

**Town of Halfmoon Planning Board****Meeting Minutes – May 27, 2014**

Those present at the May 27, 2014 Planning Board meeting were:

**Planning Board Members:** John Ouimet – Chairman  
Don Roberts – Vice Chairman  
Rich Berkowitz  
Marcel Nadeau  
John Higgins  
Lois Smith-Law

**Planning Board Alternates:** Margaret Sautter

**Director of Planning:** Richard Harris  
**Planner:** Paul Marlow

**Town Attorney:** Lyn Murphy

**CHA Representative:** Mike Bianchino

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Mr. Ouimet opened the May 27, 2014 Planning Board Meeting at 7:01pm. Mr. Ouimet asked the Planning Board Members if they had reviewed the May 12, 2014 Planning Board Minutes. Mr. Roberts made a motion to approve the May 12, 2014 Planning Board Minutes. Mr. Berkowitz seconded. Vote: 7-Aye, 0-Nay. Motion carried.

**Public Information Meeting:**

**09.024 PIM      Halfmoon Village & Yacht Club PDD, 2 Beach Road – Amendment to PDD**

Mr. Ouimet opened the Public Information Meeting at 7:02pm. Mr. Ouimet asked if anyone would like to have the notice read. No one responded. Mr. John Montagne from Greenman-Pedersen, Inc. stated the following: I'm here tonight representing Mrs. Gail Krause and Halfmoon Beach Properties, LLC. At our last meeting we presented what we're here for tonight. This project is a fully approved Planned Development District (PDD) approved with State Environmental Quality Review Act (SEQRA) approvals for the construction of a 244-unit residential development. The applicant, Halfmoon Beach Properties, LLC, has requested the Town Board of the Town of Halfmoon to consider a language amendment to the approved Halfmoon Village & Yacht Club PDD. The proposed change specifically addresses modifications of language related to the condominium form of ownership and expands it to also allow apartment ownership. There are no other changes proposed in the approved PDD legislation, the approved preliminary development plans or the adopted SEQRA action for the project. Having said that; there were extensive reviews and analyses that were done on this, an update to the traffic analysis was completed and provided to the Town Board and the Planning Board members. The modification to allow apartments actually improves the taxable rating for this property and condominiums get a discount in tax rates. So; there really are no other changes and with that; if there is anything else that the Board would like

me to discuss, I would be happy to. Mr. Ouimet asked if anyone from the public wished to speak. Mr. Mike Colletti, 130 Beach Road, asked are they still planning on having condominiums or is the language to be changed for it to be all apartments? Mr. Montagne stated the following: The modification to allow for apartments is for financing purposes. If a developer wishing to do apartments comes in at that time, it would be switched entirely to apartments. At the same time, if somebody comes in and wants to develop it as condominiums, it would be all condominiums. Right now condominium financing has been very difficult to secure and that is why our request is going in. Mr. Colletti stated the following: Okay, with that being said; I am in opposition of it being apartments. The whole aspect of the condominium development at Krause's was the fact that I would have ownership of a condominium and I could keep it, I could rent it or I could sell it. The plan that I actually sat and looked at about a year and a half ago with the boat slips and all that, it all came under the ownership end of it. So; I'm in opposition of the apartments because, of course, you would never own it and you would always be paying rent to the owners of the property. So, I'm hoping it doesn't go that way. Mr. Dick Shakerley stated the following: I'm here for another project but because this is going on right now; I'm a member of the West Crescent Fire District and I'm curious to see if anything has changed between condos verses apartments. Are the buildings going to have sprinklers? Mr. Montagne stated the following: All of the buildings would have sprinklers and the water analysis study that was done before was based on that. I would also like to point out that the construction is the same. This is an ownership change only in how you finance and how you develop the project from an ownership standpoint. So, I want to be very clear that this is still a very high-end up-scale project and no changes in from that perspective. Mr. Ouimet asked was this project reviewed by the West Crescent Fire District? Mr. Montagne stated the following: Yes it was. It was fully reviewed on the original plan. Mr. Ouimet asked has anything changed from that review? Mr. Montagne stated no, it has not. Ms. Linda Ryan, 69 Canal Road, stated the following: I'm opposed to apartments. My feeling is that people who own a condo have a vested interest in the Town, in the river and in the road and the people who are tenants don't have those interests that we have in place. I'm concerned about the transient people that will be coming in when you have tenants as opposed to owners. Ms. Arlene Clements stated the following: I live adjacent to the property and I ditto what that lady just said. I have a lot of questions and I'm against the apartments. You're going to have a lot more traffic, you're going to have a different caliber of people, you're going to have more people in the apartments, more cars and we can hardly get out onto Dunsbach Road as it is. I previously asked the question; was there going to be light up there and the answer was no, there is not going to be light on Dunsbach and Vischer Ferry until a housing development gets done up above and then they would put a light in. Again, you can hardly get out there and many times I had to take a right, go down, turn around and come back. Well, if you got 244 condos, you have two cars per one for each condo and then if you're going to turn it into apartments, you are going to have more people in the apartments because I believe you're going to get a total different caliber of people even though the rents might be high. The other thing that I'm concerned over is the canoe launch there; I don't know why they need to put the canoe launch right there. I know it was a sop to the Town, but it could go down at the end of the road and it could go down to where the little park is at the end of Crescent. Why don't they have a launch there for kayaks because it's much much better and there is more parking and everything there. I'm going to get a lot of noise; I'm going to have to look at people trucking back and forth. I also asked the question of Mrs. Krause and I know and realize that it's an expense and I said "when they clear out the water chestnuts, are they going to come down and do it around the corner where we are?" and she said "no, they can't do that". You're going to get a lot of money from taxes if it goes through and you're giving them a break if it's apartments and not condos, why couldn't you provide for something for the neighbors and the other people that live

there in the form of getting rid of the water chestnuts because we can't use the river there at all. So, it's kind of unfair to us and we're paying taxes. The other thing that I'm concerned over is; with this project there are our taxes going to go up appreciably? Mrs. Murphy stated the following: Just for clarification purposes; we don't have a Town tax so, the Town isn't taxing you. Just so you're clear; it's the County and the school that you pay and you probably have fire district or something along those lines as well. So, the Town itself does not have a tax. Ms. Clements stated the following: I'm not thrilled I'm sorry to say. It's going to hurt me and I'm directly next door. The other thing that I'm concerned over too is if it's apartments; you're going to get a lot people that are going to want to have the ski jets in the water and skidoos in the winter because they are on the river and that's going to be really really noisy. Somebody else brought up a point and I thought this was kind of interesting and it's a little off the path, but they said "if you're going to have apartments and then you got the boat launch and everything like that, lots of times in apartment complexes they go down and you have more drug problems" and somebody said "well, they're going to be bringing all the drugs down from Buffalo" and I mean that's kind of absurd, but you kind of have to think about that. Then when you go down Canal Road and you look across the river and you can see all apartments that are there and everybody that comes to my house have said "God, did you see those apartments, they look awful". So, I'm not going to see them because I don't go past my house, but I just don't like the idea. If it had to be anything, I would just say condos, but I've changed my mind about those but I definitely do not want apartments because you're going to have more turnover also and there is enough traffic on that road because it's only a little two lane road. Is Beach Road going to be widened? Mr. Ouimet stated the Town Board has requested improvements to the road. Ms. Clements stated and my concern was what kind of a barrier am I going to have from their property to my property? Mr. Ouimet stated we don't know what the site plan ultimately is going to look like until they come back to us for site plan approval. Ms. Clements stated it is always "we don't know" and then I'm going to get a surprise. Mr. Ouimet stated well, we know what we know. Ms. Clement stated I know, but I don't know. Ms. Deb Kwacz, 89 Canal Road, stated the following: My concern is basically traffic not only on Dunsbach but also on Canal Road. There are only two ways to get out of that area on Dunsbach and Canal and we have trouble now with traffic; there is the bike path, there are a lot of people walking on the bike path as well as pedestrians and bikers and with the added traffic, people don't go the speed limit as it is now and I'm just concerned for safety more than anything else. You said the traffic had been change and I don't know how that is. Mr. Ouimet asked Mr. Montagne to talk a little bit about the traffic and the updated study that you have commissioned. Mr. Montagne stated the following: Sure. Let me just touch on a couple of the item that came up. First of all a traffic analysis was done for the initial project of 244-units. There were very similar demographics and it's an ownership change here. A condominium building, as with anything else, as the gentleman had pointed out; you can buy it and you can rent it or an owner of a building can actually own the whole building and rent it. So, there is still the ability right now for it to be rented with units. Having said that; the unit mix and the unit type is the same as it was under condominiums and the traffic generation will be nearly identical and that was shown in the updated traffic study that GPI had completed. Mr. Berkowitz asked did you say that one person could buy a whole building? Mr. Montagne stated an owner that builds a building surely could continue to own that whole building. Mr. Berkowitz stated so, you could have multiple owners of different buildings? Mr. Montagne stated you can have ownership of any unit in a condominium and you can own as many as you want and you're not precluded from owning more than one unit. Mr. Berkowitz asked how about with the apartments? Mr. Montagne stated with the apartments, the apartments would be owned by an apartment management company and that management company would be responsible for all the grounds and everything else just like a Homeowner's Association (HOA) would be

responsible. Mr. Berkowitz stated so; you're not going to have multiple builders for the apartments? Mr. Montagne stated the following: No, we're not going to have that and it would be one builder. As far as the traffic goes; if you go back and look at the traffic study that was done for the original project and all of the traffic studies that are done for this area, the biggest contributor to traffic on Vischer Ferry Road is the traffic that comes off of the Northway or heads to the Northway or to Route 9 and that traffic is what is uncontrolled. That's why without a signal that traffic will continue to flow the way it does. This project does not add enough trips to trigger any kind of a warrant to suggest that a traffic signal should be put in and until the New York State Department of Transportation (NYSDOT) makes the determination that that warrant has reached its peak, they will not put a signal in. The NYSDOT does not like to put signals in because it slows down the traffic on the main commuter route, which is Vischer Ferry Road. As I said; in the updated traffic study there really is no change at all to trip generation or distribution from going from a condominium form of ownership to apartment form of ownership. The other gentleman made the point that he was against apartments because he wanted to see condominiums. Unfortunately, under the marketplace, the way it is right now banks are very very restrictive on financing for condominiums and there hasn't really been any in the Capital District in quite some time unless you're in a city. Without having a modification to this there is a potential that this project may not happen at all and that would be a significant burden to the applicant for all the time that they have put in on it and that's why the request to the Town Board was there for consideration for financing primarily. There are no other changes to the project and it's still a high-end apartment style condominium style project with the same infrastructure, same mitigations and the same improvements to the community. Public benefits were fairly significant on this and they stay the same. The canoe and kayak launch was really something that the Town had requested as part of the small 1.5-acre park to link the river to the trail and to give some off road access to people that go fishing down there that tend to park on the road right now. It's non-motorized, it's not intended for a launch for jet skis and other things as potentially was thought by the adjacent property owner. Mr. Mike Colletti, 130 Beach Road, stated the following: I do want to say that there are a couple of things; the project is really going regardless of whether it's condos or apartments. Of course, I would like it to be condominiums and I would even consider it being condominiums/apartments. I'm looking at the whole picture there and the whole project, from what I saw, is really going to be a beautification factor for the Town. It's really going to highlight that area of Town, which has been pretty much overgrown and down trodden and also, the dredging project with getting rid of all the crap in the bottom of the river. It's also going to bring in sewer and natural gas for some of us people that don't have that. As far as the light is concerned; regardless of whether this project is built or not, there really needs to be a light there at Dunsbach and Crescent Road. I don't travel that road often, but I know just what that lady was saying where you actually have to sometimes take a right and then turn around. So, it does take a long time to get out of there and of course, if the project is built, then I'm sure it's going to be a consideration. Mr. Ouimet closed the Public Hearing at 7:20pm. Mr. Roberts stated the following: I sympathize with the applicant in having a difficult time getting financing, but at the same time, this Board has to make a recommendation to the Town Board and I feel a little uneasy making a recommendation not knowing what we're going to be getting; whether it's going be apartments or condos and we may not know for who knows how long down the line. I wish there was a way to define if it's going to be apartments or condos. Mr. Ouimet asked has there been contemplation that the project would be split between apartments and condominiums. Mr. Montagne stated the following: To be honest with you, no. We are looking for one developer that will come in that will either do condominiums or apartments and do it all in one project. Mr. Ouimet stated so; if this project were to be recommended to the Town Board to proceed, could it be stipulated that you would choose

one versus another at some point? Mr. Montagne stated the following: I don't see why not. I would think that you could probably make that stipulation before we came back for site plan. Mr. Ouimet stated just to be clear; it's the same number of units that was approved by the Town Board, correct? Mr. Montagne stated absolutely. Mr. Ouimet stated and it has the same public benefits that were approved by the Town Board, correct? Mr. Montagne stated absolutely. Mr. Ouimet stated because I know this Board recommended a lower density be recommended to the Town Board, but the Town Board chose not to follow our recommendation, but chose to follow our recommendations on off-site improvements, is that correct? Mr. Montagne stated that's correct. Mr. Ouimet stated so; the only difference is to facilitate your ability to get financing for condos versus apartments? Mr. Montagne stated correct. Mr. Nadeau stated the following: When we first looked at this project and we looked at it for a long time, I liked the idea of an upscale and nice looking complex, but I think bringing apartments in here; such as what the public has said, is going to change the character of that. I'm just not comfortable with going with apartments on this project. Initially we were told that this was going to be a very nice upscale project with yachts and that type of thing and I feel that we're not going to get that. Mr. Montagne stated the following: Obviously you can have a very very nice upscale apartment project just as you can have a very nice upscale condominium project. We're talking about a form of ownership here. The project as designed remains the project as designed. This is purely an ownership modification. Mrs. Smith-Law stated can you tell us what the rents would be for an apartment so we have some kind of sense of what you're talking about when you say "upscale". Mr. Montagne stated unfortunately, I cannot tell you that that would be up to a business plan for a model for somebody on a competitive analysis for that, but if you look at other rents in the area for upscale apartments, it would be at the high-end of those. Mrs. Smith-Law stated so; we're really not getting any guarantee here that the apartments would be as upscale as the condos, correct? Mr. Montagne stated no, you're getting that promise that this will be an upscale development as envisioned. Mr. Higgins stated if you don't have a developer on-line, how can you make that commitment? Mr. Montagne stated the following: Because in order for this project to be successful and in order for it to pull the revenue that it needs in order to be built, it has to be an upscale project. You're putting in a mile and half of sewer that is going to provide sewer for 75 residents along the way and that's \$1,500,000.00 in construction alone. Then you have all of your site development costs, you've got your natural gas that you're bringing in; you've got a 1.5-acre park that's going in, you have improvements to the local road network in the area, all of which elevates the site costs and all of which elevates the construction costs, which means that you have to in order to make your financials work; you have to have a good return on the projects that you put out. Mr. Higgins stated I just want to clarify again, that the dredging that was part of the original project is still in there, all of it. Mr. Montagne stated the following: At this time the dredging is in there. I would ask the question though, if the dredging were not in there, would that be a problem because that just means that you have less disturbance and the river in front stays the way it is? You have three marinas in the area. These slips were really here as a convenience to the residents. So, that's something from an environmental standpoint and that was one of the biggest issue with the New York State Department of Environmental Conservation (NYSDEC) was getting that dredging permit completed. They would prefer to see us not do that. Right now the dredging and everything else, as I said before, remains exactly the same and there is no change to the plans and all of the development plans are exactly the same. Mr. Higgins stated and you need the dredging material to make the site plan work. Mr. Montagne stated the following: No, not really. As I explained at the last meeting, there was an awful lot of berming that was on-site and there was an excess of material that was being removed and taken off-site where actually at that time, we had an arrangement with Callanan on the hill to take extra material to help reclaim his site. Mr. Higgins stated the letter

that was presented shows a 50% increase in a one hour PM peak traffic trips. Mr. Montagne stated no. Mr. Higgins stated yes, it right in your letter where it says plus 54. Mr. Montagne stated the following: The number that you're looking at is the number of trips and with your trip generation, anything that is under 100 trips by NYSDOT standards doesn't trip any of the analysis for traffic generation for trips, which we included in our analysis. So, even if the trips doubled from what they had been in the previous study, which they did in that one time period, you're still only at 54 trips and you're well below any threshold that would be noticeable. That does not at all change the traffic that happens on Vischer Ferry Road. As I said before, your big issue on Vischer Ferry and Dunsbach Road is not traffic that is generated from here. It's the through traffic that continues off of the Northway and off of Route 9. Mr. Higgins stated the following: I'm not talking about off-site. The last time you were here I asked a question about traffic on the site including school buses and everything else. Your letter dated April 23<sup>rd</sup> shows total trips at 152 and in parenthesis it says plus 54. Mr. Montagne stated no, the parenthesis is that you have AM and PM peaks and then you also have pre and post. Mr. Higgins stated no, did you look at the letter? Mr. Montagne stated the following: What I identified before is that the forecasted 23 maximum directional trips at any given intersection is less than 25% of the value of 100 trips that generates what is required for a traffic analysis study. If you believe that the trip generation in here needs additional clarification, I would have to bring our transportation engineer to discuss that with you, but the conclusion is still the same. You're well below what triggers trip generation modifications and there is no significant change at all to what happens at the critical intersections that have been analyzed. As far as bus traffic, there is no change for buses. It would still be the same number of buses that currently travel down that road. Mr. Higgins stated some of those intersections are already "F's" and yes, there is no change, but they are still an "F". Mr. Montagne stated the following: In an intersection that is already in a condition that it is in, the modification of this project is not going to increase or decrease the level of service on that road. Other projects in the area; if you did other projects, they may eventually trip the warrant for the NYSDOT, but right now there is nothing that this applicant can do to convince NYSDOT to do anything with the Dunsbach Road/Vischer Ferry Road intersection. Even if this Town were to go to the NYSDOT and ask for that light, the NYSDOT would come back and say that you have to do a warrant and you can check with your Town engineer and he can tell you that what I'm saying is the way that the NYSDOT functions on this. We would love to see a light there and I think everybody who lives in the area would love to see a light whether this project happens or not. So, don't get us wrong, we're not opposed to a traffic light there and it would be a great thing for everybody in the area. Mr. Higgins stated so, with this change you're willing to contribute to a traffic light there? Mr. Montagne stated I can't speak for the applicant on that and I would say that at one point in time when all the other development that was in the area was going to add quite a bit to the traffic, there was discussion about cost sharing on projects. If the Town had wanted to do a Generic Environmental Impact Statement (GEIS) for the area and look at that as being a mitigation in it, then we could contribute that way, but to have it open ended right now, makes that rather difficult. The traffic impact study that was done for the Draft Environmental Impact Statement (DEIS) and the Final Environmental Impact Statement (FEIS) and then the findings; is an approved document that identified that this project does not trip or warrant a signal whether we wanted to do it or not, we couldn't. So, to say will this applicant contribute to it would be like saying "well, we don't know what other developments are going to come in, but at some point in time maybe you can contribute to this". I think from a fair share it might be worth saying "yes, we would" and it would probably only be in the \$5,000.00 range for what our contribution would be. I don't have the facts to support that right now because most of the other projects that were being proposed in the area are no longer on the table as far as I know and there is nothing that will warrant that signal yet with the NYSDOT. Mrs. Sautter asked when

was this project first approved? Mr. Montagne stated in 2010 and 2012 is when the main approvals happened. Mrs. Sautter stated so; it was condos then and now two years later you just stood up here and told us it hasn't been popular in a long time, there aren't any builders that have doing this for years and years, but you must have known that two years ago. Mr. Montagne stated the following: We started this project with the Town's Planning Board and the Town Board in 2008 and actually it was before that. So, since 2008 it took us four years to go through the approval process and in that time, we all know that the market significantly changed and during that time the applicant lost its investor right as the project received its approval. For the past two years we've been working very diligently to secure new funding for this project. That is why we are here and that's the only reason why we are here and we love to continue to do condominiums. Mrs. Sautter stated the following: I know that it's hard for everyone out there to understand and also for us because we are not that familiar with it. When we talked about it at the pre-meeting we all said "well, it's negligible and it's a very small amount of increase", but then one of the Board members said the total trip in a one hour PM peak goes from 98 total trips in and out to 152. So, we want people to understand that that is a big increase and when I looked at it a little closer, that's for 220 apartments and you're telling me there are 244 apartments. Mr. Montagne stated no, that was 244. Mrs. Sautter stated right here it says 220 and the trip generations are giving you 220 apartments. Mr. Montagne stated the following: I apologize as I don't have that letter in front of me, but 244 is what the original analysis was done on and 244 is what this analysis is done on. If this Board wishes to have some clarification, I'd be more than happy to send it to you in writing. Mrs. Sautter stated I think the public needs to know when you say that it's very little and it doesn't change and I think we even read that in our minutes and read that from your previous presentation and to me that's a large increase; 54 cars in a one hour period is extremely large and I just want people to understand that. Mr. Montagne stated the following: Okay, if you look at that; one of the things that it says in the conclusion there is that we're talking about a one hour peak AM and peak PM period on a weekend and that's less than one car a minute. A one minute cycle is usually two light cycles of a traffic light on Vischer Ferry Road. That one additional car every minute is very insignificant in traffic analysis work and I can tell you that. Mrs. Sautter stated but you have to understand that we see a lot of projects regarding Vischer Ferry and we ask them to incorporate your numbers with us. Mr. Montagne stated the following: When our original study was done it included the traffic generated by the other projects that are no longer on the books. So, these numbers are compared to that analysis. So, we added our numbers to that even though those projects aren't going to be built. So, we have a very conservative analysis here. Mr. Ouimet stated I think your real problem here is the fact that you submitted an updated traffic study from a traffic engineering firm that was different than the original firm that did the traffic study. Mr. Ouimet asked Mr. Marlow if he had an extra copy of the Greenman-Pedersen letter that you can give to Mr. Montagne? Mr. Montagne stated you don't have to do that because I can get that letter. Mr. Ouimet stated I know you can get it, but questions that have been raised by Board are very interesting based on Table #1 of the letter that you submitted. It says; 244 dwelling units, Previously Forecasted at a 2009 Study High-rise Residential Condominium and then it says 232. Mr. Bianchino stated that is a land use code. Mr. Ouimet stated the problem here is that it's very confusing and Mr. Montagne didn't do this report and they don't have anybody that did it here. Is Mr. Wieszchoski here? Mr. Montagne stated no, he is not here. Mr. Ouimet stated the following: So, irrespective to that; it shows an increase in traffic. You've heard from the public that there is reluctance on the part of public to accept apartments because of the increased traffic and you've heard that. You've heard it from the Board members and you've heard it from at least five that there is reluctance on the part of the Board to accept additional traffic. You've admitted in your studies, even though you say that it's not insignificant and not significant that there is an increase

in traffic as a result of switching from condominiums to apartments. Where do we go from here? Mr. Montagne stated obviously, if you're very uncomfortable with this letter, there are two things that we can do; one is CHA, your Town engineer, did do the review on the previous analysis and they would be more than welcome and I would be more than welcome to have our engineer talk to their engineer about and clarify it for you. Mr. Ouimet stated I haven't talked to them yet. Mr. Montagne stated I understand that. Mr. Ouimet stated I'm very well aware of what I can and cannot do. Mr. Montagne well, I'm just suggesting. Mr. Ouimet asked are you feeling any discomfort as a result of listening to the Board's comments? Mr. Montagne stated I am not at all because I know that the generation of the traffic that we have is well under our standards and if you had another traffic engineer review it, I can tell you very matter-of-factly, not a significant change and any other traffic engineer would come to the same conclusion. Mr. Ouimet stated so, is there anything that you heard tonight that may want you to go back and discuss with the applicant possible responses to what you heard? Mr. Montagne stated the following: The only thing that I would suggest is that if you have some questions on the content of that letter, I'd be more than happy to get those comments addressed by my engineer in writing and send it back to you for review as an explanation. I think that that would be a fair response rather than the expense of having to have another professional here for that. I can tell you very matter-of-factly that there is no change to the level of service where the impacts associated with traffic because of the change in use. Mrs. Smith-Law stated the following: I would like to go back to your financing issue, which seems to be your main reason for switching to apartments verses condos. I'm relatively new to the Board so, I don't have all the history. This was apparently first brought to the Board in 2008, which was the peak of the crash of the market and you're telling us now that you don't have a secured builder for either the apartments or condos and now we're at 2014 and the market is changing. So, I'm not sure you really know that you don't have secured financing because you really don't know who your builder is or what your project is. Mr. Montagne stated the following: Oh no, that's not true. We had financing in place all through and we had a developer and an investor that was financing the approval process for this project. Starting in 2007 he started with this originally using CT Male before the Chazen Companies came in and Chazen was brought in in 2008. The application was finally put before the Board in 2009 and that investor was with this project all the way through SEQRA approval and PDD approval in April of 2012. In the summer of that year is when he decided to back out of the project. He had other projects that he had been investing in at the time and it just took too long to get through this Town's approval and it was a very long process. So, for the past two years the project has not changed and for the past two years we've been trying to secure a new developer to advance the project and complete it and that's where we are running into the trouble. Mrs. Smith-Law stated but you don't have a developer or finance guarantee for apartments either. Mr. Montagne stated not at this time, we do not. Mrs. Smith-Law stated I'm really uncomfortable changing the original plan when you don't have anything lined up anyway. Mr. Montagne stated again, we're not changing the original plan. Mrs. Smith-Law stated I'm uncomfortable going from condos to apartments when you're uncertainty can't be validated. Mr. Montagne stated the following: The likelihood of us getting apartment financing is much stronger in this market in the current conditions than we would be for condominiums; much much stronger. We've had interest from people that are interested on the apartment side right now. Mrs. Smith-Law stated I'm still uncomfortable with it because it seems very uncertain. Mr. Montagne stated the following: In the absence of this change, I will tell you again that we will ask the Town Board to make a decision on it just to bring closure to it, but if we leave it just as condominiums right now, it's likely that this project will not proceed and then there will be no sewers, there will be no improvements and there will be no change to the area. Unfortunately, I hope that doesn't happen and my client can continue to have financial success on



that property, but as it is right now the restaurant is no longer there, the taxes are still very high and it's becoming a very difficult situation to continue to hold on and try to make this happen. Mr. Nadeau stated the following: I need clarification on the dredging again. Are you saying that you may or you may not dredge? It seems to me when we were reviewing the project and I think Mr. Higgins brought up the fact that they were going to reclaim the dredging because you needed for your second phase, is that correct or not correct? Mr. Montagne stated the following: Well no, the way that the phasing was worked out is that the first phase would not use dredge material. So, the first phase would include dredging and the point where the second phase is where that material would be managed. A good portion of that material would be spoiled on-site. We were going to do berms and other contouring of lands around the buildings. That material is river sediments and so it's not suitable for structural fill under buildings. There was about 20,000 cubic yards of that material that the DEIS identified that it would have been spoiled at the Callanan site. So, about 30,000 yards was going to be spoiled on-site. We can make the project work without that material clearly, but that's not the intent right now. I'm just identifying for you that the main thing here is to make sure that we're two foot above flood elevation for any habitable space and we clearly are with the garages below and the garage too. So, there is no change to the grading plan and there are no modifications that we're looking at. Mr. Nadeau stated thank you. Mr. Ouimet stated the following: So, I guess at this point the question that I have for you is based on the statements made by the public tonight and statements made by the Board members tonight; do you wish additional time to go back and reconsider your project in light of those statements. Mr. Montagne stated the following: I will need to talk to my client, but I would say that we are not going to reconsider the project. The project is really the same project. The only thing that you're asking is would we reconsider asking to be condominiums and apartments or just stay with condominiums. I think if you're asking me to stay with just condominiums; again, I will let you know that we're going to have a really hard time trying to get closure on this and get a developer that's interested right now in a bank. Mr. Ouimet stated well, as a bottom line; you heard people saying that they don't want apartments. Mr. Montagne stated well, we heard from three people tonight in the audience that said that and we didn't hear from the majority of the people in the area and I do know that we did an expanded notice so, we went well beyond. Mr. Ouimet stated you've heard from at least three or four Board members that they're uncomfortable with apartments. Mr. Berkowitz stated you've also heard over the past six years where we've had how many public hearings and how many public meetings and how many people who have spoken out in favor of this project. Mr. Montagne stated we've actually had quite a few if you go back and look at the record. Mr. Berkowitz stated but if you look at how many have spoken against the project, there is a great percentage. Mr. Montagne stated I would say that we had more in favor. Mr. Berkowitz stated I wouldn't say so. Mr. Montagne stated the following: I think we could probably go back and look at that and I respect your opinion on that. Again, I think that the main reason why we are here is because we need to make a modification to make the project financially feasible. A lot has been invested in this, it has a significant benefit to the area, it is a beautiful project and I would really hate to see it not go forward if we could not get the financing for it that we believe we can now because we do have interest for it. Mr. Ouimet asked Mr. Bianchino if there was any reason you need to take another further look at the traffic study for this project? Mr. Bianchino stated the following: We did look at the letter that was submitted by Greenman-Pedersen regarding the traffic. Also, we did have our traffic engineers look at it and they have no issue with the assumptions or the added trip generation and it was the same group who reviewed the original study and based on their analysis and their review of the analysis, they didn't have an argument with the conclusion and that is basically that the 54 additional total trips as a result of the change from condos to apartments and when you spread that over the entire distribution of where the

traffic goes to those intersections, there is a very small additional traffic so, it's a very small impact. Again, unless there is new information submitted, we've already taken a look at that.

Mr. Roberts made a motion to issue a Negative Recommendation to the Town Board for the proposed amendment to the Halfmoon Village & Yacht Club Planned Development District (PDD). Mr. Berkowitz seconded. Vote: 7-0, All-Aye. Motion carried.

**New Business:**

**14.057 NB**

**Upstate New York Subway LLC, 1508 Route 9 – Addition to Site Plan & Special Use Permit**

Mr. David Flanders, of David A. Flanders Surveying, stated the following: I'm here tonight with the applicant, Mr. Bob Hurley, from Subway Shops. We're here tonight to present a plan for the D.A.M. Liquor Store site located on Route 9. The existing site was approved as a subdivision lot in 2007. The site consists of approximately 25,000 SF. There was an existing liquor store on the property at the time, which met all of the required setbacks. There was existing parking on the site and there still is. I believe at that time the site met all of necessary zoning requirements with the exception of the frontage and my recollection at the time is that the frontage was considered to be a pre-existing, non-conforming situation. The property connected to Saratoga County Sewer District sewers and Town water. We're proposing to convert the liquor store into a sub shop with 22 tables and a drive-thru window on the back of the building. We're also proposing to change the traffic flow from a clockwise situation to a counter-clockwise being one-way and we're adding approximately 2 parking spots, which is one parking spot in excess of what is required for a restaurant. The existing parking in the front; presently there are three handicap parking spaces and we're going to reduce that to two handicap parking spaces in front of the building and there are four parking spaces in another location. Then we're going to change the direction of parking spaces on the south side of the property and there are currently six existing parking spaces there now and we're reversing their direction to facilitate the traffic flow. We paid strict attention in trying to increase the driving lane width and also meet the required number of parking spaces. We are requesting to use 9 FT x 18 FT spaces because the site is so condensed as it is. The existing liquor store seemed to have operated, to our knowledge, satisfactorily. One thing that I do want to mention is that the sub shop that is on the opposite side of Route 9 is intended to be using this site and that sub shop will no longer be there. We had a couple of alternatives for the parking; there is a rather nice evergreen tree row in the back of the parking lot now and initially what we were considering doing is putting parking spaces there and then we would be able to eliminate some of the parking spaces in the front and when we met on site with Mr. Harris we discussed that. We walked around the site and spent a fair amount of time talking about traffic flows, driving lane widths and the parking spaces that are currently there. What is there right now is more or less 15 or 16 FT long parking spaces. So, we are increasing the size of the parking spaces, although they may not be the 10 FT x 20 FT spaces that the Town would like to see and they are 9 FT x 18 FT. The driving lanes that we're proposing are about 15 FT alongside the building on the south side and on the road side or east side in the back is in access of 22 FT and on the north side the closest point is about 20 FT. That's basically our presentation with the exception that I mentioned the drive-thru window, which is going to be at the south west corner of the building and there would be a little kiosk on the north side of the building with a drive-up thing with a menu on the building and you'll place your order there and the pick-up window is around the back of the building. There is sufficient room for five cars that want to backup and there is sufficient room for cars to get around them on the north side of the building and continuing on around the drive-thru window. Mr. Nadeau asked is the drive-up window on the south side of the building? Mr. Flanders showed

the Board where the proposed drive-up window was located on the plan. Mr. Flanders stated it's going to be one of those types of things that are attached to the side of the building and it is going to stick out about 18 inches. Mr. Nadeau stated the following: What is the distance from the south side where the end of the parking spot is to the building? I have gone to that site a couple of times and that's a really tight site right there and you said that you're proposing 9 FT x 18 FT parking spaces. Mr. Flanders stated it's about 24 FT and I did say the parking spaces would be 9 FT x 18 FT. Mr. Higgins stated Mr. Nadeau was asking about from the back of the space on the south side and not on the west side. Mr. Flanders stated that's about 15 FT to the closest one. Mr. Higgins stated that's with 18 FT parking spaces so, it would be 13 FT with 20 footers. Mr. Flanders stated yes and with 10 FT x 20 FT spaces, it really does work because the site is basically what it is and it was existing when we first got involved with creating the subdivision to separate the liquor store from the residence and all the asphalt and basically with the parking layout and the building; nothing has been changed since then. So, what we're trying to work with is to modify the parking and angle it such that we can get a little bit better driving lane and still get a 9 FT x 18 FT parking space. Mr. Roberts stated the following: I'm still concerned about the parking because I've been there also and it's a low intense use now and at the most there are three people there at a time. The Subway Shop is calling for 22 tables and I'm worried about overcrowding on that parcel. Mr. Flanders stated I have something that Mr. Hurley has put together that I will pass out to the Board. Mr. Berkowitz asked are there 22 tables or 22 seats? Mr. Flanders stated it's 22 seats and I apologize if I said 22 tables. Mr. Roberts stated but still compared to three people in there at a time verses 22 seats and I know you're going to reconfigure, but with the south side parking now, that's a tough maneuver. Mr. Flanders stated the south side parking now is going to be in the opposite direction of what it is now. Mr. Roberts stated I know what you're saying, but it still is not a very wide area. Mr. Flanders stated and it's angled more than what is there now. Mr. Roberts stated but that's still not much to work with. Mr. Flanders stated the alternative that we had was to eliminate these parking spaces and to add parking spaces and cut the tree row down and we could do that, but Mr. Harris, Mr. Hurley and I all felt that the Town would rather see the trees there and a 15 FT driving lane with 9 FT x 18 FT spaces then having them out back to really 15 FT because the cars are only going one-way. I think the table that we're passing around helps explain things a little bit. Mr. Berkowitz stated the following: I'm looking at the table that you passed out and they say there is a 20% increase when adding a drive-thru so, are they considering the increased business is going to be all drive-thru business? My question is that there is going to be existing business of people who don't want to get out of their cars who go to your store now who are going to go to the drive-thru. So, I think the number of drive-thru customers is low and my concern is this isn't a McDonald's or Burger King where everything is premade and this is made to order and it takes a longer time to make each sandwich, which would possibly be five to ten minutes for an order. Mr. Hurley stated I would say five minutes. Mr. Berkowitz stated so, if you have a few people waiting in line to place an order and they have multiple orders, is there enough room to stack cars. Mr. Hurley stated we're expecting bigger orders so, the numbers were hoping will be around there. The hope is that the people in the cars would have bigger orders. Mr. Berkowitz stated those bigger orders are going to take longer to prepare. Mr. Hurley stated the following: Yes, but I still wouldn't expect much more than the five to seven minutes at the most per car. We're not looking at a ton of time and certainly not like a minute at McDonald's, but it's not going to take that much longer. We're going to have a whole separate sandwich table and a whole separate setup in the back of the store to make those sandwiches for those people coming through the drive-thru. So, it's a completely different setup and it has its own soda. Mr. Berkowitz asked so; it's not like a regular Subway setup? Mr. Hurley stated no, it's completely different as it will have a whole sandwich unit and a soda system in the back so, anybody who's getting that

product is going to be serviced just out of the back. Mr. Berkowitz asked would there be a dedicated employee just for the drive-thru? Mr. Hurley stated yes, it's dedicated. Mr. Roberts asked are you proposing something like a waiting area for the cars that are waiting for a sub to be made like they do at the other fast food places so they don't sit right in front of the window? Mr. Hurley stated there would be like five cars stacked up. Mr. Berkowitz asked is the five car stack up on the west side of the building and the north side or is it between the order window and the pick-up window and is there enough room for five cars? Mr. Hurley stated no, there are only a couple cars there then the rest are backed up behind the person ordering. Mr. Berkowitz stated so, by the time the person orders and when they pick-up there would be room for two cars, correct? Mr. Hurley stated yes. Mr. Berkowitz stated so; you would have to finish that order in the allotted five minutes or so, correct? Mr. Hurley stated I think that's why you're seeing the numbers that we came up with are not very high for drive-thru business. Mr. Berkowitz stated I think your current customers are going to use the drive-thru also so, I think the number of drive-thru customers that are listed could possibly double. Mr. Hurley stated the following: That's not the information I was given. I got this information from Subway Corporate. So, that's not the information we were given that there would be a transfer over. Mr. Ouimet asked where is the closest drive-thru to the area? Mr. Hurley stated the closest drive-thru that Subway has is in Plattsburgh. Mr. Ouimet asked do you have numbers from Plattsburgh? Mr. Hurley stated not their specific numbers, but the numbers that I have here are from the company and the breakdown of the day part is for Albany specifically and I could get their specific information. Mr. Ouimet stated the following: I think that would be helpful, but I don't know as if it's going to be critical because I think I have some fairly critical comments to make here. If it comes down to that, I think if you can show us the store sales in Plattsburgh and their drive-thru because they may not compare to the store sales that you have across the street. I don't know where those numbers came from in the comparative chart and I don't know if they are actual numbers from the Subway in the Glenpeter Plaza. Mr. Hurley stated yes, it is and those numbers are our specific store numbers now. Mr. Ouimet stated the following: So; I would assume that breakfast numbers are sit-ins verses sit-ins and take-outs. I go there frequently for lunch and very seldom is anybody sitting at the tables in there as it's all take-out. Mr. Hurley stated right, the majority of our business is take-out. Mr. Ouimet stated so, under that assumption, if you have a drive-thru, they're going to sit in their cars and take it out and they are not going to go in. Mr. Nadeau stated I will. Mr. Ouimet stated well, if cars are all stacked up, where are you going to park your car? Mr. Hurley stated the timing issue is a question. Mr. Ouimet stated I know you started asking questions about the angled parking, so go ahead because I'm going to confine mine to the north side of the building. Mrs. Smith-Law stated the entrance into the lot; is that a shared driveway with the wood framed house next door? Mr. Flanders stated the following: It is and the driveway hasn't changed and you can see it on the drawing. For the house; it splits off and goes around in a circular fashion and the other southerly entrance to the house, the driveway comes straight in and goes alongside the house. Mrs. Smith-Law asked so; can you enter that house from either side of the driveway? Mr. Flanders stated correct. Mrs. Smith-Law stated the following: I have concerns about traffic backing up right out to the road. So, I would be concerned. Mr. Flanders stated well, I don't know how long the liquor store was there or what their volume is, but I can only offer that it's been there a very long time. Mr. Ouimet stated I don't know if that's a fair comparison. Mrs. Smith-Law stated yes, it's not. Mr. Flanders stated yes, it does have two entrances. Mr. Ouimet stated the following: I would like to ask a few questions about the layout. The two handicapped spaces in the fronts, I see a hashed off area and I assume that is for a handicap ramp, correct? Mr. Flanders stated no, the asphalt is flush with the walk there all across the front and the hashed off area is there so no one parks there. Mr. Ouimet asked so; you have no place for a handicap van to drop a ramp to run a wheelchair out? Mr.

Flanders stated there is just this spot and there are three there right now and the layout is exactly what's there right now. Mr. Ouimet stated the following: I understand, but are they not required to have an area in which a wheelchair equipped van can drop a ramp and isn't that ramp to be shared by both handicapped spots? So, it can't be where they are proposing it and that needs to be reconfigured if it gets that far. Mr. Flanders stated right. Mr. Ouimet stated going around the north side of the building are you going to have two lanes of traffic; one for the drive-thru and one for a pass through? Mr. Flanders stated there will have to be if the cars are stacked up for the drive-thru. Mr. Ouimet asked do you have enough room for that? Mr. Flanders stated I thought we just mentioned that and there is room for five cars to stack up along there. Mr. Ouimet stated no, the two lanes; the pass through lane and a stacking lane. Mr. Flanders stated the following: Like I said, I thought we did that. There is one at the window, one here and three more here and there is still room for a car to pass that. Mr. Ouimet stated the following: No, that's not what I mean. On the north side of the building where you come up along the side; you have an angle that you have to make a turn and you have room for two lanes. Mr. Flanders stated it is 20 FT wide right there. Mr. Ouimet stated so it's 10 FT wide and that's kind of tight for a drive-thru lane with two cars passing in a 10 FT area, right? Mr. Flanders stated it's a little tight. Mr. Ouimet stated the following: Okay. The other concern that I have is when you reach the menu board side in the back on your drive-thru lane; how are you going to make that turn? How are you going to turn a car around that 90 degree angle where you can see the board and access the speaker phone, intercom system or whatever you use to place your order because that's where the order gets placed, correct? Mr. Flanders stated I did it myself and one of the gentlemen from Subway was with us when we met on-site and he had an extended cab pick-up truck and I don't know if he had a 6 FT bed or an 8 FT bed on it, but I asked him to make that turn and he did and he was able to make it. Mr. Ouimet stated the following: Now put a car next to him, can he make it? All these guys that you have parked in the front have to go that way around the building and if they can't get around, won't they go the other way? Mr. Flanders stated the following: There's more room at the northwest corner of building and it's not 20 FT wide there and it's considerably wider. It's only at its closest point at the northeast corner of building where it's 20 FT wide and it continually widens out as you go by. Mr. Ouimet stated the following: It's hard for me to tell that from your drawing Mr. Flanders. It looks about the same to me. Mr. Flanders stated well, it's about 24 FT; it widens out 4 FT. Mr. Ouimet stated the following: Okay. So, now you make that turn around the back and you have cars waiting for their orders to be filled sometimes, not all the time but sometimes. Now you come around that pass through lane, how do you access the drive out lane when these cars are backing into you? Mr. Flanders asked which cars are backing into you? Mr. Ouimet stated the ones that are in the angled parking on the south side of the lot. Mr. Flanders stated I assume that the traffic flow is not going to be really a high volume of traffic if they are only taking five to seven minutes to serve a customer at the drive-thru so, there will be ample time for someone to back out of there. Mr. Ouimet stated the following: Okay. Now when you add the possibility of emergency vehicles coming into the site; how does that complicate the situation there or would that become a horror show? Mr. Flanders stated that's become difficult for fire apparatus to get around the back if it's full of cars. Mr. Ouimet stated asked how about an ambulance because they're wider than 10 FT? Mr. Flanders stated is an ambulance wider than 10 FT. Mr. Higgins stated I think an ambulance is 8.6 FT wide. Mr. Ouimet stated well, okay they're 8.6 FT and you have a 10 FT lane. Mr. Flanders stated I thought anything in New York State needed a permit over 8 FT. Mr. Higgins stated no, 8.6 FT is legal. Mr. Flanders stated it's a tight site and I'm not saying that it isn't and we're trying to do the best we can with what's there. Mr. Ouimet stated I think it might be too tight for what you want to do. Mr. Flanders stated the following: We have a ditch along here and we have a grade situation where we could extend this asphalt over maybe two

or three more feet and there's a small retaining wall in another area. The Planning Board approved a subdivision for what was there at the time and we're trying to make it better as far as the parking space configuration and we're only adding two parking spaces. Mr. Ouimet stated maybe its fine as a restaurant without a drive-thru and I think it's the drive-thru that's causing us pause. Mr. Roberts asked what size delivery trucks will be there and how will they access the site? Mr. Hurley stated its one delivery truck a week from SYSCO. Mr. Berkowitz asked is the SYSCO truck an 18-wheeler? Mr. Hurley stated yes, it's smaller and it's not the full sized 18-wheeler though. Mr. Berkowitz asked what times do they deliver? Mr. Hurley stated the following: Typically overnight and we do key drops where there's no one there. The trucks come in the middle of the night, they bring the product in and then they go and that way we don't cause traffic issues. Mr. Roberts stated okay, that's what I was worried about. Mr. Higgins asked do you get one delivery per week? Mr. Hurley stated yes, one delivery a week is what we have it worked out to and that's paper, produce and everything. Mr. Harris stated the following: Just to confirm what Mr. Flanders said; when we had walked the site about a month or so ago, we did talk about concern of traffic circulation particularly on the west side of the building where the drive-thru is and the row of trees that are currently there. We talked about leaving the trees on the plan for now and see what the Board says. There is the potential that those three employee parking spaces on that side; and again it involves fill and that type of thing, and it could be relocated more to the west on this parcel on what would physically or what it would look like if you were out there to be a different parcel, but it's part of it. I don't know if they would even entertain the idea, but that would give another eight to ten feet along the west side of the building if they relocated those employee spaces further to the west on what is the white area of the plan. I don't know if they would consider that, but that might weigh in to your consideration of access around the building. Mr. Nadeau stated but I think the problem is basically to either side of the building of just what Mr. Ouimet said; if you have stacking, now you need to go around those vehicles. Mr. Higgins stated the following: Would it be possible if you moved the trees back or put some parking in the back and took the spaces on the south side and make them parallel parking instead of drive-in and put the pick-up window on that side? So, that way you'd order on one side of the building and you could stack all the way around to the other side and maybe even eliminate a couple of parking spots right in front of the pick-up window. Do you follow what I'm saying? Mr. Flanders stated the following: Yes. My original conversation with Mr. Harris was something very similar to that. I was thinking about having six or seven parking spaces perpendicular to the building in the rear where the trees are and eliminate those three employee parking spots and then the employees would just share the parking. That way it would totally eliminate the parking spaces on the south side of the building. So, we'd get seven and we'd lose six over there, but now we lose a parking space doing that. I would have to address whether or not they can actually change the interior of the building because it would require an entirely different layout if you move the drive-thru window along the south side of the building and asked is that possible? Mr. Nadeau stated another consideration you have to keep in mind though; is you don't want all the customers having to walk through the whole parking lot. Mr. Hurley stated yes, that's our concern because we could put a ton of parking back here, but we don't want our customers walking through the parking lot. Mr. Nadeau stated number one for safety wise and number two for business wise. Mr. Flanders stated there is a possibility that we can add a few feet on the north side of the building to increase that driving lane with possibly three or four feet. Mrs. Sautter stated the following: I personally think that your numbers are very low; I think it's a great idea and I think you'll get a lot of business. I just see this as really being a problem with that wait time, but I don't think you should change it, but maybe the idea or the concept. I think the lot is too small for that accommodation. Again, I think it's a great idea and regarding your numbers; I think you'll have much more than two people for breakfast at the drive-thru. Mr. Ouimet stated the

following: I'm a little confused about the discussion that was at least started about moving the pick-up to the south side of the building. Is that something that you could consider because that would be similar to the Dunkin Donuts up the street where you order on one side of the building and then you drive around the back and you pick-up almost like halfway. Mr. Hurley stated I would say no because then we'd lose all this parking and that's where we come up with the problem where everyone would have to park behind the building. Mr. Ouimet stated you could also consider having less table space inside of the building because if you're going to go to 9 FT x 18 FT spaces, you're going to need a variance. Mr. Hurley stated so how many seats would we have to go down to make that work? Mr. Flanders stated right now we have 11 parking spaces for your 22 seats. Mr. Nadeau asked do you actually have any stores that fill 22 seats at lunchtime? Mr. Hurley stated the following: Not for a very long time, but that little bit of time is important to local customers that want to be able to sit down and eat. We don't want them to say that they can't go there because there is never a seat. So, it's not much. Mr. Ouimet asked how about your store in Glenpeter Plaza, do you fill those seats? Mr. Hurley stated not much, but yes. Mr. Ouimet stated yes, but not frequently, correct? Mr. Hurley stated right, not frequently. Mr. Nadeau stated the following: If you go with a lesser amount of seats, then you can decrease your parking, which is going to create possibly a little better flow. What are the triangles in the front? As you come in there's a triangle and then to the north there is a triangle. Mr. Flanders stated it's just cross-hatching to prevent people from parking there. Mr. Nadeau stated maybe we need to wait to hear from the County and get their input. Mr. Ouimet stated yes, this has to be referred to the County, but if you're going to make some modifications to your plan, which would have to be referred to the County too and asked when the County meeting was. Mr. Harris stated the third week of June on a Thursday. Mr. Ouimet asked what is the deadline for submission to the County? Mr. Harris stated one week before their meeting. Mr. Ouimet stated so, if you make modifications to the plan, it would have to come to us to be sent to the County for their review. Mr. Flanders asked is that because we are changing the parking configuration? Mr. Ouimet stated the following: If this goes to County as presented to us tonight and the County rejects it, we can't approve it unless we have a super majority on the Board. If this goes to the County and they approve it and you come in to change it, that has to go to the County and you can't get an approval until it's approved by the County. So, what I'm suggesting to you is if you're going to make changes and if you can make those changes before the deadline for submission to the County, you make them and then we submit that plan to the County for approval. Mr. Flanders stated the following: I'm not getting a clear direction on what the Board would like to see to be honest with you. I'm hearing the issues that I'm fully aware of that I've tried to address. Mr. Ouimet stated if you're going to have 9 FT x 18 FT parking slots, you need approval from the Zoning Board of Appeals (ZBA) as this Board does not have the authority to approve. Mr. Nadeau stated which we may or may not approve. Mr. Roberts stated and we would have to deny him first. Mr. Ouimet stated correct, we would have to deny you first and I don't believe you can make the next ZBA meeting. Mr. Nadeau stated but aside from that; we're not comfortable with this layout. Mr. Ouimet stated correct, we're not comfortable with the layout and we're not comfortable with the flow around the building. Mr. Nadeau stated it's just a lot for small site. Mr. Ouimet stated also, I'm not comfortable with the handicap spaces and I don't know how you are going to fix that. Mr. Flanders stated well, that can be fixed because that was just an oversight. Mr. Ouimet stated okay, if you have the room. Mr. Harris stated timing wise; if they want to revise it and come back to this Board for the June 9, 2014 meeting, they have time to do that and depending on what happens on June 9<sup>th</sup> here at this Board, you deny them and they have time to get on the ZBA for their July meeting and they have time to get on the County and the County typically prefers, as we do as a Town that if there is going to be a denial or there is a denial, they look at both applications; denial in terms of a variance for the

ZBA, which is a separate referral from the Planning Board's Special Use Permit for the actual plan it itself. Mr. Ouimet stated unless I misread the Board, I don't believe they're comfortable with 9 FT x 18 FT parking spaces and parking on that south side of the building. Did I misread you or are you comfortable with that? Mr. Berkowitz stated the following: Can't they just bypass all of this and become compliant with our Town Code? Why are we talking about going to the ZBA and then it comes back here and then it goes to the County when they can bypass all of that and become compliant with what our regulations are by the next meeting and then go to the County and have them approve it. Mr. Harris stated because as the current layout if they make those spaces 20 FT long, that will make the aisles narrower and with the lot width of 85 FT, which you approved in 2007 as part of the subdivision, it was clearly stated and I had a follow up conversation with Mrs. Murphy about this, that if you expand the use in the future, you're going to need a variances for lot width because that they can't change and they can design themselves out of that as it is 85 FT and the code requires 150 FT. So, they are intensifying the use of the site, therefore, requiring a Special Use Permit for the drive-thru, changing the site plan in effect and necessitating a variance for aisle width, lot width and parking spaces. So, if they increase the parking spaces that are currently laid out at 18 FT, particularly on the east side; now there's parking on the east side of the building along Route 9 and you would be making the aisle much narrower in the front. Mr. Hurley stated then it just won't work. Mr. Flanders stated the following: There are parking spaces there now and it's even narrower than that now. I would just like to go on record by saying that the parking spaces were not shown on the subdivision plan that was approved and I presented that plan and parking was never addressed at the time the Planning Board approved the subdivision. Mr. Ouimet stated the following: Unfortunately it's being addressed now because you're changing the use. If you were coming in with a new tenant to occupy the liquor store, it might be a little different, but you're not because you're increasing the intensity of the use of the site. Mr. Flanders asked how would the Board feel if the client was able to give up the drive-thru window, is this a feasible location because we don't want to just represent plans and go to meetings and spending time and effort. Mr. Nadeau stated I think that I would want to see a little more configuration on the parking, but I think by eliminating the drive-thru window that it would alleviate a lot of your problems. Mr. Roberts stated I agree with Mr. Nadeau and I would be more comfortable, but we still have to make the parking work. Mrs. Smith-Law stated I agree. Mr. Berkowitz asked have we approved 9 FT x 18 FT parking spots anywhere. Mrs. Murphy stated right now we can't. Mr. Berkowitz asked has the ZBA even approved 9 FT x 18 FT parking spots? Mr. Harris stated 9 FT x 20 FT is in the code. Mr. Berkowitz stated but if they need 18 FT then they can't have 20 FT. Mrs. Murphy stated the following: Right, you don't have under the current code the authority to do that. So, you would have to deny them and then they'd go to the ZBA. Mr. Berkowitz stated right, but has the ZBA ever approved that size? Mrs. Murphy stated that I don't know and I don't ever recall ever referring that. Mr. Ouimet asked Mr. Harris what the fire district has said about this site? Mr. Harris stated the following: We received an email from the fire district today and they did not object to the current proposal, but they did indicate that if it was a new building, they would object to it. So, since this is an existing building, they did not object to the current plan, but if it was new they would have concerns regarding traffic circulation and that email is in the folder. Mr. Ouimet asked is the easiest way around this thing is to deny this application as it presently sits in front of us and refer it to the ZBA? Mrs. Murphy stated the following: I would say to wait until you hear from the County because whatever you do, say the County does approve it and you're going to deny it, then you have to do the super majority. If you're going to do something different than what the County does, you need to know what the County is doing before you go forward. Mr. Harris asked what about the idea that we have time for the next meeting for the applicant to reconfigure it. Mrs. Murphy stated if that's what they want to do, but I haven't heard that that's



what they want to do and they're still going to have to be denied on the parking issue regardless. Mr. Flanders stated the following: If the County denies it and we have to revise the plan, then we will have to sit for another month before the County reviews it again. So, we could considerably be here all summer. Mr. Ouimet stated the following: Right and the County can't approve 9 FT x 18 FT spaces. So, there's no sure cut around the ZBA on the 9 FT x 18 FT spaces if in fact you insist that they be part of the consideration. Mr. Harris stated the following: Typically the County calls usually a few days before the meeting and asks what happened at the Planning Board meeting; what the discussion was, what were the comments and what were the positive/negative comment concerns. Usually the Board's concerns are what they want to hear. Mr. Ouimet stated so; worst case scenario is the County approves it and we have to get it back here and deny it because we can't approve the parking. Mr. Harris stated the following: The County will ask if there are any variances that you potentially see and I would raise the same ones that I raised with you and that this Board has not acted yet and they may table it pending a denial or otherwise. They have tabled things and they table it waiting for more information. Mr. Ouimet stated right and that's not necessarily in the applicant's best interest because the applicant should know where we're at and that's where we're at. Mrs. Murphy stated the following: If you want to deny it tonight to get them to the ZBA and I'm not quite sure if that's what people are suggesting. It would just have to be legally sound with a super majority so you don't run into a different situation. Mr. Hurley asked is huddling back up an option? Mrs. Murphy stated yes. Mr. Hurley stated that is what we would like to do. Mr. Ouimet stated alright so, we'll table this and you get back to Planning and let us know what you want to do.

This item was tabled to allow the applicant to consider revisions to the plan based upon the Board's comments.

#### **14.058 NB      VRS Sales (Morrissey's), 183 Ushers Road – Addition to Site Plan**

Mr. Geoffrey Morrissey, the applicant, stated the following: I am the owner of 183 Ushers Road and I'm here to get an approval for a 478 SF addition onto an existing building on an existing slab on that building. Mr. Ouimet stated if I remember correctly, a couple of years ago you were here seeking our approval for a new building and that was granted under the condition that you take the old building down, correct? Mr. Morrissey stated that is correct and also there was stormwater management in that thing in which pricewise and with this particular economy, we couldn't put it together. Mr. Ouimet asked so, are you abandoning that project? Mr. Morrissey stated the following: Well, I don't want to abandon the engineering dollars for that unit, but right now I'm proceeding without it yes. If the economy changes around here that would be well received and I'd like to go ahead with it, but at this point in time I just want a 478 SF addition on the existing building. Mr. Ouimet asked Mrs. Murphy how this would affect the prior approval by this Board? Mrs. Murphy stated that would have expired by now so; he'd have to come back regardless. Mr. Ouimet stated so; he would have to submit an entire new project, correct? Mrs. Murphy stated correct. Mr. Ouimet stated so; basically what we're going to consider is the addition to your existing building, correct? Mr. Morrissey stated that is correct. Mr. Higgins stated I have the drawing here and I was wondering where this addition is going to be. Mr. Morrissey showed the Board the plan where the proposed addition would be located. Mr. Higgins stated the storage boxes that you have shown on the drawings; are those International Standard Organization (ISO) containers? Mr. Morrissey stated no that will just be a one-story addition that goes with the roofline of the existing building. Mr. Higgins stated no, on the site you show two sheds and two storage boxes. Mr. Dick Shakerley, owner of VRS Sales, stated no, those are in the Town of Clifton Park. Mr. Higgins stated okay, thank you. Mr. Shakerley stated the following: One of the reasons

for pursuing the little addition, which is little, is because we need secured storage on the property. We have been burglarized five times since last September. As you probably have all heard, there are people looking for scrap metal and anything that is metal they like to pick up and take home. The State Police and the Sheriff's Department have both been involved in it and if you go past their property, you will see nice yellow New York State Police No Trespassing signs on the property. Those signs give us the ability to arrest anybody that walks on the property because they shouldn't be there. We have documents from the Sheriff's Department and the State Police of the five burglaries since September and we have security, we have security cameras and we have pictures, but unfortunately we couldn't get license plates so; we're really looking to secure it so we don't stumble across somebody that's going through our property whether we should show up there at 10:00pm or early for work. So, that's the main reason for the addition. Mr. Roberts stated I don't see issues with this proposal except for the fact that we have to wait to hear from the County. Mr. Ouimet stated the following: Yes, we have to wait for the County response. So, we need County approval for this project and they are not going to meet until June 19<sup>th</sup>. Mr. Higgins asked is this a pre-existing, non-conforming as far as the front yard setbacks or anything that we have to be concerned about because they can't expand a pre-existing, non-conforming. What is your front yard setback to Ushers Road? Mr. Morrissey stated the front setback is 50 FT, but the addition would be in the rear of the building and I don't know what the side yard setbacks are, but it is well within the required distance. Mr. Berkowitz asked are you building on an existing concrete pad? Mr. Shakerley stated yes we are. Mr. Berkowitz asked does that mean it would be an expansion. Mr. Morrissey stated there is an existing footprint there now. Mr. Higgins asked what was that concrete pad used for previously? Mr. Morrissey stated it was just used for parking. Mrs. Murphy stated that's okay as he is saying that it is within the 50 FT setback. Mr. Higgins stated okay, then it's not a non-conforming site and it's a conforming site so, we can approve it.

This item was tabled. The Board discussed the proposed expansion and tabled the item pending review by the Saratoga County Planning Board.

**14.064 NB      Laier Enterprise LLC, 3 Plant Road – Change of Use/Tenant**

Mr. David Laier, the applicant, stated the following: I currently have a contract and I'm trying to purchase the property located at 3 Plant Road that used to be the Miracle Shop. I'm looking for a Change of Use and I own a plumbing and heating company and I'm looking that property for my business. Mr. Ouimet asked are there three buildings on the property? Mr. Laier stated there are three buildings currently on the property and I'm only looking to use the 60 FT x 40 FT building at this time and the other two properties I am going to put up for lease. Mr. Ouimet stated did you know that you have to come back to this Board to obtain approvals for those two properties that you intend to lease? Mr. Laier stated yes sir, of course I do. Mr. Ouimet stated you're going to have four full-time employees and your hours of operation are Monday through Friday 7:00am to 5:00pm. Mr. Laier stated yes and we do work a lot of Saturdays as well. Mr. Ouimet asked do you have customer pick-up in the building? Mr. Laier stated the following: Yes I do; I buy hot water heaters in bulk with another plumbing and heating contractor and we buy hot water heaters out of Canada at a very good price. So, I do have customers that buy hot water heaters from me and they do come to pick them up occasionally by appointment only. As well as the water heaters, I have parts for those water heaters for service under warranty or repair. Mr. Ouimet stated I understand that in the front building there is an apartment, is that rented? Mr. Laier stated the following: At one time I believe there was someone that was living on the property who also owned the property and was living upstairs in the first building. I can't say 100% because I haven't been on the property to see that for myself and currently they have vacated the property. Mr.

Ouimet asked have you closed on the property yet? Mr. Laier stated the following: I have not and I'm hoping to have a closing date of either May 30<sup>th</sup> or the following week. I currently have to be out of the property that I am renting now as of May 30<sup>th</sup> so, I'm trying to get everything in place so when that happens and I have to evict I can hopefully move in one shot and not miss a beat with running my business. Mrs. Sautter asked do you currently have a store? Mr. Laier stated the following: I currently rent a property and it's not an actual storefront. I don't advertise and I don't actually have a storefront and I won't need a sign. Most of my pickups would be done by appointment only. I'm not looking to make any changes on the property at this time either. Mr. Berkowitz asked what kind of delivery trucks do you have? Mr. Laier stated they are small box trucks and I have nothing in a tractor-trailer range or nothing of that kind. Mr. Higgins stated are your shipments from the factory on box trucks? Mr. Laier stated no, they actually get delivered to another heating contractor, I team up with him and we buy them and they get shipped to his facility and then he delivers them to my facility and there are usually anywhere from 15 to 25 water heaters at a time so, they fit into a smaller box truck. Mr. Higgins stated okay, just so you understand; that is a tight site there and you can't have trucks out on the road and it would all have to be done within the site itself. Mr. Laier stated no, there's nothing that large that wouldn't be able to pull into the back lot and back right up to the door. Mr. Ouimet stated it's only the back building that you're using, correct? Mr. Laier stated yes sir; I'm only using the back building. Mr. Higgins stated just to reiterate; if you want to use either of the other two buildings, you have to come back before this Board for a Change of Tenant. Mr. Laier stated yes sir I understand that.

Mr. Berkowitz made a motion to approve the Change of Tenant/Use application for Laier Enterprise LLC. Mr. Higgins seconded. All-Aye. Motion carried.

**14.068 NB      Ferguson Financial Planning, 2 Executive Park Dr., Suite C – Change of Tenant**

Mr. Dean Taylor stated the following: I'm a licensed New York State Real Estate Agent with RE/MAX Park Place at 1795 Route 9 and I'm here with Mr. Scott Ferguson. Mr. Scott Ferguson stated I live at 23 Brookwood Drive in Lathan, NY. Mr. Taylor stated the following: We are here seeking a Change of Tenant/Use permit. The building is located at 2 Executive Park Drive with a total of 6,000 SF tenant space; 3,000 SF on the lower level and 3,000 SF on the upper level. We've lost the downstairs tenant and he is not going to be replacing that and he's looking to lease approximately 850 SF on the upper level. So, there will not be any tenants in the lower level and all we have now is the accountant's office, which takes up approximately 1,500 to 2,000 SF. Mr. Ferguson stated the following: I'm a financial planner and I have one full-time employee and two part-time employees. Generally only two of us are there at a time. For the most part meeting with clients generally happens once or twice a day. There would be one car visiting to the office and no other real traffic patterns for the business itself. Mr. Ouimet asked what are the standard work hours for your employees? Mr. Ferguson stated 8:00am to 5:00pm. Mr. Ouimet asked is that every day? Mr. Ferguson stated it would be Monday through Friday. Mr. Ouimet stated you mentioned that you have part-time employees as well. Mr. Ferguson stated that is correct; there is one full-time person and that's me and there are two part-time people. Mr. Ouimet asked what hours do the part-time people work? Mr. Ferguson stated no, one of the part-time employees works two days a week and the other part-time person works three days a week. Mr. Ouimet stated and you schedule one client at a time. Mr. Ferguson stated exactly. Mr. Ouimet stated so; the most you could have is two. Mr. Ferguson stated right, two or three at the most. Mr. Ouimet asked would you say one car or two cars? Mr. Ferguson stated generally it would be one car per person. Mr. Ouimet asked is the downstairs space unoccupied? Mr. Taylor stated Mr. Nick

Marchese is the building owner and they are gone as they have packed up and moved out. Mr. Ouimet stated there was an issue that we discussed at tonight's pre-meeting regarding the last time we approved a Change of Tenant for that building. At that time we asked that certain parking places be re-striped and I don't believe you were here for that meeting however, your engineer, Mr. Tom Andress, was here. Mr. Taylor stated the following: Once the tenant moved out in January they didn't feel that there was a need for it because at any point there has never been more than half of the parking lot taken. The only time that the parking lot fills us is when the school across the street has a breakfast or something. So, they actually allow them to use the space. So, at this particular point, they didn't feel there was a need because they didn't have the capacity with using only 1,500 to 2,000 SF and 27 parking spaces for four cars. Mr. Ouimet stated was that information transmitted to our Planning Department? Mr. Taylor stated what was transmitted? Mr. Ouimet stated that they didn't feel the need to restripe and the downstairs tenant moved out. Mr. Taylor stated I don't know. Mr. Marchese stated the following: Oh, because the tenant moved out and they told us in February that they were moving out, they packed up all their stuff two weeks ago and the place is completely bare. We've been after them since November and we own the building and we are accountants and we work out of office half of the time. We have one conference room and once in a while someone will drop off a copy of something and we're not looking to rent it. Mrs. Murphy asked is the striping to code? Mr. Harris stated the following: In October the Board requested two changes to the parking lot as part of the final plan. It does not appear that they re-striped the parking spaces on the north western portion of the building to the 9 FT width required by the Board at the October meeting and they appear to be as they were before that approval at 8 to 8.5 FT. Mrs. Murphy stated the following: So; it's not a capacity issue, it's your non-compliance with code for the size of the parking spaces. So, it has to be re-striped if there is one person in there or if there is 40 people in there. Mr. Taylor stated okay, they weren't aware of that. Mrs. Murphy that's okay, but now they have let you know. Mr. Harris stated we can provide you with the final site plan submitted by Mr. Tom Andress, which is the approved site plan. Mr. Taylor stated I guess they weren't aware that they had to do anything because the issue was with the downstairs tenants and these guys are accountants and they're not Town Planners. Mrs. Murphy stated I'm just saying that it's not a capacity issue; it's an actual compliance with code. Mr. Taylor stated okay. Mr. Ouimet stated there was a date in the original approval of May 1<sup>st</sup> and it's my understanding from Mr. Harris' site visit that there was some attempt on the re-striping. Mr. Harris stated the following: What we were using was the prior site plan that had been approved showing handicap parking in the spaces close to the dumpster and they are on the northwest side of the building. I think they were already relocated before that meeting and they were towards the Route 9 side and all the paint looked pretty old. So, either the re-striping didn't survive the winter, which could happen. Long story short; what appears to need to be done is the four parking spaces against the building on the north side and they all were below 9 FT and you can move it to the west because you have room there by the dumpster. That was the only thing that we saw that was outstanding. Mr. Ouimet stated I think the re-striping of the parking lot should be completed by July 1, 2014. Mr. Taylor stated can we qualify that for storage because they do have two filing cabinets that they were planning to put in. Mr. Marchese stated we put two filing cabinets in temporarily and we will move them out by July 1, 2014 also. Mr. Harris stated I realize that Change of Tenants/Use need to come before the Board, but the applicant has available parking of 27 spaces that will allow under code a professional office of 5,400 SF. So, I just want to make the Board aware that in saying they can't use the basement for anything. Mr. Ouimet stated that's not what he said; he said that you can't use the basement without prior approval of the Board. Mr. Harris stated right, I just wanted to be clear that there is room to have additional tenants. Mr. Higgins stated the following: Agreed; but the reason I'm stating it this way is before this applicant

purchased the property, we had a number of applicants with this property come in and tell this Board different things that were going to be used for the basement. So, all I'm saying is just to eliminate any possibility of confusion in the future, if the applicant wants to do something in the basement, I think he should come in and tell the Board and let's just make sure that everything is per code. Mr. Ouimet stated the following: Maybe that wasn't clear in the past, but it's clear that we want to stay in compliance with code and we want to stay in compliance with the Town requirements on Change of Tenants. So, as far as I'm concerned; it's a new owner and a new day. Mr. Roberts asked is the applicant going to have a sign? Mr. Ferguson stated yes there will be, but there is not an application for the sign tonight. Mr. Roberts stated you'll have to come back before the Board for your Sign application. Mr. Ferguson stated yes.

Mr. Higgins made a motion to approve the Change of Tenant application for Ferguson Financial Planning with the following conditions: (1) The parking lot is to be re-striped by July 1, 2014 in accordance with the Site Plan ("Plan B") approved October 28, 2013; (2) Any future tenants and/or use of the basement, including storage, must be submitted and reviewed by the Planning Board. Mr. Nadeau seconded. All-Aye. Motion carried.

### **Old Business:**

#### **14.009 OB**

#### **Oak Brook Commons LLC PDD, Route 9 – Addition to Site Plan**

Mr. John Gay from Northeast Consultants stated the following: I'm representing Oak Brook Commons and Mr. Chuck Hoffman, the owner. We have presented plans for the site work to the Town after receiving the approval from the Town to modify the Planned Development District (PDD). I did receive a comment letter from Mr. Bianchino and we have been hurrying up to come up with answers to that and I think we've covered almost all of them. The comments that we sent back to Mr. Bianchino and to the Town; items number one and two were handled under the PDD modifications. In other words, our environmental assessment forms and so on were presented at that time and they are not changing any. Also, if you recall, the density calculations were submitted at the last or the second Planning Board meeting for your consideration and they fell well within the parameters that the Town normally likes to see. Item three was a surprise because the site has been used by the Town of Halfmoon for a well site and a roadway into it and also there was a Full Environmental Impact Statement prepared for Oak Brook Commons when it originally was conceived. However, just to get current with it; we've made contact with North Country Ecological Services, Mr. Steve George and Mr. Tom Ward and I have a meeting with them tomorrow morning on the site to look at the site and I say the site where the Town installed the original culvert under the driveway and it's quite deep and our geotechnical engineer has proposed that we extend that pipe 100 FT. By doing that, we resolved some geotechnical problems and that would be that there is a little slumping in into the stream basin right at the bottom of the hill. So, he feels if we put the pipe in and put in 2 to 4 FT of fill over the top of it. Mr. Ouimet stated the letter that you presented was submitted to us today. Mr. Gay stated that is correct. Mr. Ouimet stated at what time today? Mr. Gay stated I think it was around 1:00pm. Mr. Ouimet stated the following: I believe that Mr. Bianchino just received the letter tonight? So, Mr. Bianchino is going to have to review this anyway and it doesn't make a lot of sense to review it in front of the Board before Mr. Bianchino completes his review. So, you got caught in a catch 22 again with the County and this project is a mandated referral to Saratoga County Planning. So, this material has to be submitted to the County Planning Board and asked when will this be on the County's agenda? Mr. Harris stated June 19<sup>th</sup>. Mr. Ouimet stated so, the soonest we could act on this proposal is after June 19<sup>th</sup>. So, why don't we just ship it all off to Mr. Bianchino for his review and you guys can continue to work on the engineering issues and we'll schedule it for our next meeting after June

19<sup>th</sup> when the County has reviewed it and then we'll move on from there because we can't do anything tonight. Mr. Gay stated okay, that's acceptable. Mr. Ouimet stated the timing is what it is because we can't control when the meeting is at the County. Mr. Higgins stated the following: As far as the density calculations, the applicant provided some density calculations based on the total acreage on the site. Did they ever come back with the buildable acres calculation that we requested? Mr. Harris stated yes. Mr. Higgins asked okay and that is based on useable acres, correct? Mr. Harris stated yes, 6.27 based on useable acreage of 22.97. Mr. Higgins stated okay, when Mr. Bianchino is looking at that could he confirm that that is correct because there is an awful lot of steep hills on that site and I just want to make sure that it is correct as far as buildable.

This item was tabled to allow further review by the Town Engineer/CHA and pending action by the Saratoga County Planning Board.

Mr. Nadeau made a motion to adjourn the May 27, 2014 Planning Board Meeting at 8:55pm. Mr. Berkowitz seconded. All-Aye. Motion carried.

Respectfully submitted,  
Milly Pascuzzi  
Planning Board Secretary