

## **Town of Halfmoon Planning Board**

### **June 22, 2009 Minutes**

Those present at the June 22, 2009 Planning Board meeting were:

**Planning Board Members:** Steve Watts – Chairman  
Don Roberts – Vice Chairman  
Rich Berkowitz  
Marcel Nadeau  
Tom Ruchlicki  
John Higgins  
John Ouimet

**Senior Planner:** Jeff Williams  
**Planner:** Lindsay Zepko

**Town Attorney:** Lyn Murphy

**Town Board Liaisons:** Paul Hotaling  
Walt Polak

**CHA Representative:** Mike Bianchino

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Mr. Watts opened the June 22, 2009 Planning Board Meeting at 7:02 pm. Mr. Watts asked the Planning Board Members if they had reviewed the June 8, 2009 Planning Board Minutes. Mr. Roberts made a motion to approve the June 8, 2009 Planning Board Minutes. Mr. Ouimet seconded. Motion carried.

#### **New Business:**

##### **09.051 NB Roberts Lot Line Adjustment, 111 Devitt Road – Lot Line Adjustment**

Mr. Gil VanGuilder, of Gilbert VanGuilder and Associates, stated the following: Back in 2001 Mr. Jim Roberts and his wife purchased a 20-acre parcel of vacant land at the corner of Brookwood Road and Devitt Road. There is a house on a very small lot on the corner shown on the plans. This lot is only about 19,000 SF and at the current time the Roberts' son is living in this house and is under contract to purchase the house and a modified lot, which makes it more conforming to the current zoning. The total square footage of the lot would become 42,000 SF and would be extended in 2 directions to the east and the south. With the expansion of the parcel they would have a garden and a play area for the children. This action would make this lot conforming and the 20-acre parcel would still be vacant and the Roberts' do not have any intentions of doing with it. The Roberts' live directly across the street from the 20-acre parcel and the reason they purchased the land was to keep it preserved.

Mr. Roberts made a motion to set a public hearing for July 13, 2009 Planning Board Meeting. Mr. Berkowitz seconded. Motion carried.

**Old Business:****07.044 OB Morrissey Site Plan, 183 Ushers Road – Commercial Site Plan  
(Re-approval)**

Mr. Gil VanGuilder, of Gilbert VanGuilder and Associates, stated the following: Mr. Morrissey owns the existing commercial facility at 183 Ushers Road and a year ago tomorrow this Planning Board granted final approval to the site plan to construct a new building and to tear down the old building. The property also lies partially in the Town of Clifton Park that was also approved by the Town of Clifton Park. Going through the regulatory process, the plans were not signed until October of 2008. In January 2009 we made application to the New York State Department of Environmental Conservation (NYSDEC) for a wetlands permit. The only disturbance is in the buffer area and there is no actual wetlands disturbance. The NYSDEC has not issued the permit to proceed with the work yet. We have been checking on it regularly and have gotten no response. The only thing that we do know is it does have a permit application number and that is the only thing that has been confirmed. Mr. Morrissey would like to move ahead but unfortunately he cannot because the stormwater management area is the portion of the project that lies within that hundred-foot buffer. Mr. Watts asked so you need a 1-year extension because your year is about to run out and you need an additional year and asked Mrs. Murphy if the Planning Board can approve that and vote on it. Mrs. Murphy stated absolutely.

Mr. Nadeau made a motion to grant a one-year extension to the site plan approval for the Morrissey Site Plan application and the applicant is to notify the Planning Board if the proposed spruce tree buffer is to be placed on neighboring property. Mr. Higgins seconded. Motion carried.

**07.129 OB Sheldon Hills PDD-Phase 3, Route 146 – Major Subdivision/GEIS/PDD  
(Re-approval)**

Mr. Gordon Nicholson, of Environmental Design Partnership, stated the following: I am here tonight representing Sheldon Hills. The project was last approved on July 14, 2008 and as we stated in the letter we sent to you, the New York State Department of Environmental Conservation (NYSDEC) has basically signed off without signing the map and the same with the New York State Department of Health (NYSDOH). Mr. Watts stated you stated "basically" and they have either signed-off or haven't. Mr. Nicholson stated the following: Well no, we've addressed all of their comments and they agree with it. We just need to get mylars to stamp. We haven't done that yet because there is a time frame by which we have to file after they stamp and we have to get your signatures. If you don't grant the approval that we are requesting or the extension, we're going to take them up and file them. We are requesting a one-year extension to wait for more favorable market conditions. Mr. Watts asked Mrs. Murphy if this request meets the same criteria that we talked about before? Mrs. Murphy stated the following: The Planning Board doesn't have a set criteria that has to be met prior to them granting a one-year extension. They just need to find that it would be okay based on the approval that they granted that the approval be extended for a year. There is no specific criteria that have to be met. So, they are well within their authority to either grant or deny the extension.

Mr. Berkowitz made a motion to grant a one-year extension to the site plan approval for the Sheldon Hills PDD - Major Subdivision/GEIS/PDD site plan application. Mr. Ruchlicki seconded. Motion carried.

**08.068 OB Plant Road PDD, 91 Plant Road – Multi-Family PDD**

Mr. Gordon Nicholson, of Environmental Design Partnership, stated the following: At the last Planning Board meeting we presented plans and we updated them from basically a year ago. We also had the traffic engineer in to update the traffic information, which is a plan they have been working on for

approximately 1-year. The Planning Board Members raised some questions at the last meeting related to deed restrictions and we have provided to your office deed restrictions to control activities in the hundred foot buffer, a deed notification that is to all buyers that an active apple orchard and farming operation is adjacent to the southern property line; typical day and night time farming activities include noise from equipment, wind machines, lights, spraying of herbicides, pesticides, fertilizer and the use of seasonal farm workers. We also submitted the Homeowner's Associations (HOA) document, which is the umbrella document over the entire project that includes maintenance of the roads and the lands. We will also be submitting to the New York State Attorney Generals Office the condo offering plan and that is basically for two separate areas; the seniors' age-restricted and then the 110 non-age restricted. Also, the units cannot be sold or leased to persons less than 55 years of age in the age restricted area and that is a policy that would be policed by the Condo Association. The other thing that we would suggest is that you put that in the zoning legislation because then if there are people that lease or own in the age-restricted area less than 55 years of age, it also becomes a zoning violation. Mrs. Murphy stated that'll be a decision by the Town Board as to whether or not they want to be the age police knocking on peoples' doors and checking identifications. Mr. Nicholson stated the following: I think that addresses the questions and unresolved issues that you had at the last meeting. I'm here this evening to hopefully request and get the Planning Board to refer this on to the Town Board. Mr. Nadeau stated pertaining to the notes that Mr. Nicholson added, we could make this part of the PDD legislation as well; correct? Mrs. Murphy stated the notes that you are referring to have to do in essence with our right to farm laws, which you are putting in the covenants, and restrictions, and in the HOA, and in essence, the fact that you know that you are moving into an area next to a farm and you do not have any grounds to complain with regards to pesticides, fans and typical farm stuff. That is something that we would put into the local law legislation because that is something that can be regulated easily as compared to the age of the person occupying a house. Mr. Nicholson stated we are in agreement with that. Mr. Higgins stated the Board also has previously mentioned the traffic concerns both at the north and south end of Plant Road and just to note, the Board does have concerns regarding traffic at both ends of that road. Mr. Watts stated those would be part of the public benefit questions that would be raised with the Town Board. Mr. Higgins stated correct. Mr. Berkowitz asked Mr. Nicholson if some of the land was going to be conveyed over to Mr. DeVoe on that buffer? Mr. Nicholson stated we had talked about 40 FT, we talked about 100 FT and we can resolve that at the Town Board. Mr. Berkowitz stated okay. Mr. Nadeau asked is that something that we need to know or not? Mrs. Murphy stated the following: That's not something that you could mandate as part of your positive or negative recommendation. If the two landowners work something like that out, that is fine but you cannot mandate a distribution of land between two parties.

Mr. Roberts made a motion to pass a positive recommendation to the Town Board – the Planning Board included that the "Right to Farm" passage should be included in the pending legislation and recommended that improvements to Plant Road should be considered per the project's traffic study. Mr. Nadeau seconded. Motion carried.

#### **09.015 OB Clifton Park Auto Body, 1627 Route 9 – Change of Tenant**

Mr. Joseph Moffre, owner of Clifton Park Auto Body, stated the following: This application is for a change of owner. I purchased the business a little over a year ago. Clifton Park Auto Body was an existing business that has been operating at this location since 1982. The only thing that has really changed with the business itself is that I took ownership after the previous owner passed away and I bought the business from the estate of his widow. I own and operate the business in exactly the same fashion that it has been run. I was requested to come before this Board because we were unaware that a change of owner required a change of tenant applicant because the business didn't change, just

the ownership. We have submitted paperwork and site plans with a narrative for the operation of the business. Mr. Watts asked Mr. Moffre to explain what businesses you are going to operate at that location and the volume of the business. Mr. Moffre stated the following: The business has always carried a used car dealership license and a registered repair shop license. Primarily we focus on auto body repair and some light mechanical with some car sales, which has always been done at this site. Since I have taken over the business in the last year I have probably increased the volume and overall business by 100%. We are not utilizing the entire lot as it could be. There is parking and a pavement area that I believe would allow up to 85 vehicles but I am not at that point yet. I probably average in the range of 40 to 50 vehicles on-site at this time. Mr. Watts asked the 40 to 50 vehicles are there for what purpose? Mr. Moffre stated for repair and resale. Mr. Watts asked for an estimate of what the vehicles are there for. Mr. Moffre stated the following: There is a towing impound area that could accommodate about a dozen cars and this area typically has anywhere from 8 to 15 cars in it at any given time because towing impound vehicles really doesn't require a 10 FT x 20 FT parking spaces. I think the plan is drawn out where it is accommodating 10 FT x 20 FT parking spaces. Those impound vehicles are short-term and long-term vehicles depending upon the circumstances. The damaged vehicles that come in from tow calls eventually get repaired if they are repairable. If those vehicles are not repairable, then they get removed and salvaged out by the insurance companies that are involved with the people who own the vehicles. I buy and sell cars and I typically buy cars that need some kind of refurbishing. This is basically my edge in the market where I can provide a service and sell a car at a competitive rate and also make a living off of it. Typically I do buy cars that have some damage and I repair them. I have customer cars that I repair and I do auto body repair for a couple of dealerships; Mangino Mitsubishi and Lia Hyundai. These dealerships will drop vehicles off for repair so there is usually a couple of vehicles that belong to those other dealerships that I am doing auto body repairs on. The number of cars for sale varies. I probably have an inventory of about 20 cars right now but they are not all repaired. So, some of the cars are for sale and some are in the process of being worked on for future sale. I wholesale and retail those vehicles. They don't all go out for sale to the general public because some do get wholesaled. In essence this is what the business is and that is how it has been done at this site since the business was opened but it was done on a smaller scale. I do think that the potential for growth is there and the space would accommodate that growth. What the prior owner did was the same thing but he didn't employ as many people and didn't do as much volume. The repairs are made in a 6-bay facility. We have roughly a 2-year old state-of-the-art acudraft spray bake system; a spray booth with baking capabilities so we're able to be productive and push cars through and get them in and get them out so the volume capability is there and I am trying to utilize it. Mr. Roberts stated I don't recall the former owner having a towing service or an impound lot. Mr. Moffre stated the following: I don't have a towing service. Currently towing is sublet to DPS Auto and they tow in off the list to me. The previous owner did have other tow vendors who did tow vehicles into him. That is a common practice whether you own your own truck or not because some places do have that. I basically continued the same thing, as it is a source of jobs. It is a way to get jobs because the vehicles get towed in off the impound list from the State Police and the Sheriffs off of the tow call list and it is a revenue source for the business. The previous owner did it in the same fashion as I did. I would like to eventually get my own truck because it is another revenue stream that could be exercised rather than subbing it out. I guess that is the gist of this site plan and since we have to be here to ask for what I would ultimately like to be able to do. I did add to the narrative the desire to have a truck parked on-site but currently there is no truck parked at the site. The trucks come in and drop off the vehicles and leave. Mr. Roberts asked so you are applying for an auto body shop, used car sales, towing service and an impound lot? Mr. Moffre stated the following: I guess yes and that what was there prior. It really is a change of tenancy but it is kind of not because it is the same business. It is exactly the same business that was there since 1982. It was Clifton Park Auto

Body and it still is. Nothing has changed except the ownership of the business. Mr. Watts stated when you operate an impound lot, do you enter into any kind of written agreement with the police agencies that have cars there? Mr. Moffre stated the following: No, they just require that you have insurance and that you are a legitimate commercial repair center and that you are a registered repair shop and I am. There is no contract whatsoever. You are put on a list. Kinetic Towing, Gary's Auto Body, the Lussier's are all on the same list. As accidents occur throughout the Town, they are dispatched, the dispatchers for the State Police and Sheriff's have that list and they go down that list and they call, kind of by turn, each vendor that is on that list to respond to the tow call if they are available. That is really all there is to it. The State Police require a fenced in area and that you are insured. Mr. Watts asked how long has the fenced in area been there? Mr. Moffre stated we put the fence up in June 2008. Mr. Ouimet asked if the impound area is currently leased by you to DPS Towing Service? Mr. Moffre stated no. Mr. Ouimet asked who is DPS Towing Service? Mr. Moffre stated the following: DPS Towing Service is on the list with me in conjunction because I am the location that they are towing to but they are totally a sublet. DPS tows the vehicle in and I pay them for the tow. Mr. Berkowitz asked if DPS towed to anywhere else. Mr. Moffre stated they tow for other people, they don't exclusively tow for me. Mr. Berkowitz asked who else does DPS tow for? Mr. Moffre stated the following: They tow for other customers for themselves but they tow off the list. As far as being on the tow list, short of that I would have to get my own truck. Mr. Berkowitz asked if DPS towed to other lots? Mr. Moffre stated the following: I don't know because I don't know the scope of their business. I know what my relationship is with them; it totally pertains to the tow calls off the police and sheriff's list and those vehicles get towed in to my location. Some vehicles stay there for 24-hours and some stay there for 2 weeks. It really depends on the situation; for instance if it was a DWI tow, those vehicles come in and leave within a 24 to 48 hour period because there is no damage involved. If it was a collision accident call, those cars get towed in and the cars are there depending upon the insurance company and the nature of the accident, which could be for several days or several weeks. I know that they tow to my location and as far as I know they bring everything to me but I am just relying on good faith as far as that goes. I have no contract with them in that respect. I just require that they're insured and I have a copy of their insurance. The State Police has a copy of our insurance bonds just to protect themselves. Mr. Berkowitz asked do they store vehicles there? Mr. Moffre stated when they bring vehicles in; they are for me. Mr. Berkowitz asked do they store their tow trucks there? Mr. Moffre stated the following: No, they do not keep their vehicles on-site. They run a 24-hour tow service that really has no affiliation with me. They have their own phone numbers and their own business and basically I pay them on a sublet basis. When they bring the vehicle in, they provide me with a tow-call slip, I cut them a check and then I take over the vehicle from that point. Mr. Ouimet stated I guess that is where I am having a little bit of trouble understanding; what is it that you sublet to DPS Towing? Mr. Moffre stated the following: Basically I treat it as a sublet. They tow the vehicles in and they also do all my towing. If you were my customer and you called me up and told me that you had an accident or your car broke down, I would take your information, I would call DPS and dispatch them myself to go and get your vehicle and bring it to my facility. So, that is considered a sublet. Mr. Ouimet stated so the impound lot that you have is really not sublet to anybody and it is something that you created on your own. Mr. Moffre stated the following: The impound lot is strictly for my operation, it is totally me and it is just a fenced in area. I guess calling it an impound lot is just a way to refer to what that area is. It is a fenced in area where vehicles are stored. Mr. Ouimet asked but are they being stored for you? Mr. Moffre stated yes, 100% for me. Mr. Higgins asked if Clifton Park Auto Body is on the State Police list as an authorized tower. Mr. Moffre stated yes we are. Mr. Higgins asked when you get the call in the middle of night, you don't go yourself, and you just call them and send them out? Mr. Moffre stated the number that they have is his phone number and they call him directly. Mr. Higgins asked so in other words he actually gets two spaces on the list, his own and

yours? Mr. Moffre stated the following: No. He is only on the list with one space. We made a joint contract because in order for him to be able to tow off that list, he needed a location that would support towing. It was a good fit for both of us because with me taking over the business, I didn't want to go out and buy a tow truck and take on all that added expense not knowing what the revenue stream would be. So we basically got on the list together and we made application together. The State Police knows when DPS tows, the vehicle is going to end up at Clifton Park Auto Body. They are not calling Clifton Park Auto Body they are calling DPS. There is only one number on the list and there is only one spot on the list. We're not both on the list. Mr. Higgins asked what is his legal business address? Mr. Moffre stated I don't know. Mr. Higgins asked but on the State Police paperwork, is his storage yard listed as being at your location? Mr. Moffre stated the following: No, we're both listed on that paperwork. We filled the paperwork out together. Clifton Park Auto Body actually filled out the paperwork but when they call the number that Clifton Park Auto Body provided, they get DPS. This is not uncommon because on that list there are several numbers that you could call and you could get Kinetic Towing. I don't believe the number you provide is really the issue, DPS just happens to do all my towing. Mrs. Murphy stated the following: The issue becomes whether or not the tow business has a legal address, which is your address because you just said that you didn't know their address. Mr. Moffre stated the following: I know that they don't have my address. They are not using my address for their business. I just don't know what their address is. DPS has their own insurance and they have everything. They have got to have an address some place because they have registrations, insurance and plates. They are not using 1625 Route 9 as their address and they are not using Clifton Park Auto Body's address or name. Mrs. Murphy asked where is their office? Mr. Moffre stated I believe they are located some place in Halfmoon. Mr. Watts stated well, you are in a partnership of some sort with this place and they are some place in Halfmoon. Mr. Moffre stated I am not in a partnership with them. Mr. Watts asked what is the name of the principal of that company? Mr. Moffre stated Dan Sequin and he calls the company DPS Towing. Mr. Watts stated the following: You mentioned that you created this impound lot and I think the problem we are having in our minds is getting through with what you are doing. For instance: Somebody's car is going down the road and somebody clips it and that car needs repair work or bodywork. When the tow truck comes from wherever, the owner of the car says "take it to you or take it to somebody else" that is a tow of a car that has been damaged. Mr. Moffre stated correct. Mr. Watts stated then it seems to me that there are cars that get stopped by law enforcement agencies and they might take the car from somebody who has a DWI and that person goes wherever they go and then the State Police or the Sheriff's say the car goes "here" wherever that is. Mr. Moffre stated correct. Mr. Watts stated and that area has to be fenced in and secured so that person after they get let out or one of their friends can't go and grab the car from wherever it is, correct? Mr. Moffre stated the following: Correct. The main purpose of the impound is for that reason; for that type of vehicle and that type of situation. Mr. Watts stated or for a car that was stolen and they would put it in this impound lot. Mr. Moffre stated the State Police don't have a specific one, they rely on whoever is on the list with an impound to secure the vehicle. Mrs. Murphy stated they do have their own, if they so chose. Mr. Moffre stated the following: Right now we have a vehicle on hold for the State Police. The vehicle was in an accident on the Northway a couple of Sunday's ago over by Exit 10 and it is a Mercury Navigator that is in about 6 pieces. The State Police have had a hold on that vehicle now for 2 and 1/2 weeks and it is been sitting there because they are investigating the dynamics of the accident. That vehicle ended up at our place because we were the next ones on the list. They called us and the tow truck went and picked it up and brought it in. That is the situation with that kind of thing and that is why they want it fenced in because they don't want the owner of that vehicle to get any kind of access to it without their permission. Mr. Watts stated okay so we have separated out the impound lot concept with somebody's car getting towed there. Mr. Moffre stated a collision car does not have to go in there. Mr. Watts

asked when did the impound lot get installed? Mr. Moffre stated there was always parking there and we just fenced off the area. Mr. Watts asked what do you mean parking? Mr. Moffre stated the following: The area where the cars are parked that we are calling the impound area. That area was always a parking area or a parking lot area. It is an area of the location that was always a gravel parking lot that just had a fence put around it. Mr. Watts stated so there were always parked cars in that area that might have been for sale. Mr. Moffre stated not likely because we located it in the back corner where you really don't even see it from the road because it is obstructed by buildings. Mr. Watts asked why would cars have been parked back there? Mr. Moffre stated the following: It was a parking area or a holding area. It was just an area of the parking lot with cars for repair, cars for the shop and that is what is typically parked there now with the exception of what's fenced in. Mr. Watts stated for this new business that you have created you have fenced in this impound area. Mr. Moffre stated right and to be on the list it needed a fenced in area and that is why we fenced off that area. Mr. Watts stated so that is a new business at that site. Mr. Moffre stated the following: It is an extension of the existing use. Cars have always been towed in and dropped off there; they just weren't secured. Mr. Watts stated okay. Mr. Ouimet stated I am assuming that the access to the impound lot is gated and locked. Mr. Moffre stated yes it is. Mr. Ouimet asked if the State Police were to call DPS Towing at 2:30am and say they needed a car towed off of the Northway and brought to your lot and impounded; does DPS Towing have their own key and do they have their own access to this lot or do you have to meet them there. Mr. Moffre stated no, I don't have to meet them there because they have access to the impound lot. Mr. Ouimet stated so in essence it is DPS's Towing lot. Mr. Moffre stated no it is not their lot; DPS tows to that location and drop the vehicle off and leave. Mr. Ouimet stated but two separate businesses have access to a closed locked lot. Mr. Moffre stated if that is the real issue with the lot, I could just get my own tow truck and do exactly what I'm doing, only towing the vehicles in myself. Mr. Ruchlicki stated I think the issue is that that type of activity was never on that site before. Mr. Moffre stated okay. Mr. Ruchlicki stated the previous owner did not have an impound lot. Mr. Moffre stated okay. Mr. Moffre stated the previous owner had vehicles towed in by other tow companies. Mr. Ruchlicki stated but they were not impounded. Mr. Moffre stated the following: I understand what you are saying. I fenced in the area so that I could qualify for the tow list. Mr. Ruchlicki stated correct, so therefore, that is an activity that was not previously at that site. Mr. Moffre stated okay. Mr. Watts stated the following: On your application that you submitted you indicated your hours of operation as 8:00am to 8:00pm during the week, 10:00am to 4:00pm on Saturdays and closed on Sundays. Also, you have 2 full-time and 2 part-time employees. This impound lot is a 24/7 operation. Mr. Moffre stated that is on-call. Mr. Watts stated that is a 24/7 operation. Mr. Moffre stated the following: Correct, that is an on-call. Anybody who tows and anybody shops in Town like Lussier's or anybody who is on that list, it is technically a 24-hour situation above and beyond your regular commercial hours. Mr. Watts asked if the impound lot had to be lit? Mr. Moffre stated the following: It is lit and there is lighting behind it. There is one light that I'm repairing that was on the end of building. The Enterprise Rent-A-Car, which is immediately adjacent, has a light on the back corner right where that lot is and we get residual light from that. If a tow truck comes in at night to drop off a vehicle, it has the heavy white lights that they just turn on, back in, drop it and pull out. Mr. Watts asked if there were any homes back in that corner of the property adjoining to that? Mr. Moffre stated the following: No sir. This piece of property is part of one larger commercial piece of property that has several businesses operating on it and in the rear of the property there is a wooded buffer. I don't know the exact dimensions of it but it is a heavy wooded area and then I believe that there are some apartments in the back on the next piece of property at the end of the road where Casale's Rent-All is located. Mr. Nadeau stated on the site it where it says, "fixed office trailer", wasn't that Bill Mooney's area? Mr. Moffre stated this whole place was Bill Mooney's area originally. Mr. Nadeau stated that's the point but I believe that the model home was parking their

homes in that area. Mr. Moffre stated the model homes business is immediately adjacent to the left. Mr. Nadeau stated the following: They had a numerous amount of model homes and they were all over that lot. To my recollection, I don't believe Clifton Park Auto Body was using this portion of that lot. I thought that was stored with modular homes. Mr. Moffre stated that I don't know. Mr. Nadeau asked are you saying that the used car business was Bill Mooney's, because I don't believe Victor actually had a used car lot in the front there. Mr. Moffre stated the following: Victor did put cars there for sale and Victor's wife provided a narrative about what they were doing and they did put cars out for sale, just not as many. Previously I don't know and all I know is that the modular home business is still there. It is next door and there is actually a modular home out in front of the actually Clifton Park Auto Body area. Mr. Williams stated we don't have a lot information on the prior use of that site and I didn't realize that at one time it used for a modular home sales site. I can look that up if you can give me some of the names. Mr. Nadeau stated the following: Going way back a gentleman named Bill Mooney had a large car lot on that side of it and then I know Victor came in and got the approval for the body shop. I believe that again, the modular home business were still parking their homes there because Victor used to complain that they were blocking the entrance and blocking the view to the shop. Mr. Moffre stated the following: It still does. Currently there is a modular home right out in front right now that blocks the view of the business. Mr. Ouimet stated regarding the fixed office trailers there appears to be three with one to be removed and two would stay. Mr. Moffre stated the following: The one to be removed I guess has been sitting there for about the last 20 to 25 years and what it actually is, is one of those old modular office trailers. It is just sitting there on its wheels and it has just been used for storage for years. When I took the business over, it was being used for storage. It had excess parts, equipment and things like that in it. We're proposing to take that out of there. You don't see it from the road and you wouldn't even know it was there unless you pulled into the back of the property. I really have no use for it and it is kind of an eyesore so we are proposing to take that out of there. Mr. Ouimet asked what about the small office trailer in front of the 6-bay one-story metal building? Mr. Moffre stated the one that is adjacent is being used. Mr. Ouimet stated so there are two offices; there is the bigger office, which blocks the one to be removed. Mr. Moffre stated right; we are not using that office at this time. Mr. Ouimet asked so there is the one to be removed and the one in the front of it are not being used right now? Mr. Moffre stated no. Mr. Ouimet asked so the only one you are using is the little one in front. Mr. Moffre stated the following: We want to use the bigger one. The fixed office trailer that is in the front is permanently mounted and skirted and finished. The one behind it is just an old trailer. Mr. Ouimet asked what about the smaller one in front of the one-story metal building with 6-bays. Mr. Moffre stated yes, we use the one to the left of the building. Mr. Ouimet asked and you intend to continue to use that? Mr. Moffre stated the following: Probably not as an office. My intention would be to use the larger building and not use that smaller one but that could be removed from the site if that was an issue. Mr. Ouimet stated it seems to be right at the end of the driveway. Mr. Moffre stated although the appearance of this and the way the spaces are all marked out, it's all gravel and some blacktop all the way around the building and that trailer is sitting on gravel and blacktop; it is not sitting on earth. Mr. Ouimet stated are you talking about the little one? Mr. Moffre stated the following: The little one has gravel and blacktop behind it and in front of it. It is skirted in but it is above grade and you have to use stairs to get into it. It's not convenience and it is not handicap conducive. It is not really great when elderly people come in and need an estimate and they have to struggle getting up the stairs to get into the office area to sit. So, it is really not a primary good use for me and I would like to get rid of it to be honest with you. Mr. Ouimet stated it is just confusing for me to look at the site plan and see three office trailers with one to be removed but two are to stay. Mr. Moffre stated I never gave it any thought as far as the smaller one and I would have no issue with removing it. Mr. Berkowitz asked if any of the trailers were handicap accessible? Mr. Moffre stated the following: The front one is grade level with one step and it



would need a ramp and I planned on doing that to make it handicap accessible. The main garage is but customers really don't have a reason to go in there anyway. The office is not handicap accessible. The office has been there forever and I guess it could be ramped if it had to be. I was just as soon not use it, but pre-existing, as when I took the business over, it's not. I believe it has 3 steps before you hit the landing and it is an office trailer. *Mr. Berkowitz asked a question that was inaudible for transcription.* Mr. Moffre's response was as follows: The area in front is all green and according to the plans there is 22% green space; you have the front off of Route 9, the culvert area and then the lawn area that I don't know the exact dimensions of it but it is pretty far offset from the road. It's not paved right up the road, there is a large green area in front, a green area all the way down between Enterprise Rent-A-Car and where it is showing parking spaces, there is a green area behind to the left of the building. There is green area down the sides between mobile home place and there is also a green area where those parking spaces are on the 12 spaces that are in the front of the facility, there should be a little space there because there is a couple feet of green between each side of those parking spaces. Mr. Berkowitz asked if that was noted on the map. Mr. Moffre stated the following: I didn't because I didn't draw the site plan. When Mr. Kim did the site plan I think they overlooked the fact that there is a little green median there between the parking spaces. Mr. Watts asked Mrs. Zepko if she did a site visit. Mrs. Zepko stated yes. Mr. Watts asked and what were your observations for your site visit relative to what is going on here. Mrs. Zepko stated the following: At the time that I was there, there were the trailers that are shown on the site plan, the parking lot is all gravel and the garage with the 6-bays. I observed maybe 12 cars parked in the parking lot at the time I was there. Are there any specifics that you are looking for? Mr. Watts stated yes, have they had fire inspections and C.O.s'? Mr. Moffre stated the fire inspection was just done in March and we passed. Mr. Watts asked was there any homes around the property and did you understand the uses that were being proposed? Mrs. Zepko stated yes, the site is sandwiched in between the Enterprise Rent-A-Car on one side and like Mr. Moffre said there is that grass median. Then immediately adjacent to the south is the Modular Home Sales. When you drive in, it is hard to see his shop from Route 9, you have to actually turn-in in between those 2 properties and the garage sits in the back there. So, it is difficult to actually see the business unless you are looking for it. If you were driving by quickly, you wouldn't even notice that it was there. When you drive in, there is a very large gravel parking area in the front of it. Mr. Watts asked if there were any homes adjacent to this impound lot? Mrs. Zepko stated the following: Not that I could see. There are trees to the rear of the parcel but I couldn't actually visually see any homes through those trees. Mr. Watts asked how far back are the woods before you get to a neighbor? Mr. Moffre stated the following: It is about 250 FT between the impound lot and the parking lot for the apartments. You can't see them unless you knew they were there because that area is very thickly wooded. Mr. Watts stated the following: One thing that I see right now as an issue is there was a business on the site of sorts and you just took over and started operating there without coming to the Planning Board. Then when we realized you were there, you were told and then you came in. Mr. Moffre stated the following: Right. When I went to purchase the business, my attorney and Mrs. Canali's Attorney both reviewed the Town Code and the way we interpreted it, we didn't realize that we needed to come in. We weren't changing the business; we were just changing the owner of the business. Mr. Watts asked Mr. Moffre for his attorney's name. Mr. Moffre stated the following my attorney is Mr. David Lenney. Mr. Lenney did make a call and he called somebody in Planning and he did look at the code book at that time. Mr. Watts asked are you telling me that Mr. Lenney called somebody in the Planning Office. Mr. Moffre stated Mr. Lenney called someone in Planning and asked them a question as it pertained to the way the code read and at the end of that conversation, he didn't feel that we had to make application for a change of tenancy because it was a change of owner, not a change of tenant. I was buying the business as it stood. I bought Clifton Park Auto Body right down to the paperclips as well as the phone numbers and the name of business. All I

did was just walk-in and take over. We were under that assumption and then when it was brought to my attention, we immediately made application when you requested it. As a matter of fact, Mr. Buck, one of your Code Enforcement Officers, came out to the business and he asked me to come in to make an application. I believe within an hour of Mr. Buck's visit I came in and started the ball rolling on this. If we were aware of it, we would have done it. We were kind of under the impression that the business never shut its doors and it never stopped operating. Mrs. Canali and I signed papers and the day we signed the papers I started running the business. Mr. Watts asked Mr. Moffre if Mr. David Lenney was still his counsel. Mr. Moffre stated no he is not. Mr. Nadeau stated the one concern that I have is the fenced in area and asked if this was an expansion of a non-conforming use. Mrs. Murphy stated the following: It sounds like what the applicant is describing is an expansion of a pre-existing non-conforming use. Again, not that the site can't handle what you are describing, but that because it didn't exist there previously you would have to get a variance. Mr. Moffre stated I know what the wording means. Mrs. Murphy stated you would have to go before the Zoning Board of Appeals (ZBA) in order to do what you are proposing to do. Mr. Moffre asked for that part of the use? Mrs. Murphy stated it would be for any expansion on the pre-existing, non-conforming. Mr. Moffre asked so if I wasn't doing that, then the ZBA part of it goes out of play unless I want to do that. Mrs. Murphy stated based on what you are saying here today. Mr. Moffre stated the following: I would think if that is the issue at this point, I would just assume to remove that use and make application for that on a separate note because it is more important to me to get the business approved for some use as I have a sizable investment and I have bought this business. I own it, I own expenses, its bills, its hardware and I have a very large investment here now. So it is more important to me to at least get the previous use, if that is what you want to call it, approved. I have no issue with making a separate application for the expansion of the business and going through the ZBA if that is what is required. I would have no problem ceasing the use and even removing the fence until such a time that it is approved. Mr. Watts stated personally I think there are still some questions we have here. Mr. Nadeau stated looking at the fence, it appears that it is on the adjacent property. Mr. Moffre stated the following: The adjacent property is the same property. Mr. Cummings's family owns all of it; he owns the Enterprise Property, he owns the Affordable Homes Property, the Rainbow Playground Property and the 250 FT deep wooded area that is directly behind the site. The lines on this site plan are basically lease lines and the purpose is to just establish what portion goes to what business. Mr. Nadeau asked if Mr. Moffre was leasing from Mr. Cummings. Mr. Moffre stated yes, I am leasing it from him and the lines basically just break it up so everyone knows what part of the property they're in control of under the terms of their lease. Mr. Higgins stated the following: The intensity of the previous use, if they had a couple of cars for sale, obviously I don't know where they were displayed. However, looking at the spacing that is shown here now, there is spacing for 25 to 30 cars right adjacent to Route 9 where there were never that many cars displayed at that point. You could be looking at that many cars up there, traffic and everything else with trying to get in and out of the site. Is the used car lot going to be serviced out of the fixed office trailer? Mr. Moffre stated yes, I want to service the whole facility out of that trailer. Mr. Higgins stated the following: It says 22 percent green space but it doesn't really give us an area that shows the green space and obviously the area directly adjacent to Route 9 is shown as display space now, but it was not used exclusively for display space previously. There is a certain amount of green space that could be incorporated there just to dress up the site. Mrs. Murphy stated the following: I'm going to ask the Board's indulgence; that some of the members of this Planning Board are recalling that when this property was utilized as a repair/auto sales, it was limited in size in that the lease only took up the right side of the driveway and that a different entity leased the left side of the driveway. Mr. Moffre stated the following: Yes, Enterprise Rent-A-Car was a tenant in that building at one point and now they are next door in the other building. I do know that it was Enterprise Rent-A-Car's office at one point. Mrs. Murphy stated the following:

What happens is that then equates to again, an expansion or a change of a pre-existing non-conforming because you are changing the size of it and the use of it. A rental place is obviously different than a sales or repair. I need the Board's indulgence to try to get that history more specifically to steer Mr. Moffre in the right direction to make sure what he is doing complies with our regulations. Mr. Moffre stated that is fine and whatever you guys need is fine with me. Mr. Watts stated Mrs. Zepko and Mr. Williams will be in touch with you to discuss what they need and then we will talk to you about that impound thing and everything else. Mr. Moffre stated like I said if that is an issue it can be addressed at a later date as far as I am concerned. Mr. Watts stated we will figure it out and we certainly need more information.

This item was tabled for continued review on proposed uses and to obtain additional information.

**09.024 OB Halfmoon Village & Yacht Club, 2 Beach Road – Multi-Family PDD**

Mr. Andy Rymph, of Chazen Companies, stated the following: I am here tonight on the behalf of the Halfmoon Village & Yacht Club's proposed project. As you know, we made a Planned Development District (PDD) application a while back and offered to prepare a Draft Environmental Impact Statement (DEIS) to address the State Environmental Quality Review Act (SEQRA) concerns. We prepared an outline of the scope for the DEIS and submitted to CHA. I believe on June 9, 2009 Mr. Bianchino had sent a letter back to the Planning Board and in that detailed out why we are here tonight for a request that the Planning Board return a recommendation to the Town Board to have the applicant prepare a DEIS to move the project forward. Mr. Watts asked Mr. Bianchino if that was correct. Mr. Bianchino stated yes.

Mr. Berkowitz made a motion to pass a recommendation to the Town Board that a Positive Declaration to the SEQRA process should be considered for this project in order for the applicant to prepare a Draft Environmental Impact Statement to identify and mitigate potential environmental impacts. Mr. Ouimet seconded. Motion carried.

**09.042 OB Saratoga Academy, 1524 Route 9 – Change of Tenant & Use with Addition to Site Plan**

Mr. Ouimet recused himself from this item. Mr. Michael Christensen, the applicant, stated the following: The last time I was before the Board we did a conceptual presentation of what we were planning to do and we were waiting on our site plan revisions and final drawings from our architects. Now we are before the Board to make our official presentation. I have provided the Board with our brochures so you could get a full understanding of what the Saratoga Academy of Arts & Sciences is about. We are looking to have an independent pre-school/elementary school in the Clifton Park/Halfmoon area. We are currently located in Clifton Park where we are operating 2 classrooms. We are looking to expand to 3 additional classrooms for a total of 5 classrooms. We would have 5 classrooms on two facilities. We would be maintaining a pre-school at our existing Clifton Park facility and moving our primary grades; kindergarten and first grade to the proposed location at 1524 Route 9. The following year we would be expanding again and then that site would revert to becoming our pre-school center. So we would have 3 sections for pre-school, which would become the feeder into our main building which is yet to be determined where it would be located. For this year we are expecting 50 children in the building. A number of the children would be bused. Almost all of the children are eligible for busing. Currently we have been speaking with Shenendehowa and they are aware of situation and they have approved our proposed site plan in terms of the busing requirements and the turnaround specifications. We also have 2 students coming from Niskayuna and they will be sending us smaller transport for those students. Our hours of operation are 8:30am to 3:00pm. Beyond

3:00pm there would not be anybody in the building. We are going to have after school care but that would be at our other facility. The children from the 1524 Route 9 site would be bused to the other facility for after school. The following year there would be no bus transportation at the facility but we would then have children in the building until 5:30pm. So those would be the changes. This is the bottom portion of Dr. Morrison's building, who is also here tonight. There would be minor renovations and would consist of taking down sheetrock and re-installing sheetrock. We would be adding additional restroom facilities and there would also be some storage and office space. There would be fire rated corridors with double egresses per fire code. The only minor change was the site plan revision that was required taking in mind the busing and transportation needs. We were trying to be the least invasive as possible in disturbing the site. You can see that they have done all the computer simulations for a large bus. So the buses would be coming right into the main entryway and out. You will see that this required widening the existing curb cut to allow for that. There would probably be 2 buses. The buses would come into a drop-off zone, they would traverse around the parking lot where there would have to be additional asphalt made to allow for the turnaround. This would require that site losing 4 parking spaces but there would still be adequate parking as required per Town code. Dr. Morrison currently owns both of these buildings. Another change would be in the green space area where we are proposing a play yard. There is currently a stockade fence that comes in and then goes down at a 45-degree angle across the middle of that area. We would be moving that stockade fence to have it continue along the property line. We don't know why it doesn't do that now, but we would continue the fence along the property line to keep the barricade between the mobile home park and the play yard. It would still meet all of the requirements for green space. Mr. Nadeau asked do you have written authorization from Shenendehowa that they had looked at the site. Mr. Christensen stated I can get written authorization. Mr. Nadeau asked did you also mention Niskayuna? Mr. Christensen stated today Niskayuna said they would be sending children to us also. Mr. Nadeau asked could you also get written authorization from Niskayuna as well? Mr. Christensen stated okay. Mr. Watts asked this is not limited to Shen and Niskayuna either because you can get kids from Colonie, Waterford-Halfmoon, Mechanicville or whatever, correct? Mr. Christensen stated well it is certainly possible but it certainly not likely. Mr. Watts asked why? Mr. Christensen stated the following: Because it is already getting late in the registration process. I would be surprised if we had more than 50 children at this stage of the game. We are nearing capacity now. It is possible but not likely and if we got a random child from someplace, they wouldn't send a bus, they would send a car. Mr. Watts stated okay, that was the only concern as Mr. Nadeau mentioned. Mr. Christensen stated the biggest concern would be Shen busing. Almost all of our kids are from Shen and I would expect them to send 2 buses. They would probably have a run south of Route 146 and a run that goes north of Route 146 but I am sure that they would be happy to send an authorization. Mrs. Murphy stated Mr. Higgins' question to me was with regards to some of the statutory mandates for sex offenders not being near a school and whether or not if such a school moves into the area changed those rules and that is not something for this Board to consider. But, it could affect anybody in that area but that is not something this Board can consider. Mr. Higgins stated regarding the proposed playground; you said that is presently green space. Mr. Christensen stated correct. Mr. Higgins stated so being that it is now being utilized as a portion of the school does that affect the green space? Mrs. Murphy stated I would need to look at that issue and whether or not a playground could be considered green space. Mr. Christensen stated I don't think it does, because it says the green space requirement is for 20 percent and the existing lot currently has 40.5 percent so the percentage change would be a 1 percent change. Mrs. Murphy stated he is just saying that if you take out the part for the playground, it would still have enough green space. Mr. Williams stated the following: I had a discussion with Mr. Bianchino throughout the process and Mr. Bianchino and I felt that the site would still have 40 percent green space. The percentage of the green space represented was 39 and 41 percent. Mr. Watts

stated so we are okay no matter what. Mr. Polak stated the following: When he goes from the learning center this year and then after the first year he goes to the day care, would he have to resubmit an application to run the day care? Because when the kids get dropped off early in the morning and then they are picked up after 5:00pm that sounds like a day care activity. Mr. Christensen stated we are chartered by the State of New York as pre-kindergarten through primary grades so the origination itself is chartered as such. I guess Mr. Polak's question is specifically to the Town because I am authorized to run both of those operations and currently it is all under the same umbrella. Mrs. Murphy stated the following: It depends on how the Planning Board chooses to grant the approval. If the approval is granted predicated on the use currently that you're proposing for this year, then you would have to come back if it was modified. If the Planning Board said that this full build-out plan is acceptable for that building, then you would not have to come back. Mr. Christensen stated the following: The site plan revision was specifically done with the one-year contingency in mind aside from the playground. The build-out itself; the interior, was done for two purposes; we wanted space that would allow us to have classrooms of this size in order to handle the type of instruction that we want to do. More importantly was having a long-term vision that this needed to become a pre-school. So these rooms are being designed for that stated purpose. Mr. Watts asked but at this time your request right now is for the kindergarten and first grade, correct? Mr. Christensen stated my request would be for the entirety of the plan but my use for this year is for kindergarten and first grade. Mr. Polak stated the only reason I brought that up was because of the other projects and the impacts at that intersection and 3 buses would not impact the traffic. However, if there were 60 to 70 cars a day dropping off kids would be another impact at that intersection. Mr. Watts stated I would feel more comfortable doing just the kindergarten and first grade. Mr. Berkowitz asked what is the maximum amount of students that you would have this year and the maximum next year? Mr. Christensen stated I am anticipating a maximum of 50 students for this year. Mr. Berkowitz asked how many students can the facility handle? Mr. Christensen stated the facility can hold 60 students. Mr. Berkowitz asked is that for kindergarten and first grade? Mr. Christensen stated either because each classroom has a capacity of 20. Mr. Berkowitz asked how many for just pre-K? Mr. Christensen stated the following: The number is the same and that is the maximum. Our stated mission is that our classes never crest 20. Mr. Watts stated in your advertising for this facility I would appreciate it if you use Halfmoon. Mr. Christensen stated the following: Absolutely. We have not been presumptuous in putting Halfmoon on anything yet but our new brochures will have a Clifton Park Campus and a Halfmoon Campus. I have a question regarding signage; not so much what would be the permanent sign. We have not submitted a sign application yet. There are pre-posted signs on each lot that has panels but is it possible to hang a banner in the interim on the side of the building? Mrs. Murphy stated yes, you could do a grand opening for a period of 30 days. Mrs. Zepko stated you can put a banner on the side of your building that says "grand opening" and you can have it there for a period of 30 days. Mr. Christensen asked can I say "coming September 09"? Mrs. Zepko stated yes, whatever your verbiage is.

Mr. Berkowitz made a motion to approve the Saratoga Academy change of tenant & use with addition to site plan application for the Kindergarten through first grade use. The Board asked the applicant to reappear before the Board for the proposed pre-K use before next year. Mr. Roberts seconded. Motion carried.

Mr. Ruchlicki made a motion to adjourn the June 22, 2009 Planning Board Meeting at 8:17 pm. Mr. Berkowitz seconded. Motion carried.

Respectfully submitted,  
Milly Pascuzzi  
Planning Department Secretary