated that the village code mandates a weighted requirement, and when this was completed, the result still indicated that there was more area undisturbed than there is disturbed. Mr. Aarons, who had questioned Mr. Wegner and Mr. Davis regarding these calculations, stated that he understood that the calculations are still under the number requiring a steep slopes permit.

Comment and response #8: Mr. Wegner stated that the pipes are adequately sized; in fact, they are twice the size needed for a 100 year storm. He also stated that Chazen is inaccurate about the roof leaders and there is a note on the site plan which takes precedence over the architectural drawings (which are inaccurate). Chairman Luntz asked the Village Engineer if that statement was true. The Village Engineer stated that yes the pipe referred to by Mr. Wegner will have the most flow and was tested for the calculations for the 100 year flow and an excess of a 100 year flow. Mr. Aarons asked where the pipe was located and to where it was going. Chairman Luntz stated that the architectural plans will need to be consistent with the site plan. Ms. Allen stated that there needed to be a more aggressive monitoring of the field. She suggested that a plan for regular onsite monitoring be put together. Chairman Luntz stated that such monitoring is not usually in the purview of the Planning Board but Ms Allen responded that the Planning Board must have it.

Comment and response #10: Mr. Wegner stated that he had added a note to the site plan to perform an additional percolation test prior to the installation of the infiltrator. Mr. Davis stated that this was something that the Village Engineer would be monitoring in the field. Ms. Allen stated strongly that there needed to be monitoring.

Mr. Wegner also discussed the drainage to the site and in particular towards adjacent properties downstream. In the drainage analysis on the impact of the water flow, Mr. Wegner stated that the drainage will provide a reduction of water flow towards the neighboring property.

Chairman Luntz stated that there has been a lot of back and forth and discussion around legal issues regarding ownership and transference and subdivision and apportionment, and basically this board, after reviewing this with counsel, is dependent upon the opinion of and determination by the Building Inspector whether this is a legal building lot. It is the opinion of the Building Inspector, which in this town is also the Village Engineer, has determined that this is a legal building lot. Chairman Luntz stated that this board is not going to take up that legal question; the Planning Board members are depending on the determination of the Building Inspector. He stated that is not the question for the Planning Board determination; it has been determined by Building Inspector; and that is what we are going with.

A member of the public requested to speak. Chairman Luntz stated that this is not public hearing but they will entertain brief comments after the Board is completed discussion. Mr. Davis respectfully objected since it is not a public hearing but Chairman Luntz stated that it is the custom of the board that comments are entertained from the public who come here and listen to the Board.

Mr. Aarons stated that he really doesn't think the legal issue is appropriate for the Board to discuss. He stated that he takes exception with the Chairman's speaking on behalf of the board. Mr. Aarons stated that he doesn't "think it is something to make a public statement about because it is evident to us that whichever way we determine this issue today, there is going to be litigation from the applicant or the audience who are neighbors; I don't think it is appropriate for us to pass on one way or another what the legal outcome is of who gets to make that determination. It is not in our province to make that call."

Mr. Krisky stated that that is the bottom line.

Chairman Luntz responded by saying that the Board is not making that call; that the Board is saying that the Building Inspector has made the call.

Mr Aarons stated that he doesn't agree one way or the other whether it is the Planning Board's call or the Building Inspector's call. He thinks that it is not up to to the Planning Board to make the determination. Mr. Aarons stated "We are here to vote on the applicant's application."

Chairman Luntz responded by saying that he had stated that the Board is not going to make that determination. Mr. Kauderer stated that he didn't think Mr. Aarons and Chairman Luntz were saying anything different.

Mr. Aarons strongly disagreed with the Chairman's having said that the Building Inspector is the final call. Mr. Aarons stated that the Chairman was speaking on behalf of the Board, and he didn't agree with that either. Mr. Aarons stated that he didn't think there is enough case law one way or another to make that determination. He was not prepared to sit here as a member of this board and say that is the outcome.

Mr. Kauderer stated that he didn't see any difference. He had thought the Board members were going to vote on the merits of the site plan as presented by the applicant. Mr. Kauderer asked Mr. Aarons if that is what Mr. Aarons was saying? Mr. Aarons stated "yes."

Mr. Krisky stated he would like to hear members of the public. Chairman Luntz stated that the Board would hear brief comments but that "we are not here to argue legal ownership."

John Mackeon, formerly of 22 Terrace, stated that although he no longer resides at this address, he has concerns with the safety of the road and putting another driveway into a road that he considers dangerous. He questioned whether there had been any discussion on sight lines. He also expressed concerns about the modular construction and roof height.

Mr. Davis responded that he had discussed the sight distances at the very first meeting; these were referenced on the first page of the site plans. Mr. Davis stated that in terms of building height, the house complies. Chairman Luntz agreed and stated that the house is easily the allowable height. After some questions about how allowable height is arrived at, Mr. Aarons agreed that the house was "nowhere near" the maximum height.

Mr. Ira Lipton, 55 OPRN, requested an opportunity to speak with his engineer and send the plans to Chazen. He also observed that if the neighbor does not maintain the storm drains it is a long time risk exposure for him. He stated that the whole effort of the applicant has been "getting out from under the more stringent requirements of the steep slopes law." He stated that even though it was better to disturb less, the applicant now had "onerous construction issues." He was not sure if the Chazen concerns were satisfied.

Mr. Lipton further stated that he thought it would be a noble thing to do more soil testing; that one didn't have to wait and see the soil quality until the construction. He said, following up on Ms. Allen's comment, that the Board was relying on the Village Engineer's office and questioned whether the office had enough staff to monitor this construction. Mr. Lipton continued to say that one of the most major impacts of the construction would be the impact on the Regis property.

Mr. Lipton stated that he had no idea what the ultimate basis of the determination is, but he stated that if the Board is concluding that they can go on then it must be predicated on the decision that this is a legal lot and that this is a result of a legal subdivision.

Mr. Kauderer stated that the Planning Board does not have to get into that; that the assumption Mr. Lipton is making is not correct and the Planning Board does not want to get into this conversation. Chairman Luntz said that he thought it has been stated that the Board is not determining that this is a legal building lot; he was not prepared to do that. What the Board is depending on is the determination of the village, which is the Building Inspector. Under the village code, the Building Inspector is the one who makes that determination. Chairman Luntz stated the Board is moving past that point.

Mr. Lipton stated that as far as he understands the law, in not making a determination as to whether or not this is a product of a lawful subdivision, the Board has delegated the determination to the Village Engineer. Mr. Kauderer stated that this was not so, the Board has not delegated anything. He further stated that he didn't see the point in hearing any more of this since this is not a public hearing.

Mr. Lipton responded with saying that he was trying to find out the basis of the determination. He stated that "this is the determination that Mr. O'Connor made, and I am telling you that as far as I understand, that it is a determination that you are supposed to make."

Mr. Singleton interjected and said "That is incorrect, that is an incorrect statement of law."

Chairman Luntz stated that the Board was not going to argue this right now, and Mr. Lipton would have to move on. He stated that the Board is not going to discuss this anymore. Mr. Lipton reiterated that he didn't understand the basis of the Board's determination.

Mr. Kauderer stated that it is just a courtesy that the Board has listened to Mr. Lipton--that he didn't have the right to speak; this was not a public hearing. Mr. Krisky stated that the Board members had heard what Mr. Lipton had said and were not obliged to respond one way or the other. Mr. Lipton disagreed.

Ms. Allen stated that she thought the Planning Board was obliged to assure the people and the Board cannot just say they don't want to.

Responding to Ms Allen, Mr. Krisky said that he didn't say "the Board is not obliged to respond to the petition or the objection to the petition, rather the Board is not obliged to respond to the legal argument." Mr. Krisky stated that "the Board members are not in a position to argue the law because the Board is not charged with it."

Ms. Allen stated that "we are charged with safety and being legal." Mr. Krisky stated that all the Board members share Ms. Allen's concerns about this.

Mr. Davis stated that he objected to Mr. Lipton's statements since this is not a public hearing and in addition, he objected to a number of misstatements made by Mr. Lipton. Mr. Davis stated that on October 4, 2012 an application was made for a minor site plan of which the steep slopes permit was a component, and that component was removed. This was a minor site plan application from the onset. With respect to the Chazen comments, Mr. Davis stated that nothing that was raised by Mr. Wegner's comments is new, that the applicant was not here to satisfy Chazen engineering but that the applicant only has to satisfy the Village Engineer. Notwithstanding that, the applicant has responded to all of the comments on the November 27th meeting. The code expresses the intention that a minor site plan should be resolved in one meeting and that after 90 days it is an automatic approval.

Mr. Davis asserted that it was a false statement for Mr. Lipton to say that the applicant is directing water towards his property. With respect to the steep slopes permit, the whole intent of the steep slopes ordinance is to reduce the disturbance of steep slopes, and that is what he and the applicant have tried to do throughout this process. Mr. Davis stated there was nothing more to discuss with the substance of the application; it is not fair to his clients. He has answered every question, bent over backward to do everything the Board and the Village Engineer has asked him, and has responded to all of Chazen's comments.

Mr. Krisky stated he would like to hear Ms. Regis' comments.

Jan Regis, 63 OPRN, thanked the applicant for making the house smaller, but claimed that because of the engineering work done on the Lipton property by the applicant's engineer, her land is unusable and unstable and she has spent lots of money stabilizing her land, taking down her pool, chimney and deck. She further stated that the house, if built, would probably be empty and questioned why the Planning Board would want to put another empty house in Croton.

Mrs. Francy stated that it is their right as the owners to decide what they do with their property.

Mr. Krisky stated that "our job is to review the application before us, that is our job;... there is an application before us that we have to rule on, based on the evidence that has been provided to us. "

Ms. Regis questioned the advice they were getting.

Mr. Wegner addressed the storm drain maintenance issues. He stated that the storm drains must be maintained and if not, the homeowner will get ponding and icing in the front yard. It will become painfully apparent to the residents if the storm drains are not being taken care of.

Mr. Krisky stated "I have one issue... but it does concern me that a lot of this stuff is dependent on engineering which I certainly don't understand as a layman but it would seem to me that you would want to get the complete commentary on both sides of the engineering since it is such a potentially dangerous piece of property." Mr. Krisky questioned whether the Board should wait

two weeks so the neighbors had a chance to consult with their engineer and then the Board would get the balance of both sides.

Mr. Aarons responded to this by saying that this is a minor site plan and no public hearing is required, therefore he did not believe the Board has the right to wait for further comment. Mr. Kauderer agreed. Mr. Aarons said "it is a minor site application; our engineer and the applicant's engineers are basically what we have to look to for engineering."

The Village Engineer stated that the comments from Chazen were extremely minor comments, and the applicant did address them by his letter and the plan. Chairman Luntz asked if they were addressed to his satisfaction as an engineer? The Village Engineer answered yes, that he will work with the applicant and work with the sheeting design by the contractor. A sheeting design usually comes in during the construction phase. He reiterated that he thought all of the Chazen comments were addressed and they were all relatively minor. He did not believe there were any substantial comments.

Mr. Krisky asked the Village Engineer if he had no concerns about the land shifting even beyond the actual work zone? The Village Engineer stated that it has to be properly shored, but that will be done through the sheeting process or some other method specific to the contractor that is brought in. The Village Engineer described how the sheeting process is done.

Mr. Krisky stated that there is a lot of "loose seeming soil and debris" on that particular ridge on the Regis property and that concerned him a great deal. He stated "I am not an engineer so to a certain extent I have to accept your word, that you are confident that it is not a danger." The Village Engineer stated that the top part is the root zone which is comprised of looser soil. As one gets deeper down, the soil becomes more consolidated and more compact-- what one sees on the surface is not what one sees deep down. There was sandy loam on the bottom and when the test hole was dug, it stood.

Mr. Krisky asked the Village Engineer about the sheeting process, and if it disturbed the earth like fracking does. The Village Engineer stated that it does not, it is not a fracking process. Mr. Kauderer added that he thinks of sheeting as a temporary retaining wall.

Mr. Aarons stated that the 16" maple is of major concern to him. He is concerned with what would happen to the existing wood timber retaining wall if the tree dies since the retaining wall is held by that tree and because the applicant is not replacing the existing wood timber retaining wall. One of Mr. Aarons' concerns is what happens to the existing wood retaining wall if the root system is disturbed. He pointed out that if the wall shifts there is a lot of soil above in the neighbor's property and he was not sure if he trusts the soil above. Mr. Aarons stated that is the number one concern for him. His second concern is that he is "circumspect about completing this project without going outside the limits of disturbance. I understand that it has been presented to us as not going to occur, but looking at the site and looking at the detail of the site, I don't see how that is going to happen, my own experience with doing these types of projects; it's a small area we are trying to stay in; I don't know if I find this credible." Thirdly, he stated

that he was not clear on the legalities of the lot in general. He did not want to take a position as to whether or not the Building Engineer is or is not the final word. Mr. Krisky asked Mr. Aarons if he was concerned that “if you have a yes vote are you blessing a legality?”

Mr. Aarons said he didn’t know, that he was circumspect on what it means when there was an “allocation “[sic]; Chairman Luntz interjected “apportionment.” Mr. Aarons stated that he thought there was some “speculation as to that as opposed to being absolute.” He didn’t want to be the “arbiter for that.”

Mr. Kauderer stated that the Board got very clear advice and direction from the Village Attorney. He stated that Mr. Aarons could disagree with him, that was his right, but the Village Attorney did the research, looked at the cases.

Mr. Aarons stated he was very clear about asking about controlling cases on that and he didn’t want to get into the details. He read every one of the cases and he did not think it was clear at all. He stated he thinks it needs judicial determination.

Mr. Kauderer stated that it does not or may not matter what happened 49 years ago and that the Board doesn’t have to get there. The loudest and clearest advice that the Board heard was that they don’t have to get there.

Mr. Aarons stated he was torn on the issues. He was “not sure that a yes vote doesn’t validate and then obviate the issue.” He believed if there was a requirement and there needed to be some subdivision blessing from a Planning Board, and this Planning Board today says yes, the issue becomes moot.

Mr. Kauderer stated that Mr. Lipton was attempting to use what happened 49 years ago as a “both a sword and a shield.” The neighbors have a building permit so it is legal, but the applicant doesn’t--Mr. Kauderer did not think this was fair.

Mr. Aarons stated that once a Certificate of Occupancy is issued, “you can’t go backwards. On the other lots, a Certificate of Occupancy has been issued, so it is moot.”

Mr. Kauderer asked how it was ok that a person can take advantage of what happened 49 years ago but it can’t be done for your neighbor. From Mr. Kauderer’s point of view, it was not equitable.

Mr. Aarons stated that the time to stop what happens is prior to the issuance of a Certificate of Occupancy. He stated he wanted to hear from Mr. Davis. In addition to this issue, he also has concerns outside this issue which he voiced, but he suggested that then the Board should take a vote.

Mr. Kauderer agreed that the Board should take a vote. Mr. Kauderer believed there was likely to be litigation no matter which way the Board voted. He suggested that if there was a vote,

those who opposed should state the reasons why they are opposed because there will be litigation. Hei agreed with Mr. Davis that it would be arbitrary and capricious to vote against the application since the Board has reviewed the application in exhaustive detail, every suggestion has been complied with, the steep slopes law clearly doesn't apply. Mr. Kauderer continued to point out that every single objection the Board has made, the applicant has responded. Mr. Kauderer stated that those opposed should give their reasons so that they can say "I am not being arbitrary and capricious and these are the reasons I said no."

Mr. Aarons stated that claiming that it is arbitrary and capricious is making a judgment. He believed that Mr. Kauderer has prejudged that there can be no reasonable objection. Mr. Kauderer responded that he said that if a vote is "no" then a person should say why it is a 'no'.

Mr. Aarons stated that arbitrary and capricious means there is no reasonable objection.

Mr. Krisky stated that he didn't think "if we vote no we are being arbitrary and capricious."

Mr. Aarons stated that Mr. Kauderer made that statement before he was hearing the other Planning Board members.

Mr. Kauderer reiterated that, in his opinion, a court would find that a denial of this minor site plan application is arbitrary and capricious.

Chairman Luntz stated that the Planning Board has been given what the determination of the lot is, so the Board has to judge the application on its merit. He stated that he couldn't find a reasonable reason why the Board shouldn't pass this application. He stated that the issues raised have been addressed to his satisfaction and the Village Engineer, and he stated that the Board needs to depend on the Village Engineer for his opinions about the issues. He continued to say that the Board additionally got comments from an outside engineering consultant (Mr. Wegner) and all objections and comments were addressed. He stated he was having a hard time coming up with reasons why not to move forward.

Mr. Aarons asked if the Board was taking a vote at present because he was "getting the sense that I am on the fence."

Mr. Davis stated that the reason not to get caught up with the subdivision is that 1) the Planning Board has no authority to make legal determinations so whether something was right or wrong in the 1960's, the Board has no purview to consider or debate that; and 2) the Building Inspector is the one charged with interpreting whether it is a legal building lot. The Building Inspector had rendered a decision in 2007, it was not appealed, and the Board has no authority to supercede it.

Mr. Aarons stated that he had read through all the cases that were cited, and what he came away with is that the Building Inspector/Engineer is the arbiter of bulk and zoning requirements. He asked what if the Building Inspector is in error?

Mr. Davis stated that one's sole means of recourse is to appeal to the Zoning Board. The Village Code states that on any determination or ruling decision of the Building Inspector, the only way to challenge that is to bring an appeal in 60 days. If he has taken the position that you can appeal to the Zoning Board—any ruling or determination of the Building Inspector—then the only way to challenge this is to bring this to the Zoning Board; you have no authority to challenge it.

Mr. Aarons stated he understands that if no one challenges it, but if it is an error, and nobody challenges it, has a lot been created and has a subdivision occurred?

Mr. Davis stated that there is some nuance to the sixty day rule. If it has never been challenged, you get 60 days when you became aware of the Building Inspector's error. This is not the case here, the determination was never challenged; you have no authority to supercede this decision.

Mr. Wegner stated that he understands that within the limits of disturbance, the high side might be of concern, and it is noted in the resolution that shoring is required for the tree. Mr. Aarons asked about the stone wall. Mr. Wegner stated they will shore up what we have; it is not our responsibility to shore up a wall that is not ours and not stable.

Mr. Davis stated that the Planning Board retains ongoing jurisdiction to put in more conditions, if the engineer sees an issue; bonding in place that secures approval. Mr. Wegner reiterated that they will shore and maintain what we have. He stated that our responsibility is not to go beyond our property to shore up a wall that is not ours. Mr. Kauderer stated that the wall itself there is not obligation to protect the wall itself as long as the land is shored up. Mr. Krisky agreed that there is no obligation to shore up the wall that is not their property.

The Village Engineer stated that the new foundation and wall holds back the soil and the silt fence and usual erosion and prevention measures are used. Mr. Aarons asked if a bond protects the neighboring property? He asked what happens if there is damage done to neighbor property during construction?

The Village Engineer explained that there are different bonds; the bond described is under the excavation and filling part of the code-for excavation, shoring, construction of permanent retaining wall and permanent foundation. The money is used to stabilize the site. If some unforeseen accident happens, and something happens to the neighbors' property, that is an issue between two property owners. The Village Engineer stated that he didn't expect anything to happen, but the bond is there to make sure the work is done and completed. Mr. Davis pointed out that the contractor and owner will have insurance. Mr. Kauderer commented that no one is going to be without rights.

Mr. Aarons requested a five minute break. Mr. Aarons returned and Chairman Luntz stated that the Planning Board has a resolution before them. The Village Engineer

suggested a couple of minor changes to the draft resolution regarding modular construction and the cleaning of yard drains.

Mr. Kauderer moved to entertain a vote and Mr. Aarons seconded this motion. It was agreed not to read through the resolution but it was marked as Exhibit A.

Chairman Luntz called to vote the resolution marked Exhibit A for the application for 57 Old Post Road North and stated that if a member votes no, the Chairman would like to hear what the objection would be.

Mr. Kauderer voted aye.

Mr. Krisky voted no, citing "I am uncomfortable with too many things here from the engineering to the legal. I am not comfortable." Mr. Kauderer asked Mr. Krisky if he could be more specific and Mr. Krisky responded that he could not be more specific.

Chairman Luntz voted aye.

Ms. Allen stated no "for the same reason."

Mr. Aarons stated that he had already spoken of his reservations in terms of both the retaining wall to the north of property as well as "the potential that I don't think it is credible that the site work will be done within the boundaries of the orange fencing. But, to a larger extent, because I don't want to vote no, because I don't believe that we have the jurisdiction to hear this, I am going to make a stand on that, so I am going to abstain."

Mr. Krisky asked if that means that it doesn't pass.

Mr. Kauderer stated that it means the application is not approved and he believed that the Board members would be putting the Village Attorney in a difficult position of defending this if they didn't give reasons as to why they voted beyond saying they were uncomfortable. Mr. Kauderer believed that saying they were uncomfortable was exactly that--arbitrary and capricious.

Mr. Aarons responded to Mr. Kauderer by saying that they had already expressed concerns about the tree and concerns about the retaining wall.

Mr. Kauderer responded that Mr. Aarons had but not Mr. Krisky.

Mr. Krisky stated "I am not comfortable with all the engineering components and legal issues. I am not convinced on those fronts; I don't think I am being arbitrary and capricious; that is my opinion."

Mr. Kauderer responded that he hadn't heard Mr. Krisky say he was uncomfortable because of a certain reason. He said "You don't like the application, that is not good enough." Mr Krisky denied saying that.

Mr Aarons stated that since the vote has not closed, "let me make my vote a no. I will articulate clearly what my negatives are--because the vote has not been closed by the chairman, so I am going to modify my vote to no. This resolution is a five page resolution for a single family residence. Mr. Davis has been correct when he says this has been an incredible process to get an approval or disapproval on a single family residence. Why? Because this lot is a square peg you are trying to fit a round hole into —everything we are trying to do to make this a buildable lot does not make sense for the neighbors and the community. This is a lot that has a steep slopes permit filed, and that steep slopes permit filed was rescinded. Why? Because they wanted to avoid the steep slopes, telling us they were going to be able to complete the construction in a much more narrow boundary. I don't buy it; I don't find it credible that this is going to occur. When we talk about putting steel plating in, you have to hammer that in place, it causes vibrations; it causes changes to foundation and dirt. I don't buy that this is safe for the people in the community. " Mr Aarons further stated that the way the application has been presented, it is not comfortable for him to have it built on. He disagreed with Mr. Kauderer that worrying about his neighbors and community is arbitrary and capricious.

Mr. Kauderer stated that at least Mr. Aarons had articulated his reasons.

Mr. Aarons stated emphatically that he wanted to make the statement because he has heard time and again that this Planning Board does not have jurisdiction to make the determination as to whether or not this is a lot that can be built on. Mr. Aarons further stated that along with other objections, not in lieu of, he does not think that the lot that has been properly subdivided and he does not think that the lot can be made into a lot that is properly subdivided by the Village Engineer or Building Inspector by deeming it so. He wanted to be clear on the record that he didn't agree. He further stated that he did not have any evidence as to how 4 lots became 5 lots.

Mr. Kauderer stated that Mr. Aarons had assumed that subdivision was needed. Mr. Aarons repeated that he assumed it was a lot that was multiple lots to begin with and how mysteriously four lots became five although there was no evidence. He stated that if this application came to us today this lot would not be approved.

Mr. Kauderer responded that he did not think how this was relevant; the outcome was a big disappointment and stated that he believed the rights of the applicant have been violated.

Mr. Davis stated to the Planning Board that they have deprived this applicant of all use of his property; a lot that requires no variances, and his applicant has the rights to build on this property.

Mr Aarons stated that the applicant avoided the steep slopes law.

Mr. Davis responded that is the point of the steep slopes law; they had complied with the law. Mr. Davis asked Mr. Aarons if he is saying that nothing can be built on this property? Mr. Aarons stated he did not agree with Mr. Davis. He stated that Mr. Davis had artificially made what appears to be a smaller disturbance.

Chairman Luntz stated that the Board has made a vote—they have denied the application with three nos and two ayes. Initially the vote was an abstention, Mr. Aarons interjected that he has the right to change his vote from an abstention to a no vote and Mr Davis should check his parliamentary procedure.

Chairman Luntz concluded that the Planning Board has denied the application. Mr Davis stated that the applicant will proceed with an Article 78.

#### **4. Adjournment**

There being no further business to come before the Board, the meeting was adjourned at 11:05 p.m.

Respectfully submitted,

Ronnie Rose, Planning Board Secretary