

SUFFOLK COUNTY PLANNING COMMISSION

MINUTES

A regular meeting of the Suffolk County Planning Commission was held at the William H. Rogers Legislature Building, 725 Veterans Memorial Highway, Smithtown, NY 11787 on May 4, 2005 in the Rose Y. Caracappa Auditorium at 12:00 P.M.

PRESENT:

Robert Martin (Smithtown) - Acting Chairman
Louis Dietz (Babylon)
Charla Bolton (At Large)
Frank Tantone (Islip)
Richard London (Village 5000 & Under)
Richard O'Dea (Riverhead)
Laure Nolan (Village 5000 & Over)
John Caracciolo (Huntington)
Linda Holmes (Shelter Island)
Linda Petersen (At Large)

ALSO PRESENT:

Thomas Isles - Suffolk County Director of Planning
Andy Freleng - Suffolk County Principal Planner
Claire Chorny - Suffolk County Planning Department
Chris Wrede - Suffolk County Planning Department
Christine Farrell - Suffolk County Attorney
Kim Kennedy - Aide to Legislator Caracciolo
Peter Lambert - Suffolk County Planning Department
Lisa Greci - East Hampton
Nicole Wachter - Aide to Presiding Officer Caracappa
Ted Klein - Suffolk County Planning
Eileen Keenan - New York Sea Grant
David Gasper - NYS Dept of Environmental Conservation
Steven Mikulencak - New York Sea Grant
Christy Witters - New York Sea Grant

George Proios - Chairman of the Soil and Water Conservation District
Kevin LaValle - Aide to Legislator Losquadro
Frank Messina - Grants Tech. Suffolk County DPW

Minute taken by:

Eileen Schmidt – Secretary

(THE MEETING WAS CALLED TO ORDER AT 12:15 P.M.)

ACTING CHAIRMAN MARTIN:

The Suffolk County Planning Commission is now in session. Will you please rise and join us in a salute to the flag.

SALUTATION

ACTING CHAIRMAN MARTIN:

Just one other thing I have to say, I want to wish Linda Holmes a happy birthday.

MS. HOLMES:

Thank you very much.

ACTING CHAIRMAN MARTIN:

She traveled all the way from Shelter Island to be here on her birthday.

MS. HOLMES:

Thank you.

ACTING CHAIRMAN MARTIN:

Do you want to say a few words or anything?

MS. HOLMES:

Well, I want to thank you and it's very nice to be able to do your civic duty when you're a little old lady in tennis shoes.

ACTING CHAIRMAN MARTIN:

Well, we can't top that one I guess. The first item on the agenda the approval of the minutes of April 6th.

MS. HOLMES:

Just one little, a couple of little minor corrections on page 10 with my comments just a typo in line two, to make every property owner responsible for controlling run off, and on the next page line three lead is l-e-d, just those two.

ACTING CHAIRMAN MARTIN:

That's it?

MS. HOLMES:

Yes.

ACTING CHAIRMAN MARTIN:

Okay Linda, thank you. Anybody else? A motions in order.

MR. CARACCIOLO:

I make a motion to accept the minutes.

MS. HOLMES:

Second.

ACTING CHAIRMAN MARTIN:

All in favor signify by saying aye. Contrary minded. So accepted. **(Vote: 10-0)**
The next item is tabled. Three is the public portion. Anybody on the outside wish to speak today? Please fill out a card. No, no answer. Okay. Four, Tom Isles it's all yours.

MR. ISLES:

Just very briefly, a couple of items to bring the Commission up to date on. The first item is, during the summer months the Commission often goes to other parts of the County for their meetings; we have had contact with the Village of Port Jefferson and they've offered to host a meeting of the Commission at the next meeting in June. If that is agreeable to you we will go ahead and confirm the meeting with the Village; it would be held in the Village Town, Village hall, pardon me in Port Jefferson at the Harbor. If there's any discussion on that or comments otherwise the meeting I think is scheduled for Riverhead.

ACTING CHAIRMAN MARTIN:

Okay. Let me go around the room and ask everybody. Anybody have any problem with that? Everybody okay? You'll receive the direction in the mail anyway it'll show you a map where it is. Okay, Tom.

MR. ISLES:

Yes, we will certainly do that and then if any members have suggestions for meeting in July and August certainly pass them along to us and we'll try to schedule those meetings. The second item is the Planning Department has completed an update of the demographic economic development trends of the County. This was prepared by Peter Lambert who's with us today and it's done on a regular basis by Peter, but here again it's just an information source for you and it just updates population statistics and growth trends and so forth within the County for your information. If you have any questions, you know, please let me know.

Two other items, one is that the Planning Department has been working pretty extensively this past month regarding the development of Gabreski Airport and most specifically on the issue of the adoption of a master plan for the planned development park at Gabreski Airport. We are continuing on that with the town with the intention that the updated plan will be submitted to the Southampton Town Board sometime in May. We will provide more information to you on that; it will require a referral to the County Planning Commission when the town does officially adopt the draft plan for consideration.

The last item I'd like to just bring up a little bit later when we get to the regulatory aspects on the Commission and that deals with the matter of Starlite Properties. This was an application that was referred to you by the Town of Brookhaven, I guess about a year or two ago. The Commission approved it subject to certain conditions; the town has now sent a different map to us which appears to qualify as a local determination and I'd just like to at the time of the regulatory review fill you in on the details of that and then request that we go ahead with the local determination at that point. Beyond that Mr. Chairman we do have a presentation today from Sea Grant which is an organization that in this case provides information today on the Phase II stormwater regulations. They've been gracious enough to come down today and give us a brief presentation on the program. It is a program of large significance to all the municipalities in the County and we felt it was important since we have many municipal representatives here to hear this. It relates to many different kinds of development. To give a brief introduction to Eileen Keenan whose here from Sea Grant is George Proios who's the Chairman of the Soil and Water Conservation District and has been working with this organization closely.

MR. PROIOS:

I just wanted to quickly go over with you something about the Stormwater District and a little bit brief history on how we got involved in this. Back in the 1930's some of you might remember we had a giant dust bowls and as a result of that the federal government created legislation to allow states to create soil and water districts. Every state in the union has done that; in this state all 62 counties, the 57 plus the five boroughs of New York banned together and there are 58 soil and water districts and I happen to chair the one in Suffolk County. One of the major requirements obviously is to look at problems caused by water erosion to our soil and stormwater is one of those major issues. Back when the first clean water act was enacted in 1972 everybody was concerned about point discharges, industrial chemicals coming out of pipes. And in 20-25 years a lot of progress was made dealing with that and whether nonpoint became a problem or it maybe was just masked and we didn't see it before, but as we took care of the point source all of a sudden we started to realize that nonpoint source i.e. things from golf courses, things from road runoff, other things that don't generally come out of a pipe or though sometimes stormwater is a pipe, but its coming over a large area began to manifest itself affecting area.

We have the dubious distinction here on Long Island in having all of our waters, coastal waters being impaired. A unified watershed assessment was done eight years ago or more and it found that all the waters are category 1 waters meaning they're all impaired and most of that impairment is coming from nonpoint source pollution. So when the state had to realize that the stormwater regulations were coming into play and they did give municipalities and individuals a long lead time there was a Phase I and most people didn't know about it. Phase 1 came and went and all of a sudden two years ago Phase II was implemented, and the state committee, the state Soil and Water Committee is a good that sort of represents all the soil and water districts. It's a separate policy making body; if you know

anything about McKinney's, the smallest McKinney's book is the soil and water district law it's about 30 pages, you can read in 15 minutes. Half of it is about creating a state soil and water committee and the other half of it is about giving local counties enabling legislation to create local soil and water district law.

I happen to sit also on a state committee and just to show you neat way that somehow government works because there was a job freeze in DEC and there was federal dollars coming into DEC they transferred that money to AGA Markets. AGA Markets transferred the money to the state's Soil and Water Committee which I sit on and we at the state's Soil and Water Committee contracted out with five local soil and water districts, one of them being Suffolk County in order to get a body down here to help with some of the implementation of the Phase II regulations and that's how Dave Gasper ended up getting up here. So he has a contract with the district, but he works with the Region 1, DEC office. So I thought it would be a good idea to do is to go into the two parts of Phase II, one is Eileen was hopefully going to go into a brief history of how the law came about and then talk about MS 4's Municipal Separate Storm Sewer Systems that's the opposite of you may remember years ago CSO's, Combine Sewer Overflows. That was the whole issue with New York City that their sewer system was combined with their storm systems so every time it rained sewage was dumped into Long Island Sound and nearby bodies of water. They're combined we're not combined, but we still have these conduits of stormwater going into all of our waters. I think Suffolk County has over 162 direct discharges. I've never seen a complete listing of all of them if you add up all the townships and all the villages how many pipes we have going into our coastal waters, but that's one of the issues that this whole program is trying to address. And then she'll talk about the requirements that all the governments in Suffolk County and the seven western governments have to do for the as MS 4's and then David will finish up talking about the construction grants activity and you'll see on this chart that you'll go over hopefully some of the requirements if you're altering more than an acre of land and I would say the majority of development here in the County is often more than an acre of land. And the requirements and many of them are not being complied with and its Dave's job to try to get them to come into compliance. So with that I'll turn it over to Eileen.

MS. KEENAN:

Thank you, George. Is this microphone working okay?

MS. SCHMIDT:

Yes, just bring it right to your face.

MS. KEENAN:

Okay. Can I take it out of here?

MS. SCHMIDT:

Yes.

MS. KEENAN:

Okay. First, I'd like to thank Tom Isles and also George Proios for arranging for us to be here. I'm very glad to have this time to spend with to speak about the Phase II program. For those of you that aren't familiar with NEMO or with Sea Grant our NEMO Program is administered by New York Sea Grant. Sea Grant is actually a research and education program whose primary objective is to ensure the sustainable use of New York's coastal resources. Here in New York Sea Grant is comprised of a partnership between Cornell Cooperative, I'm sorry, Cornell University and the State University of New York. We have extensions specialists working throughout the state. We have specialists working throughout the state in the various estuary programs including the Peconic Estuary Program, The South Shore Program, The Long Island Sound Program and even the New York/New Jersey Harbor Estuary Program. Virtually, all of New York's estuary programs have a Sea Grant specialist associated with them.

We have extensions specialists that address seafood safety, coastal processes and erosion and also fisheries management. The program that I'm responsible for is known as the NEMO Program and NEMO is actually an acronym that stands for Nonpoint Education for Municipal Officials. Now we work with Long Island local governments to assist them in addressing contaminated stormwater, hence, the name Nonpoint Education for Municipal Officials.

Our program is funded through grants from Long Island's estuary programs and also through the New York State Department of Environmental Conservation and New York State Department of State. New York NEMO is modeled after the original Connecticut NEMO Program which started over ten years ago and which was so successful that it now serves as the coordinating hub for a national network of over thirty NEMO programs across the country. Our NEMO Program assists Long Island municipalities in addressing the impacts of nonpoint source pollution or contaminated stormwater and here in New York we also provide direct support to Long Island's local governments to assist them in achieving effective Phase II stormwater management compliance.

So this afternoon I'll be providing you with a background to the Phase II Program. We'll take a look at the major components that municipalities need to include in their Phase II Programs. We'll look at the requirements and then at the end I'll conclude with some recommendations for effective implementation.

We're very well aware that there are a variety of contaminants that are picked up by stormwater. These are all picked up and transported through our stormwater conveyance systems and they are discharged largely untreated directly to Long Island's beaches, bays, wetlands and harbors. These contaminants are causing a number of impacts which represent serious economic as well as health concerns and they have been identified by Long Island's three estuary programs as the primary cause of the negative impacts being experienced in Long Island estuaries which brings us to the Phase II Program.

The objective of the Phase II Program is to address these issues to enhance recreational opportunities, to prevent beach closures, to make seafood safer to eat and to improve water quality. The Phase II regulations are now recognized and have been characterized as a new era in water pollution control because we're now moving beyond the typical sources of water pollution that we're all so familiar with; industrial discharges in sewage treatment plants for example. And we're now moving forward to address a variety of widespread contaminants that are generated throughout our communities because these contaminants are so widespread a comprehensive management approach is necessary. And in this regard the Phase II Program affects nearly all aspects of municipal procedures, policies, facilities and operations.

As George mentioned Phase II originates; it is a federal program and it originates with the Clean Water Act which was amended back in 1987. It does follow on the Phase I Program which applied to industrial activities and large municipalities and large construction sites. The Phase II Program was enacted or passed back in 1999 and it became effective in March of 2003 at which time affected municipalities were required to file a notice of intent upon which they described their initial plans to implement fully compliant municipal Phase II stormwater management programs. Here in New York the Phase II Program is administered by the Department of Environmental Conservation.

In terms of who's affected by Phase II, first we have municipalities. Any owner or operator of a municipal separate storm sewer system or MS4 located within an urbanized or designated area is required to comply with the Phase II Program. Phase II is a nationwide program and it does apply to municipalities throughout the country if they are within an urbanized area as designated by the EPA based on certain population's thresholds or if they are within an area that was designated here in New York by the DEC for example based on a determination which considered environmental sensitivity or significant natural resources in an area. Phase II also applies to construction site operators.

(Laure Nolan entered the auditorium at 12:34 P.M.)

Any construction site operator that is working on a development or a redevelopment project that disturbs equal to or greater than one acre of land that results in a discharge to surface waters of the United States is required to comply with the Phase II Program. Now we have an interesting aspect to here in that we actually have two separate permit programs here. We have the municipal program and we have the construction program and they overlap. The municipal program is a gradual program; it involves graduated or incremental levels of compliance. Municipalities have until 2008 to fully meet the requirements of the Phase II Program however, construction site operators need to be in compliance with the construction site permit now. So we have two separate and overlapping programs. They're overlapping in that the municipal program requires local oversight of construction site activity as well. So construction site operators are directly accountable to New York State right now and must comply with the New

York State Phase II Construction Permit and as municipalities achieve full compliance with the municipal permit they will also be subject to local Phase II construction oversight as well. At this point I'd like to just encourage you if you have any questions to please feel free to let me know and I'd be happy to stop at anytime if that would be helpful.

In terms as to what is required, most Long Island municipalities are now required to have permit coverage for the discharge of contaminated stormwater. They need to develop and implement fully compliant Phase II stormwater management programs by 2008 and their programs need to be designed so as to reduce or prevent the discharge of pollutants to the maximum extent practicable. Nearly all of Long Island was either automatically or additionally designated under the program. There are very few areas on Long Island that are not covered by the municipal Phase II Program. In terms of the major components that municipalities need to include in their Phase II Programs in the time we have this afternoon I'm going to provide a basic overview of the requirements, but I would encourage you to take a look at the state's municipal Phase II permit for some detail and specifics on the requirements. We'll be providing a discussion of just the major aspects of the Municipal Program the afternoon.

Municipal Phase II Programs need to include six major components; these are also known as minimum control measures and they are designed to educate and involve the public, to address the contaminants that can be associated with municipal facilities and operations and also to reduce the impacts that can be caused by construction site activity and land development. Now we'll take a look at some of the major requirements, some of the specific requirements for each one of these major components. These major components what we're looking at right now actually comprises the basic outline of the Municipal Phase II Program.

So lets take a look at these a little bit more closely now in terms of what they each require. In terms of public education municipalities need to disseminate educational information to the public regarding the pollutants that can be picked up by stormwater. The impacts that they can cause and also the things that the public can do in order to help take corrective action and reduce these contaminates and the problems that are associated with them.

As to involvement, municipalities are required to provide opportunities for the general public to participate in both the development as well as the implementation of the local stormwater program. In this regard they are required to prepare an annual report, present that at a public meeting and provide opportunities for the public to provide comments and input on the local stormwater program. In this regard the state's program goes a bit further and has a level of detail or specificity that goes a little bit further than the federal Phase II Program, but for the most part New York State's program very closely parallels the federal program.

Turning now to the pollution prevention and good housekeeping minimum control measure; this calls for municipal operation and maintenance program designed to prevent or reduce contaminated runoff from municipal operations. This entails employee training; it involves procedures, schedules, records, evaluations and reports. And for example it applies to such municipal facilities or operations as those associated with buildings and facilities maintenance, parks and open space management, stormwater system management and roads maintenance for example. This is just a very short list; virtually all municipal facilities and operations would fall within the realm of this specific aspect of their programs in one regard or another. The idea is for municipalities to take a look at what they're doing in conjunction with an identification of their local contaminants of concern and see where there might be opportunities for improvement with regard to pollution or contaminant prevention.

Turning now to illicit discharge detection and elimination; this is directed at illicit discharges or connections such as those that might arise from residential properties or from businesses such as dry cleaners, gas stations or restaurants. This also addresses illicit dumping or illegal dumping, for example the local resident that might not understand that the local storm drain does not lead to the sewerage treatment plant or necessarily to any other treatment facility and is dumping motor oil or other automotive fluids down the storm drain. So this addresses illicit connections as well as dumping. This calls for a municipal program to detect and address non-stormwater discharges specifically municipalities need to prepare a sewer system map upon which they identify all of the points at which their systems discharges to surface waters of the United States. They also need to prepare and enact and enforce an ordinance or a local law prohibiting non-stormwater discharges with enforcement measures. And we'll see requirements for education throughout the Phase II Program and this minimum control measure requires education for employees, business and the general public concerning the hazards that can be associated with illegal discharges and improper disposal of waste.

The next component of municipal Phase II programs that we'll take a look at is construction site runoff control. This is directed at the large amounts of sediment that can be transported from disturbed areas such as those associated with construction site activity, but that can also be associated with residential gardening any land disturbance. Basically, does include sediment transport, but in this regard we're specifically targeting construction activity that disturbs sites equal to or greater than one acre in size. For this municipalities need to put in place an overall program to reduce the pollutants associated with construction site activities. Here again, an ordinance or local law is required with penalties for erosion and sediment controls as well as waste controls.

Municipal procedures for site plan review, site inspection and enforcement and for receiving and responding to input from the public are required; and here again, education or training for construction site operators is required so that construction site operators have an awareness and an understanding of what is

required of them in order to comply with the local standards. In this regard I'd like to point out also that municipal construction site programs need to adhere to the state standards for erosion and sediment control. So while municipalities generally have erosion and sediment control ordinances site plan review procedures, site inspection and enforcement mechanisms they need to make sure that those are in accord with the state standards for erosion and sediment control.

Turning now to the post construction runoff component; this minimum control measure is designed to address the ongoing impacts that can be associated with land development. For example, the increase in the quantity and the decrease in the quality of stormwater runoff that can be associated or caused by intensive land uses. This component of the municipal program involves both structural as well as non-structural management practices the objectives of which need to be to minimize water quality impacts on a post construction basis and to attempt to maintain pre-development runoff conditions. For this aspect of their program municipalities are required to develop a post construction program designed to address runoff from new development and re-develop here again, this applies to sites equal to or greater than one acre in size.

The non-structural management practices that can be utilized to meet the requirements of this minimum control measure include an approach that considers water quality and for example master plans, watershed plans and low impact development policies can be relied upon as well as water wise site design techniques such as buffers and riparian zones, minimized disturbance, minimized imperviousness and maximized open space.

Post-construction implementation can also include structural management practices such as constructed wetlands, stormwater system retrofits or detention and retention basins. We need to keep in mind here however, that Phase II does require that municipalities insure the long term operation and maintenance of stormwater mitigation practices to insure that they're functioning as intended on an on going basis. And here it's helpful to keep in mind that it may be potentially more effective to very carefully evaluate the mix of proactive non-structural practices and to help insure the cost effectiveness of the measures that are being implemented. Sometimes it has been found that structural practices can result in a false sense of security, perhaps even a sense of complacency throughout the community when the members of the community believe that that structural practice has basically got the situation covered. And so what we find is that contaminants are not being controlled at their source and there are cost associated with the ongoing maintenance of these practices they need to be cleaned out, they need to be inspected, they need to be repaired on an ongoing basis. So it's very important to carefully consider and to utilize proactive cost effective approaches that address the contaminants at their source and potentially in a more cost effect manner.

Well, there are certainly a number of challenges associated with the Phase II Program not the least of which is for funding. However, municipalities also need staff, equipment and technical expertise to meet the requirements of the Phase II Program. Here it's helpful to keep in mind that much of what Phase II requires actually involves areas of responsibility that have traditionally been within the municipal realm for many, many years and in this regard the Phase II Program can actually prompt municipalities to build on existing efforts. Phase II really does not involve a lot of "new stuff". The idea is to take a look at existing operations, existing policies, existing equipment, procedures, methods of delivery and build on those existing efforts to achieve effective Phase II compliance.

This brings me now to perhaps the most significant aspect of the Phase II Program; shared implementation is encouraged. Municipalities can work with non-governmental organizations; they can work with universities, school systems, civic associations, business associations and perhaps most importantly they can work with each other to implement one or more aspects of their Phase II programs. And when we pare away the regulatory terminology and take a look at what's required keep in mind that shared implementation is encouraged. We can see that the Phase II Program actually constitutes a watershed management program. These minimum control measures actually amount to a community wide watershed planning process. So we recommend that municipalities engage in inter-municipal watershed based co-implementation that cannot only reduce cost because it can result in more effective, more efficient economies of scale and delivery of municipal services and operations, but it also has the potential to maximize on resource protection. This is because to the extent that municipalities are able to achieve consistency with regard to their land use practices and their pollution prevention policies they're able to achieve optimal levels of resource protection when these various activities and policies are applied within a water shed and directed at the receiving water body that they all share in common.

So to wrap this up we recommend an implementation strategy to municipalities that stresses that local pollutants of concern be addressed, that municipalities prioritize their local audiences and specific areas or issues. Phase II is not a general stormwater program. The idea is for municipalities to take a look at their local pollutants of concern; their local water bodies to identify the sectors or areas or folks within the community that are generating those contaminants and to prioritize those audiences and specific areas in terms of their Phase II Program. They need to use their Phase II Program to address their local issues and not necessarily engage in educational activity or policies and practices that are not integrated, targeted, focused and planned on local objectives. We strongly recommend that municipalities maximize on the flexibility and co-implementation incentives and by doing all of these things municipalities can derive the greatest local benefits for their expenditures on their stormwater programs.

There are a number of sources of support for municipalities here on Long Island with regard to Phase II. These include the NRCS, Suffolk County Cooperative Extension, the Soil and Water Conservation Districts, the Water Quality Coordinating Committees and the Long Island Estuary Programs. And the New York NEMO Program through Sea Grant is available to provide continuing workshops, consultations, training. We can assist grant applications; we can assist with planning, reporting and evaluating the Phase II Program and I'd like to also let you know right now that we have recently expanded our program. I have Steven Mikulencak and Christy Witters with me. We have expanded, we've added these two additional staff people and we are planning to deliver our NEMO Phase II support throughout Long Island within the drainage areas for each of Long Island's estuary programs. So just so I'd let you know about that, that we have additional staff and we will be island wide and with that I'd like to invite your questions. Thank you.

ACTING CHAIRMAN MARTIN:

Thank you, Eileen. With questions we'll start with Laure.

MS. NOLAN:

None.

ACTING CHAIRMAN MARTIN:

Dick.

MR. O'DEA:

Yes, thank you. Is there an education process for lets say engineering firms and law firms that are high profile in construction situations so thatthere's a lot of pressure here on municipalities according to this lecture? If there's knowledge upfront of dealing with these engineering and law firms it makes the job I think a little bit easier.

MS. KEENAN:

Yes. There have been a number of programs that have been offered through the American Public Works Association and also the American Society of Civil Engineers for example, and I do believe that the Soil and Water Conservation Districts around the state and the Regional Planning Council Water Quality Coordinating committees around the state. There are a variety of organizations, professional organizations that have been providing various levels of training throughout the state for a few years now that's not to say there's not certainly a very definite need for more of that.

MS. BOLTON:

As part of my job I drive all over Long Island and I see many construction sites mostly residential development sites along the North Shore which are on hill sites. One I see almost uniformly is what amounts to sand mining operations and is in fact sand mining operations because these people are actually selling the sand that they're digging out of these hill sites. My question is probably the most

effective way of dealing with this certainly on...in the hill site communities is to really emphasize the development of ... development regulations relating to hill sites. And judging from what I see they're either ineffective or nonexistent and that seems to me a really important place to put your outreach program and your recommendations and implementation to the degree that you have it. I mean, it's absolutely disastrous; I don't recall, and maybe it's because there's so little land left, I don't recall the degree of devastation that I'm now seeing it at any other time and so my question is, are you emphasizing this hill site development issue?

MS. KEENAN:

Actually, we have Mr. Dave Gasper who will be speaking with you further about the specifics of the construction program. And yes, when we do go into villages that have steep slopes and hilly areas within their jurisdiction that is something that we do stress. We also stress that in regard to, for example, septic system management which can also be a problem in areas with steep slopes and sanding soils for example. So yes, that would be the type of issue that we raise at the local level when do go into individual municipalities, but Dave will be speaking on next about the construction program and he maybe able shed further --

MS. BOLTON:

Okay, because it really should pre-exist the construction program meaning it should be in the zoning regulations so that these sites are not considered sites for development in the first place.

MS. KEENAN:

Right. The municipalities need to adhere at a minimum to the state's standards; however, they certainly can go further than that and I'd like to also point out now that there are various guidance materials that have been distributed by the DEC. And there are also a number of guidance materials relating to the Phase II Program and its implementation. These draft guidance materials will be distributed; it's expected that they'll be available within the next six months or so, but in particular I would like to call your attention to one called the Stormwater Management Guide for Local Officials that does address the planning and local law process that is very definitely needed for the construction and post construction of review processes.

MS. BOLTON:

Okay. Thank you.

MS. LONDON:

First, I'd like to congratulate you on your report; I think it was nothing less than excellent, very informative. My only question I have is enforceability, who would be enforcing this?

MS. KEENAN:

Here in New York the DEC is the administrating agency; however, I will also point out that as I stressed Phase II is a federal program and under the Clean Water Act third party lawsuits are permissible. This means that local citizens can prompt or can force compliance by bringing third party lawsuits. So enforcement will be through the general public at large as well as through the state DEC. And at the local level with regard to construction activity enforcement will be at the local level also.

MR. LONDON:

Thank you.

ACTING CHAIRMAN MARTIN:

I want to ask you one question you have to speed it up here we have a time restraint. So whatever point, keep right to your point Eileen generally, okay.

MS. PETERSEN:

Just one quick question, are you working with individual town highway departments because they're so responsible for the stormwater runoff.

MS. KEENAN:

Yes.

MS. PETERSEN:

Are you giving them seminars and educating them at to the 2008?

MS. KEENAN:

Yes, yes. We provide focus topic workshops or seminars and as a matter of fact a few months ago we provided a focus topic seminar on pollution prevention and good housekeeping in Nassau County which was attended by nearly one hundred municipal staff people including folks from the highway department DPW, Parks, etc. And so yes, we'd be available to provide that out here Suffolk as well.

MS. PETERSEN:

Thank you.

MS. HOLMES:

Do I understand correctly that this is having just persuaded my little town of Shelter Island to enact a runoff law, do I understand that actually under this program our town would have been required to do that and they don't know it?

MS. KEENAN:

It is possible; I would need to verify, however, that Shelter Island is either automatically or additionally designated under the Phase II Program. There are a few areas out east that are not covered by the Phase II Program. So I would like to verify --

MS. HOLMES:

It might not be covered because we do not have a municipal water supply except in one teeny area of the island.

MS. KEENAN:

I suspect that it is covered by the Phase II Program; so to answer your question Shelter Island would need to prepare an erosion and sediment control ordinance and illicit discharge detection ordinance and the other requirements of the program that I mentioned earlier in conformity with state standards.

MS. HOLMES:

I see well, if you are able to determine that I would like our town officials and our highway superintendent who's very up on things to each have one of your kits. And I also was wondering if in your education program you are addressing what our water authority people are telling us is a growing problem which is people flushing medications down the toilet and that's leaching into our water supply. And when a presentation was made here recently I urged him to get physicians educated to tell their patients, don't throw away your unused medication in that way put it in a bag and let it go to the dump, but don't flush it down the toilet. And it just something that's emerging as a problem and I wonder if that was I didn't see it listed in, you know, the pollutants you were mentioning.

MS. KEENAN:

Yes, that is something that is emerging right now and that is something that we are considering extending education based on and we are taking a look at that right now in terms of the research that's been done so far.

MS. HOLMES:

He had some statistics that might be helpful to you.

MS. KEENAN:

Yes, thank you. And I would like to follow-up with you if you think it would be helpful for our NEMO team to come and meet with the folks out at Shelter Island. I'm sure we'd love to take a visit out there.

MS. HOLMES:

I think it would be marvelous; it would be very, very helpful.

MS. KEENAN:

You can bend my arm to visit Shelter Island anytime.

MS. HOLMES:

Thank you.

ACTING CHAIRMAN MARTIN:

Thank you, Linda.

MR. TANTONE:

No questions.

MR. CARACCIOLO:

No questions.

ACTING CHAIRMAN MARTIN:

Okay. Hearing no other questions thank you.

MR. O'DEA:

I have one question for George. George, yesterday there was a press conference on filters in County drains?

MR. PROIOS:

Yes, for the drains. Yeah, there's a number of private consultants that have come out to put inserts in: some of them trap sediment other ones actually I went out and visited a site where it actually kills bacteria and what we're trying to do is get some data. The only agency that was starting to look at them was the state DOT; so we're trying to get more information. There's a consultant that's working out with all the towns for the Peconic Estuary to do a concentrated effort to look at town, county, state discharges and as part of that we'll have some pilot projects installing different devices. Some of them are called storm scepters, they have different trade names, but we don't have any kind of long term data. As Eileen mentioned one of the issues we want to make sure we want to get devices that don't require a great deal of maintenance because that's one of the areas that we seem to fall short on. So we want to have devices that can go out there you can put them in there and don't have to go back every week, every month and worry about them. So that's currently what we're starting to do now.

MR. O'DEA:

So the County is going to do their own first, is that --

MR. PROIOS:

Parts of County and part of it is going on I know through the Peconic Estuary Program is going to do one and I know the state DOT has had several of these installed for about the last three years also monitoring as well.

MR. O'DEA:

Okay. Thank you.

ACTING CHAIRMAN MARTIN:

Thank you, George. Thank you.

MR. ISLES:

Dave, how long is your presentation? We had originally planned about a half an hour.

MR. GASPER:

If you're pressed for time then I could it this should only take a couple of minutes. I mean, it's a lot of overlap.

ACTING CHAIRMAN MARTIN:

Would you rather come another time?

MR. ISLES:

That's the pleasure of the board.

MR. GASPER:

It's just the gist of the implementation of the secondary --

ACTING CHAIRMAN MARTIN:

Would you rather come another time when we have more time now?

MR. GASPER:

Well, within the package of information that I distributed is my presentation so you can take a look at that if you'd like and go through it. Basically, a lot of what Eileen did in her presentation was already covered; however, I do want to mention that I am the stormwater control specialist for Region 1 of the DEC so that means Nassau/Suffolk Counties both counties. But any construction site with this speedy zone permit 0201 over an acre that has a potential for discharge or discharge into surface water has come through me. So I made a copy and I put my business card on the front page of my presentation. So, I forgot your name ma'am, but you were talking about the North Shore if you have some issues with the North Shore I would be more than happy to go out there and inspect because I am the enforcement implementation arm of the DEC for this permit and there is a lot that this permit covers and helps minister within the stormwater (inaudible).

ACTING CHAIRMAN MARTIN:

Okay. Thank you.

MR. GASPER:

So I guess that was quick; that was the quickest presentation I ever did. If you have any questions feel free to ask me.

ACTING CHAIRMAN MARTIN:

Anybody have any questions? No. Let's go on to our next order of business.

MR. ISLES:

Thank you very much, Eileen; thank you Dave too as well and we'll keep the materials too.

MS. KEENAN:

Is it okay to break this equipment down now?

MR. ISLES:

Sure.

MS. KEENAN:

Thank you.

ACTING CHAIRMAN MARTIN:

We're going to go now to our Commission's Roundtable we'll start with Laure.

MS. NOLAN:

Nothing new.

ACTING CHAIRMAN MARTIN:

Dick.

MR. O'DEA:

Town of Riverhead did their first TDR application the planning board signed off on eleven development units to a site off Sound Avenue. The program residentially has a package of 500 units and when they're exhausted that's the end of the residential component. And along with that and conceding with it is the component of TDR's in the commercial area which I don't I'm not sure whether it has a cap or not, but that's will be the other half of the TDR process. So it's kind of important event. Thank you.

ACTING CHAIRMAN MARTIN:

Charla.

MS. BOLTON:

I have nothing. Thank you.

MR. LONDON:

Nothing, thank you.

ACTING CHAIRMAN MARTIN:

Linda.

MS. PETERSEN:

No.

ACTING CHAIRMAN MARTIN:

No. Linda.

MS. HOLMES:

Yes, we have some good news from Shelter Island again. The town is just entered into a 50/50 deal with the County to combine development rights and a conservation easement for 43 acres on Shelter Island in a very fragile peninsular which will preserve an area that could've had 35 houses and also protect the already fragile water supply for a very densely populated area in the western part of Shelter Island. And the total purchase using our 2% funds and County funds is \$4.72 million and the County assessed this property at over six million so we all feel very good about it and we're very happy the Legislature just voted the other day to approve this so we're very happy.

ACTING CHAIRMAN MARTIN:

Thank you, Linda. Frank.

MR. TANTONE:

I have nothing from Islip.

ACTING CHAIRMAN MARTIN:

John.

MR. CARACCIOLO:

Nothing.

ACTING CHAIRMAN MARTIN:

Tom.

MR. ISLES:

All right, Mr. Chairman we now go to the regulatory items on for the Commission which starts with Andy Freleng and zoning once we get set up with the computer which will be a second I think.

MR. FRELENG:

(inaudible)

MR. ISLES:

Good point, thank you. I just wanted to mention to you on the application of Starlite Properties which was from the Town of Brookhaven as I said about a year or two ago, at that time the application was for a subdivision of industrial property. At that time the Commission recommended approval subject to one of two things regarding the access to the site. The Commission said either put in tap streets so that there could be access to adjacent properties at some point in the future or put in a loop road. The Town of Brookhaven then received that and did not override the Commission and the applicant then sought to get approval for the tap streets, made application to the Suffolk County Legislature for that. And the reason for that is that the property in question is actually the former Gucci Fireworks or current Gucci Fireworks facility and the County was the original owner of that property.

In the transfer of the property the exchange of property the County retained the development rights to a perimeter of the property for the purpose of maintaining a permanent buffer around the site. So the Legislature then considered the idea of changing the development rights respective to tapped streets; that was not approved by the Legislature. The applicant then resubmitted a map to the Town of Brookhaven leaving the development rights areas undeveloped and intact and they've created a loop road on the map which is a large cul-de-sac, but we did send that out to our traffic safety division of the Department of Public Works. They've contacted us back saying that for the purposes of truck movements it works more than adequate. They said you could land a 747 on it actually. But so in terms of the one aspect of the movement of trucks and vehicles and so forth associated with the industrial development of the property the design that was submitted in the referral from the Town of Brookhaven does appear to meet County standards.

The second aspect, however, was the applicant was also proposing a subdivision of some of the development rights property; that raise a question to us as to whether that had any impact as it relates to the County's development rights. We did send an inquiry to the County Attorney's Office; I did receive a reply recently and the analysis of the County Attorney is that number one, the County's development rights were dedicated to the County Nature Preserve when the transfer occurred back in the 1980's. The conclusion is that there is no legal impediment with respect to subdividing the property under which the development rights sit. However, in the event Starlite Properties wishes to transfer the area the property upon which the County owns the development rights whereby no development of any kind is contemplated such may only be accomplished with the approval of the Suffolk County Legislature.

So the opinion of the County Attorney is that the subdivision of the property itself does not appear to be in conflict with the County's deed or any County requirements on the development rights; that there's no legal impediment. However, as an advisory Starlite Properties is advised that any transfer of the property does require legislative approval. So with that is we feel at the staff level that this matter would be a matter for local determination since it now complies with Commission guidelines. And we would put in a comment that any subsequent transfer of the property that may result from this subdivision is subject to approval of the Suffolk County Legislature. So I wanted to bring this to your attention in terms of the review and action that the staff is prepared to take on this based on the Commission's guidelines. Obviously, if you have any questions or any other points or matters that you feel the Commission should take at this point certainly we welcome that, but I wanted you to be aware of it.

ACTING CHAIRMAN MARTIN:

Okay, good.

MS. PETERSEN:

One question; in regard to the 1,000 units of workforce housing that are being proposed on the County property in that vicinity, will this site be relatively near to that and are there any items that we as the Commission should be concerned about with this development going forward on the Starlite Properties site and there impacts that it could have on the proposed workforce housing site?

MR. ISLES:

A very good point and one that I think does deserve careful scrutiny. There are several uses in this area that would be of concern from a residential standpoint. Obviously, the industrial properties Starlite Properties is one and there's a compost facility further down along Horseblock Road. There's some other sites. So all of that would have to be taken into consideration with the planning of these surplus properties that the County owns in Yaphank. We have begun that process and we will be under the County Executive's directive preparing an RFP by the end of the year; so the intent on that is that the time this year will be used to more closely examine those kinds of constraints; that if there is housing anticipated where should that be, what sort of separation should there be from these other uses. I think the intent was to put the residential more northerly behind police headquarters in that vicinity, but here again, that kind of planning does need to happen. It's in the process of happening as we speak and so that would be an important consideration. I think as far as this site's concerned the site is already there. It's already zoned industrial or heavy industrial actually. The action that's referred to as now is a subdivision or dividing the lots, but I think, you know, so I think that's not going to change too much. But in terms of where the County lays out either a sports venue use, housing, entertainment type uses whatever maybe going in there would all have to be designed around the facts of what exist in the area and what the impacts of that will be.

MR. PETERSEN:

Okay, thank you.

ACTING CHAIRMAN MARTIN:

Okay, Linda.

MR. DIETZ:

Mr. Chairman, I'd like to make a motion to staff.

ACTING CHAIRMAN MARTIN:

Thank you. Do I hear a second?

MR. CARACCILO:

Second.

ACTING CHAIRMAN MARTIN:

All in favor signify by saying aye. Contrary minded.

MR. ISLES:

Okay, so staff recommendation which is a local determination.

ACTING CHAIRMAN MARTIN:

Okay, a local determination. 10-0 **(Vote: 10-0)**

MR. ISLES:

Okay, we'll now go to Andy.

MR. FRELENG:

Good afternoon members of the Commission and the first regulatory matter before the board is the application of Michael Franchi. This application was referred to us from the Town of Smithtown. The jurisdiction for the Commission is that the subject application is adjacent to CR 14 otherwise known as Indian Head Road. Are you picking this up Eileen?

MS. SCHMDIT:

Yes.

MR. FRELENG:

Okay. The applicants request a Special Exception approval to permit an accessory apartment in a central business zone on 17,218 sq. ft. in the hamlet of Kings Park.

The subject parcel is located on the east side of Indian Head Road approximately 124 feet north of Park Drive. The analysis of the character of the area indicates that the subject parcel is located in a strip of Central Business zoning. The subject property is shaped like an inverted "L" if you will or a backwards "L". That's the subject property here; I apologize for the background. We can't seem to figure out why we can't get this green to bleed out, but that is the subject property. This is Indian Head Road. The subject property abuts improved Central Business zoned property on the north and west in the elbow of the "L", that would be in here okay. Also to the north the subject site fronts on Meadow Road which is a town road; to the west the site also fronts on CR 14. East and south the subject property abuts improved Central Business zoned property.

The petitioners seek a change of use from the existing two-story, two-family dwelling to a first floor retail space with a second story accessory apartment. As a result a Special Exception permit is required for the apartment in a Central Business zone. Moreover, the conversion from residential dwelling to retail requires a parking variance to reduce the minimum required parking from 18 to 11 spaces. The parking variance would be a 38% deficiency in the required space. The Town of Smithtown, however, is considering parking requirements for the adjacent western properties. So they're considering that together as part of this application and hence the referral material to the Suffolk County Planning Commission indicates a required parking amount of 39 spaces. In total this would be a 72% variance in the required parking.

It's the belief of the staff that the proposed conversion to retail and the subsequent lack of parking on site would be an overintensification of the use of the premises along a County roadway. Since the retail would front on CR 14 with no access to the rear parking it is a concern of the staff that the retail customers will park on the County Road to an extent that it may become unsafe. So what we have is we have this structure here which is currently two-family who wants to convert the ground floor to retail. The parking for this would be in the back; there is some parking along the street here, however, Smithtown is considering this whole thing as the parking requirements for this parking lot. So we have a large deficiency in the parking, preexisting to start with, but made worse now by the conversion of this two-family to retail. So therefore the issues related to the subject application stem from details relating to the conversion of land uses with insufficient lot area for parking along a County Road.

Staff is recommending disapproval for the following reasons: number one, the proposed use would be approximately 38 to 72% short of the required parking. Paragraph which follows is the rationale from the staff report. Condition number two, I'm sorry, reason number two is that the subject use constitutes the unwarranted overintensification of the use of the premises. And reason number three, is that the subject use would tend to necessitate the use of CR 14 for parking purposes thereby diminishing the traffic and safety carrying capacity of the said road. That is the staff report.

ACTING CHAIRMAN MARTIN:

Thank you, Andy. Members of the board have any questions?

MS. NOLAN:

Yes.

ACTING CHAIRMAN MARTIN:

Yes.

MS. NOLAN:

I didn't understand the parking issue; are you saying that the town is considering that parking lot in the back to be the parking for all of those buildings?

MR. FRELENG:

Right. We had an application, if you could back up a second, Chris you can leave that either way. We had an application for this tax map parcel, all one piece. The deficiency in the parking here was 38% if you change the use of this building from what it was; the town, however, in their referral material is considering all these structures as part of the use for the parking here which exacerbates the parking deficiency.

MS. NOLAN:

Are they all owned by the same owner?

MR. FRELENG:

No, they're not, but they are treating them as one complex.

MS. NOLAN:

Well, I guess I don't see how you can penalize the owner of that parcel because owners of other parcels are using his property for parking.

MR. FRELENG:

Well, I don't know how the local planning board is looking at that, however, we would base our determination on the issue at hand which is the 38% deficiency, so depending on how you consider the application it ranges from 38 to 72%.

MS. NOLAN:

Weird, okay.

ACTING CHAIRMAN MARTIN:

Any other questions?

MS. PETERSEN:

Just one; Andy what smart growth are they talking about putting apartments above stores in certain area?

MR. FRELENG:

Yes.

MS. PETERSEN:

This appears to be a commercial area.

MR. FRELENG:

Yes.

MS. PETERSEN:

Is that one reason why they were looking to do that type of development?

MR. FRELENG:

Well, we don't have an indication on the rationale behind why they're looking to do it. However, when you do mixed use projects you still need to keep in mind that that residence in a dwelling need to have a reasonable expectation of convenient parking and this comes off the bat as a deficiency.

MS. PETERSEN:

But we don't know if this is an area that they're looking at to promote smart growth within, I mean, the town as a whole is a study area or anything like that?

MR. FRELENG:

The staff had no knowledge of that, no.

MS. PETERSEN:

Okay, thank you.

MS. NOLAN:

Could I ask just one other question?

ACTING CHAIRMAN MARTIN:

Yes, surely.

MS. NOLAN:

Are the parcels adjacent to it on either side on Indian Head Road; are they commercial or retail on the bottom?

MR. FRELENG:

They are commercial zone properties; I think they're service I'm not sure if they're retail. I was there this morning, they're not all dwelling. There are no dwellings except for that one; so they are either service or commercial uses, but they're small uses, yes.

MS. NOLAN:

Okay.

ACTING CHAIRMAN MARTIN:

Anybody else have any questions? A motion's in order.

MR. TANTONE:

I move staff.

MS. HOLMES:

I'll second it.

ACTING CHAIRMAN MARTIN:

All in favor signify by saying aye. Contrary minded. I abstain. So one abstention.
(Vote: 9-0-1-0 Abstain: Martin)

MR. FRELENG:

Thank you. You might have noticed at the end of the table a staff member Chris Wrede; he's been with us for awhile now. The next application is referred to us from the Town of Brookhaven. Chris recently has been handling the area variances, the dimensional variance applications; so this one rose to a level where Chris believed that the Commission should take a look at it so I'm going to turn over the microphone to Chris.

MR. WREDE:

Good afternoon. I've been with the County for nine years five of which was in the Real Estate Division and the last four in reviewing zoning in subdivision applications. The second zoning application comes from the Town of Brookhaven; it's the application of Glenn Adelwerth. The applicant is requesting area and front yard setback variances for a proposed one-family dwelling. Subject parcel is located on the north side of Montauk Highway, 600 ft. west of Seatuck Avenue in the hamlet of Eastport.

An analysis of the character of the area indicates that the parcel is located in a low density residential area in the A-1 zoning district. To the north and east, the subject property abuts single family residences. To the south the property fronts on Montauk Highway.

The petitioner seeks variances for the erection of a single-family dwelling. The lot area of the parcel is 27,495 sq. ft. which is 32% deficient of the required minimum lot size of 40,000 sq. ft. The front yard setback as proposed is 38.4 ft. which requires an 11.6 foot variance from the required 50 ft.

The subject property is situated in a Hydrogeologic Groundwater Management Zone VI. The site is not in a Pine Barrens area or in a Special Groundwater Protection Area. This is related to the subject application stem from setbacks and access to County right-of-way. At first glance the site of the proposed dwelling is problematic fronting on the County right-of-way especially because it's on a curve, but the staff believes that a residence can be created with good planning and land use principles.

So we're recommending approval of the variance subject to the following; that the front yard shall be set back 50 ft. from Montauk Highway to contribute to the buffering of the residential amenities from traffic activities and noise.

Number two, the proposed driveway shall make an angle of at least 70° and preferably 90° with Montauk Highway. The driveway angle is to be measured between the centerline of the driveway and the nearest edge of the right-of-way of the road. Where the driveway is located on the curve which it appears that this is the centerline of the driveway shall coincide with a radial curve.

Number three, a "T" shaped turnaround arrangement for the driveway shall be provided so a vehicle leaving the lot will not have to back out into traffic on the County road.

Number four, before any approval of the variance is given the applicant shall be required to obtain all the required permits and approvals from the County Department of Public Works.

Number five, all stormwater runoff resulting from the improvement of the lot shall be retained on site by adequate drainage structures so that stormwater runoff will not flow into the right-of-way. And six, the proposed single family residence is

located within one mile of Spadaro Airport. The house shall be constructed using materials and techniques that will reduce interior house noise levels in accordance with FAA standards. And that is the staff report.

ACTING CHAIRMAN MARTIN:

Thank you. Any board members have any questions?

MR. ISLES:

Mr. O'Dea made a motion.

MR. LONDON:

Second.

ACTING CHAIRMAN MARTIN:

All in favor signify by saying aye. Contrary minded. Abstentions. So carried. Who?

MS. BOLTON:

I'm saying no.

ACTING CHAIRMAN MARTIN:

What's that?

MS. BOLTON:

I said no.

ACTING CHAIRMAN MARTIN:

No.

MR. ISLES:

One opposition.

ACTING CHAIRMAN MARTIN:

So there's one no. So it's 9-1. **(Vote: 9-1-0-0 Contrary minded: Bolton)**

MR. ISLES:

Now we go to subdivisions which is Ted.

ACTING CHAIRMAN MARTIN:

Yeah, okay. Okay, next is subdivisions.

MR. KLEIN:

Good afternoon. The first subdivision for consideration is called Riverhead Medical Condominium sent to us by the Town of Riverhead. The Commission's jurisdiction is Main Street which is State Road Rte. 25. The applicant is proposing eight medical office condominium units and the proposed project is conversion of an existing two-story medical office building that's currently under

construction. The applicant is proposing four offices on the first floor and four, excuse me, units on the second floor. These are condominium units, so they're going to be owner occupied. They'll be common area on the first floor and the second floor as well as shared common area outside.

The proposed condominium lies within the Commercial/Residential Campus zoning category which permits development on minimum lot sizes of 40,000 sq. ft. per unit.

The proposed condominium subdivision is creating eight medical office units on a piece of property that's 216,897 sq. ft. These units will range in size from 1,710 sq. ft. to 4,470 sq. ft. The eight units if you calculate them according the lot area will yield, the yield is one unit per 27,112 sq. ft. that's not calculating any roads or any other improvements in that area. In accordance with the current zoning and allocating the minimum area necessary for some improvements a yield of four or possibly five units would be considered reasonable in accordance with the current zoning.

Since the proposed number of units created would exceed a number permitted by zoning this condominium application is considered an overintensification of land use. If you could see the aerial the character of the area surrounding the property is a mixture of commercial uses along 25. This is 25 here, it's mostly commercial uses; to the south here is residential and to the north is agricultural use.

The staff recommends the Commission, the board disapproval of this application for the following reasons: Creation of a subdivision with a number of units exceeds the number permitted by the zoning classification of the property constitutes an overintensification of land use. Such action could establish a precedent for future condominium/subdivisions of this kind which would essentially be a circumvention (sic) of the town board's actions taken over the past several years to control development in the area.

I'd also like to offer the following comments for the Commission's consideration. The subject parcel is within the zoning district which is designated as a receiving district by the Town of Riverhead's Transfer Development Rights Program. Therefore, the applicant and town may wish to consider the purchase and transfer of residential building rights from a designated sending area such as an Agricultural Protection Zone to the subject parcel. This would satisfy the applicant's request for an increase in on-site yield while moving towards meeting the town's objectives of preserving farmland, limiting population growth and enhancing the tax base. That's the staff report.

ACTING CHAIRMAN MARTIN:

Thank you, Ted. Laure is there any questions?

MS. NOLAN:

I guess I'm a little confused. Did this come before us as a building?

MR. KLEIN:

No. It's a condominium application.

MS. NOLAN:

No, no. You said it's presently a building that's currently under construction for medical office use. So did the building come before us?

MR. KLEIN:

I don't believe it did; that would be a site plan application.

MS. NOLAN:

Oh, okay. Oh, so this is coming --

MS. PETERSEN:

It would've been a site plan application if we saw a building --

MS. NOLAN:

So we wouldn't have seen it as a site plan application.

ACTING CHAIRMAN MARTIN:

Ted, can you answer the questions?

MR. KLEIN:

Yeah, I am.

ACTING CHAIRMAN MARTIN:

I don't want the board members to get into a debate.

MR. KLEIN:

I, I, no.

MS. NOLAN:

Okay. So it's before us because he subdividing the building?

MR. KLEIN:

Yeah, he's in effect yielding off the property into four -- eight condominium units that's -- which would be individually owned and occupied.

MS. NOLAN:

But he's not really subdividing the property.

MR. KLEIN:

Well, he's yielding the property; he's yielding units off of the property. I know it's a little bit confusing and at first glance so someone will say well, the building is already up. Well, the guy couldn't use the building.

MS. NOLAN:

Well, it's not a ques --

MR. TANTONE:

Is he just simply creating separate tax map numbers for each individual condominium unit and that's what triggers the subdivision?

MR. KLEIN:

Correct.

MR. TANTONE:

So the overall square footage is exactly the same.

ACTING CHAIRMAN MARTIN:

Well, if the condominium of course he's going to have it individually.

MR. TANTONE:

Right. So theoretically he can rent it out to eight different users.

MR. KLEIN:

Right.

MR. TANTONE:

And that would be allowed. So your contention is simply that they'd be individual units that are owned rather than rented.

MR. KLEIN:

Yes, correct.

MR. TANTONE:

Then I agree; I'm totally confused.

ACTING CHAIRMAN MARTIN:

Condominium map is different than a subdivision map because each parcel is assessed by the assessor. We just went through that in town, okay. Each parcel is owned by the (inaudible). The ground becomes common property and that and maybe that's why they're in front of us; maybe it changed the application.

MR. KLEIN:

He's entitled to condominium use of the property and based on the zoning code he would be allowed four maybe five units that can be owned under separate ownership. He's going for eight.

MS. NOLAN:

Well, it's the same square footage.

ACTING CHAIRMAN MARTIN:

What's the difference what the amount of the units are if the square footage is that we're concerned with. If I built an office building there okay, and I wanted to make the rooms 10 by 20 every one of them there'd be no different just the parking. I mean, why would there be a difference? There's still a 40,000 sq. ft. building or whatever the number is.

MR. KLEIN:

Well, this is a different application it's not -- it's like a subdivision application. It's not a site plan application.

ACTING CHAIRMAN MARTIN:

That's what you're saying Frank, right?

MR. TANTONE:

I think so.

ACTING CHAIRMAN MARTIN:

I don't see the difference.

MR. KLEIN:

Regardless if the building is there or not he's applying for eight units; that exceeds the permitted by zoning.

MR. TANTONE:

Right, but I think the difference is is that this is a commercial condominium as opposed to a residential condominium. So your density requirements change. I'm looking over there to Laure to see if I'm on the right track.

MR. FRELENG:

From the staff's perspective if I might jump in?

MR. TANTONE

Okay, maybe Andy if you could help us.

MR. FRELENG:

Well, just simply from the staff's perspective we've just go a procedural issue here. We have condominiums that are required to be referred to the Commission; all condominiums are required to be referred to the Commission. So we take in the first instance we have a condominium what is allowed by zoning. It's not allowed eight units per their lot area they cannot yield eight units, therefore, they're overintensified their rights to subdivide the building based on the local zoning.

MR. TANTONE:

But do they distinguish between residential condominium units and commercial condominium units?

MR. FRELENG:

Not in our referral criteria; so we get a condominium we look at it based on the zoning they're overintensified on the zoning.

MS. NOLAN:

But commercially, do you know if the square footage of the building would be within their zoning code?

MR. FRELENG:

When it was an office building it was in conformance with their code. When they changed it to residential condominium they were no longer in confor --

MS. NOLAN:

But it's not residential is it?

MR. FRELENG:

I'm sorry; when they changed it to medical condominium they were no longer in conformance with the local code.

MS. NOLAN:

But the local code has nothing specific in it for commercial it's only a residential code is that right?

MR. FRELENG:

No, this zoning if I'm not mistaken is commercial zoning.

MR. KLEIN:

Commercial zoned yes, but it doesn't address a commercial condominium.

MS. NOLAN:

So for the condominium you have to go to the residential code for the condominium yield?

MR. KLEIN:

I'm going by the current zoning code which is 40,000 square foot.

MR. ISLES:

For the minimum lot size

MR. KLEIN:

Minimum lot size; I'm applying that to -- as I would for a residential condominium, you know, doing the yield calculation that way.

MS. NOLAN:

All right. So you are -- nothing fits in terms of Riverhead's codes so you're using the residential to get you to where you are?

MR. KLEIN:

I'm using the zoning code.

MR. TANTONE:

But I don't think the code nor your analysis distinguishes between residential and commercial. The distinguishing factor is that commercial is really based on square footage whereas residential is not; it's based on individual lots if I'm making any sense that way.

MR. ISLES:

Yes. It may be an interpretation. I mean, obviously, we reviewed this way interpreting the minimum lot size is 40,000 sq. ft. per lot. They're proposing to create eight condominium lots; therefore, they're in excess of that. Your points are well taken and I understand the village or the town in this case may say well, no, this is still one lot. It's a form of ownership condominium not necessarily a subdivision of property and, therefore, we're going to slice it up into eight pieces instead of one piece. But based on our analysis and with the referral that was submitted to us this is the conclusion we came to and this is our recommendation to you, but I understand your points.

MR. KLEIN:

The staff basically interpreted in the same way we would interpret a residential condominium application based on the zoning and the permitted number of units --

MR. TANTONE:

But your analysis is that it's an overintensification of use. You're implying an improper standard to come to that conclusion is what I think.

MS. NOLAN:

I agree.

MR. DIETZ:

If it went back, if he just rented these units he could rent eight units and he'd be fine, but because he wants to instead of renting them he wants to sell them individually then you're triggering this the way you're looking at it to go the other way, is that what you're saying?

MR. KLEIN:

That's right.

MR. DIETZ:

Well, right now he could use the eight units and rent them out to eight individuals for whatever size he wants to make them and he's fine.

MR. KLEIN:

Right.

MR. TANTONE:

See by the commercial standard if you were going to come to the conclusion that it was an overintensification of use you wouldn't so much look at it that's eight units you perhaps would look that he was building, what's he building, how many square feet? I'm sorry.

MR. ISLES:

What's the total building, Ted?

MR. TANTONE:

The total building square footage is what?

SPEAKER:

(inaudible)

MR. TANTONE:

29 --, no.

MR. KLEIN:

Where did you see that; I don't think I even included that in the report?

ACTING CHAIRMAN MARTIN:

First floor is 1,597, second floor 2,100 --

MR. CARACCIOLO:

No, that's the common area, Mr. Chairman.

ACTING CHAIRMAN MARTIN:

Common area, right.

MR. KLEIN:

It wasn't a factor in my, you know --

MR. TANTONE:

Yeah, but on a commercial development it absolutely has to be a factor.

MS. NOLAN:

Tom, I'd like to make a suggest -- make a motion that we send this back for local determination and let the Town of Riverhead decide if they want to treat this as a commercial project or as a residential or apply a residential standard.

ACTING CHAIRMAN MARTIN:

That makes more sense.

MR. DIETZ:
I'd second that.

MS. HOLMES:
I'll second it.

MR. KLEIN:
Can we offer the comments to that?

MS. NOLAN:
Comments being?

MR. ISLES:
To what affect?

MS. SCHMIDT:
Who second it?

MR. DIETZ:
I second it.

ACTING CHAIRMAN MARTIN:
He second it. Okay. Motion is on the floor and a second. All in favor signify by saying aye. Contrary minded. Nobody. Abstentions.

MR. O'DEA:
I'll abstain and I'd like to make a comment on it.

ACTING CHAIRMAN MARTIN:
Richard O'Dea, okay. Richard O'Dea abstains everybody else is for local determination. **(Vote: 9-0-1-0 Abstain: O'Dea)**

MR. O'DEA:
May I make a comment? Mr. Chairman.

ACTING CHAIRMAN MARTIN:
Yes, Dick.

MR. O'DEA:
Can I make a comment on this application being I didn't say anything before? The building is up; it's being landscaped. This packet only arrived the day before yesterday. I went down to town hall and tried to get after reading this and tried to get some answers because I pass this building very often in my life style. I didn't get any, but my point for the comment is that if we could receive these a little bit earlier I don't know if they come off the press, but this two days before the meeting in this case did not give me any opportunity to get any answers from

town board members or Rick Hanley, the Planning Director. Town hall is in a bit of mess; they're redoing the meeting room and everybody was scattering all over the place. So that's my point; that's all there is.

MR. ISLES:

The problem that we face in terms of the timing and I understand your point is the Commission has 45 days within which to review a referral; so we time it in terms of the last possible date that we can close the calendar while still being able to hit the cycle of the 45 days. So what happens just to get to the point on it then is that we keep it open as long as possible because if we close it too soon the calendar for lets say today's meeting and we still have application coming in that aren't eligible for the June meeting because they're already timed out so that's part of the constraint we face. And if there is anything we can do to try to speed it up we will, but it's pretty darn tight right now.

MR. FRELENG:

Commission O'Dea just so you know the staff reports are mailed out a week before the meeting so if you'd like to give us a different address where we might be able to get them to you faster temporarily or in the future we could do that.

MR. O'DEA:

Most times I get them a week ahead of time. This particularly one for whatever reason it was a two day process.

MR. FRELENG:

But if any of the Commissioner's are having a problem getting their reports in a timely manner just let us know and we'll try and figure out to send it to a different location.

MR. TANTONE:

Just one last comment?

ACTING CHAIRMAN MARTIN:

Yes.

MR. TANTONE:

As far as overintensification goes you might want to look at it not by the number of units by the total square footage that's being built and that's where I think the confusion comes between the residential and the commercial. For instance, if he were building 4,000 and he was only allowed to build 2,000 that would be an overintensification of commercial use not so much the total number of units.

ACTING CHAIRMAN MARTIN:

Yeah, that's what I said a number of units mean anything, square footage --

MR. KLEIN:

I'm reviewing it as a subdivision so I have to go by, you know, what's permitted by zoning according the land area.

MS. NOLAN:

That's resent, but I think our point is that's the residential code. They're really isn't a code that covers this.

MR. TANTONE:

Right, but you don't need to be ironclad in your decision. You have to take into account that it's a little bit different of an application, I think, and so does Riverhead obviously, if they're giving you that standard then I understand where you could be bond by that to a certain extent. So whatever it's kind of a little loophole.

MR. KLEIN:

Yeah, I know, it's unique it was definitely.

ACTING CHAIRMAN MARTIN:

Yeah, okay.

MR. ISLES:

Thank you.

ACTING CHAIRMAN MARTIN:

Okay. Let go on to the next one.

MR. KLEIN:

Okay, we're going to LD that one. Just one more. The next application is the subdivision of Neil & Lauren Pollak. It's sent to us by the Town of Islip. It's located on the westerly side of Snedecor Avenue, approximately 375 ft. north of Purdy Avenue. It's in the hamlet of Bayport. Commission's jurisdiction is the Bayport Aerodrome also known as Edwards Airport.

The applicant's proposing a subdivision of approximately 73,684 sq. ft. into two lots. The zoning classification is residence AAA zoning which permits single family development on a minimum lot area of 40,000 sq. ft.

The proposed subdivision will create two residential lots ranging in size from 27,817 sq. ft. to 45,867 sq. ft. The subject parcel is presently improved with a single family dwelling. It fronts -- the front yard faces Snedecor Avenue and its rear property line runs along the neighboring residential lots to the rear. And also there's apparently a road easement that currently not opened along the rear of the property as well.

Since the proposed lot is only 27 -- one of -- excuse me, since one of the lots is only 27,817 sq. ft. this area is less than that required, the minimum required by the zoning classification of the property and, therefore, the Commission would classify that as a substandard size lot. Furthermore, that same lot has only access from the easement over lands of another and, therefore, is by Commission definition landlocked. The surrounding character of the neighbor is predominately low and medium density residential.

Staff recommendation to the Commission is disapproval for the following reasons: The proposed subdivision will result in the creation of a landlocked parcel and creation of a parcel is contrary to good subdivision layout principles and creates a problem as far as access by emergency and service equipment is concerned. Also a creation of landlocked parcel places the ZBA in an awkward position of having to grant building permits for lots, you know, of landlocked in nature and whereas the future owner of the landlocked parcel is not held responsible for that.

And also another reason for denial would be the creation of a subdivision with substandard size lots; that's lots whose areas are less than minimum requirement by zoning classification of the property. This would also constitute an overintensification of land use in the area that already has a well established density. Creation of this subdivision could result in the establishment of precedence and such action would essentially be a circumvention -- circumvention, excuse me, of the town's zoning code.

Also the staff would like to offer some comments for your consideration. The map should clearly state the name of the subdivision. The preferred form of the name of this map would be Preliminary Map of Neil & Lauren Pollak. Also another comment is all proposed lots of a subdivision should be identified by number and not by letter of the alphabet.

MR. DIETZ:

Mr. Chairman I'd like to make a motion to staff.

MR. LONDON:

Second.

ACTING CHAIRMAN MARTIN:

Second by Dick. All in favor signify by saying aye. Contrary minded. Abstentions.

MR. TANTONE:

One abstention.

ACTING CHAIRMAN MARTIN:

That's carried too. **(Vote: 9-0-1-0 Abstain: Tantone)**

MR. KLEIN:

Okay, thanks.

MR. LONDON:

Mr. Chairman, I make a motion to adjourn.

MR. DIETZ:

Second.

ACTING CHAIRMAN MARTIN:

There's a motion to adjourn. All in favor signify by saying aye. Contrary minded. So adjourned. **(Vote: 10-0)**

(*The meeting was adjourned at 1:45 P.M.*)

{ } Denotes Spelled Phonetically