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STATE OF NEW YORK : COUNTY OF ULSTER
TOWN OF MARLBOROUGH PLANNING BOARD

----- X

In the Matter of

CHESTNUT PETROLEUM

Project No. 15-8001
1417 Route 9W
Section 109.1; Block 4; Lot 14

----- X

SKETCH - SITE PLAN

Date: April 20, 2015
Time: 7:30 p.m.
Place: Town of Marlborough
Town Hall
21 Milton Turnpike
Milton, NY 12547

BOARD MEMBERS: MICHAEL LOGUE, Chairman
BEN TRAPANI
JOEL TRUNCALI
CINDY LANZETTA

ALSO PRESENT: RONALD BLASS, ESQ.
PATRICK HINES
KATHI NATLAND

APPLICANT'S REPRESENTATIVE: SCOTT PARKER

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MICHELLE L. CONERO
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(845) 895-3018

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CHESTNUT PETROLEUM

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CHAIRMAN LOGUE: All rise for the
Pledge.

(Pledge of Allegiance.)

MR. TRUNCALI: Agenda, Town of
Marlborough Planning Board, April 20, 2015.
Regular meeting 7:30 p.m. Approval of
stenographic minutes for 3/16/15. Chestnut
Petroleum, sketch, site plan. Next deadline:
Friday, April 24th. Next scheduled meeting:
Monday, May 4th.

CHAIRMAN LOGUE: Since we just received
the minutes for 3/16, we will table that until
the next time.

First up is Chestnut Petroleum.

MR. PARKER: Good evening. Scott
Parker, director of facilities for Chestnut
Petroleum.

MR. INTERRANTE: Ciro Interrante,
architect.

CHAIRMAN LOGUE: At this point we're
looking --

MR. BLASS: I think -- well, I think
the Planning Board has some SEQRA business to
attend to this evening. This is an application

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for site plan approval from this Board which also requires at least two variances from the Zoning Board of Appeals. The first is a variance, a small variance, from the minimum lot size of two acres, and the other concerns front yard setback variances.

Apparently this matter was in front of the Zoning Board of Appeals recently. I was not there. There was public comment in front of the ZBA. In addition to that, the Zoning Board of Appeals, consistent with statute, had referred this matter to the Ulster County Planning Board for comment and recommendation. The recommendations came back from the Ulster County Planning Board to the ZBA which were fundamentally twofold. Firstly, there was a recommendation that the Planning Board and the Zoning Board of Appeals, and thus all other agencies with approval power here, conduct a coordinated review under SEQRA. There was also a suggestion, backed up by twenty or thirty pages of pictures, that the applicant consider altering the site design to flip the relative location of the gasoline pumps and the building.

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The applicant was last here and there was a preliminary review of the project in accordance with Pat's memorandum.

With respect to the issue of SEQRA, the Board may recall that there was comment on the record to the effect that the environmental assessment form submitted by the applicant was not consistent with the current forms used by the Zoning Board of Appeals. And there was also a recommendation from Pat that the applicant consider using a full and up-to-date environmental assessment form given the various site impacts that are summarized in Pat's memorandum and were summarized on the record at the last Planning Board meeting.

So since I wasn't at the ZBA meeting I'm not entirely sure that I'm an accurate presenter of all that occurred, but what I think arose out of that meeting was an issue as to who was going to run the SEQRA review among -- as between the Planning Board and the Zoning Board of Appeals, or, alternatively, was there going to be a separate SEQRA review, an overlapping and independent SEQRA review done by each of the

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Planning Board and the Zoning Board of Appeals.
Contrary to that, it was inconsistent with the
recommendation of the Ulster County Planning
Board.

So I think one order of business that
the Planning Board might take up this evening is
whether or not the applicant has an environmental
assessment form for this agency consistent with
current requirements of the DEC, and whether or
not it's a full EAF. And then, if so --
apparently yes -- we can chart a course from that
point if the Board wishes.

CHAIRMAN LOGUE: So do you have that
now?

MR. PARKER: We were at the Zoning
Board -- I was at the Zoning Board on Thursday
night for a few hours, and one of the things that
did come up was the EAF. We have completed the
long form here, and I have copies of it if you
want it right now.

CHAIRMAN LOGUE: Yeah. We'll pass them
around.

MR. PARKER: I have seven.

One thing that was mentioned that I

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don't really -- we didn't get into much with the ZBA was talking about positioning of the building. We talked a lot about the EAF and some other things, but we didn't get into the positioning of the building at that meeting. I don't know, you know, what memo and pictures you're referring to, but --

MR. BLASS: So there is a statutory report and recommendation from the Ulster County Planning Board.

MR. PARKER: That's right.

MR. BLASS: Have you seen that?

MR. INTERRANTE: No, I didn't see it. Is it possible for me to get a copy of it?

MR. BLASS: I don't have it with me. It's certainly available to everyone.

MR. INTERRANTE: Do you have a copy?

MS. LANZETTA: I have it.

MR. BLASS: So my reference was to the fact that there were numerous attachments to that.

MR. PARKER: Yeah. I didn't see the attachments.

MS. LANZETTA: I have a question, Ron

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and Pat. Well first of all, I'm a little concerned that we're receiving this at the meeting, the information that I think should have been given to us ahead of the meeting so we could properly review it and be sure that it's complete.

That being said, I also am concerned about the completeness of the preliminary site plan because I know Pat had given a number of items that he was concerned about being addressed. Before we begin our actual SEQRA review, we have to be assured that we have, you know, a complete -- an idea of what it is that we're actually looking at.

Being that -- first of all, let me back up. I do like the idea of a coordinated review since, if things do change and additional area variances are needed, we could be working side by side with the ZBA to facilitate it to go along quicker in that respect. So I think that that's a good idea. But at the same time, if we do request that an alternate site plan be produced, I just don't want to begin the SEQRA process before we're sure that we have everything in

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place, that we're actually going to be looking at what it is that we want to review. So, you know, it just seems to me at this point that we need more interaction with the ZBA itself so we can get an idea of what they really want to do, and preferably everybody work together so that we can move this thing along as expeditiously as possible and make sure that everybody is on the same page.

I'm just thinking that tonight -- I'm just not sure what it is that we're doing tonight. That's my question.

MR. INTERRANTE: This Board can declare itself lead agency and then it becomes a coordinated review with the Zoning Board, and that would help move things along. We're working on the items that were in Pat's letter. We're working with the DOT, the Health Department and so on.

MS. LANZETTA: Once we declare ourselves lead agency, then the time clock starts ticking. I don't really want to start that clock until we're sure that this site plan is the one that we're going to be reviewing.

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MR. PARKER: I think our problem is that without somebody kind of taking the lead we can go back and forth forever on this thing.

MR. HINES: There's no time clock on the SEQRA.

MS. LANZETTA: There isn't?

MR. HINES: No. The only time clock is if you declare yourself lead agency, there is a required circulation of your notice of intent and then the other involved agencies have thirty days in which to contest that or consent to it. So there's a thirty-day time period where nothing can happen unless you hear from each of the involved agencies.

CHAIRMAN LOGUE: Any other comments from the Board?

MR. TRUNCALI: Ron, is it just the ZBA's job to either give or deny the variance? Is that their only job?

MR. BLASS: That's their jurisdiction. That's their jurisdiction.

MR. TRUNCALI: Why would they get involved in any review?

MR. BLASS: Of the SEQRA?

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MR. TRUNCALI: Yeah.

MR. BLASS: Under SEQRA every governmental approval is subject to SEQRA unless there's a specific exemption spelled out in the State DEC regulations. So I do not believe that the reduction of the minimum lot size below two acres is one of those exemptions. Consequently, the ZBA is legally obligated to go through a SEQRA review with respect to the variances, just as the Planning Board is obligated to engage in a SEQRA review with respect to site plan, just as the DOT is obligated to go through a SEQRA review with respect to the access -- means of access.

So, you know, one of the first things we should do with an application once it receives an environmental assessment form that's worthy of review is to decide what type of action this is under the SEQRA regulations. There are three types of actions; one is Exempt, which this is not. Another one is called Type I which is typically a larger project that is more likely to require an environmental impact statement according to the regulations. The third is Unlisted. It's called Unlisted basically because

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it's neither Type II Exempt or Type I. So it's called Unlisted. I think Pat and I discussed this and he would agree that this is an Unlisted action under the SEQRA regulations. So why do I go into this? I go into this because the rule with respect to Unlisted actions is that coordinated review, which is where one of the agencies with approval power runs the SEQRA review for all of the others and all of the others are bound by it, is optional with respect to Unlisted actions, whereas coordinated review, as I just defined it, is mandatory with respect to Type I actions. If this was a Type I action, larger, bigger, next to a park, there would be a mandatory coordinated review. Since this is a smaller project, it's an Unlisted action and a coordinated review is optional. If a coordinated review occurs, that means that one of the agencies with approval power can step up and say, you know, I think it's a good idea that I be the lead agency, meaning that I run the SEQRA review for all the other agencies. You would do that by basically declaring your intention to be that lead agency. You would circulate a notice to all

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of the other agencies asking for their consent or their objection. Typically they all consent. If you don't go down the optional path of having a coordinated review as I just described it with one agency running the SEQRA for all the others, then each of the agencies separately and independently is obligated to run their own SEQRA review, which could be inconsistent or consistent with the findings and processes of every other agency. It is my feel -- although I wasn't at the meeting, it's my feel that the Zoning Board of Appeals doesn't really view itself as equipped to run SEQRA reviews as compared to the Planning Board. I think there's a desire at that agency, or perhaps a leaning at that agency, I'm speculating, to have the Planning Board run the SEQRA review process in lieu of the ZBA.

Now having said that, and of course it's up to this agency, this Board, to determine on it's own whether it thinks that's a good idea or not a good idea in terms of how it does it's own business aside from how the ZBA does it's business.

I should go one step further probably

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for the applicant's sake and/or the Board's sake and lay out the scenario that will occur in the event there's a coordinated review, meaning that this Board steps forward and says I want to be the lead agency, I want to run the SEQRA review for all the others. That would typically mean in terms of batting order and potential approval processes as follows: That one, no agency can issue any of it's approvals or make any of it's decisions until the SEQRA process is complete. The SEQRA process could potentially become complete by the issuance of a negative declaration and the finding of the lead agency that no environmental impact statement is required. But until that hypothetical negative declaration occurs, if it is to occur in this case, then no agency can issue a decision. So the ZBA couldn't issue a decision, nor of course could the Planning Board issue a decision on the site plan, nor could the DOT issue a decision on curb cuts, et cetera. So in a situation like this when you have both a site plan in front of the Planning Board and variances in front of the ZBA, and where the Planning Board steps up to be

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the SEQRA agency, the typical batting order scenario in terms of approvals rolling out, if they do, is the lead agency does a negative declaration first, that frees up, in this case probably the ZBA to go next and make a decision on the variances, and if the variances are granted then it frees up the Planning Board to take the matter back and to make a decision on site plan approval. So I think that would be the batting order as it rolls out with respect to coordinated review with this Board being the SEQRA agency.

In the event that for some reason there's an uncoordinated review and every agency here is left to pursue the option of doing their own independent SEQRA review, then theoretically the Zoning Board of Appeals could take the matter in and could do it's own SEQRA determination and it's own determination on the variances, and the Planning Board could do it's own SEQRA determination, consistent or inconsistent with the ZBA's.

There is probably, from a planning perspective or from a planner's perspective, a

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theoretical preference for coordinated review to avoid inconsistency and inefficiency. I think that planner's perspective is reflected in the County Planning Board's comments when they recommend a coordinated review take place.

And then with respect to Cindy's point, I think that the order of business is the fact that the Ulster County Planning Board has already told the ZBA, and predictably it will tell this Board when it gets a referral from this Board and answers this Board's referral, that a required modification would be at least consideration, if not implementation, of a flip flop of the gas pumps and building relative to Route 9W. I think that that was probably on the mind of the Zoning Board of Appeals as well because it had that recommendation. It had a recommendation that maybe the project should be altered in that significant way and maybe there should be a coordinated review. I think faced with those two things and other public comment, the ZBA did not move forward and that's why it's back in front of this Board.

It's in front of this Board I think

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fundamentally to decide whether the Board thinks a coordinated review is a good idea and to step up and declare intent to be lead agency if you do, and then to circulate the environmental assessment form and application to the other agencies for consent. That process of obtaining consent can be accelerated by an applicant by driving the consent form around to the various agencies and asking for, you know, a sign off, if you will, to get things moving. But I think that's the primary order of business this evening.

And I think -- to go to Cindy's very good point that the EAF just came in, this EAF is going to have to be reviewed by Pat, and it may be great or it may not be that great. We don't even know yet. Maybe Pat already knows. It has to be circulated to the other agencies. So one of the ways to go about moving forward is to have the Board consider declaring it's intent to be lead agency and then to circulate the environmental assessment form, once it is approved in terms of it's content by Pat, hypothetically, or once any of Pat's comments

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about incompleteness are addressed by the applicant, and only then would it go forward. That's another way to deal with the late arrival of the environmental assessment form.

MS. LANZETTA: Do you know what the coordinated review -- would you invite members of the ZBA to attend sessions where discussions on the site plan are happening so that --

MR. BLASS: Sure.

MS. LANZETTA: -- everybody knows and any other concerns that the ZBA might have could be raised at that time?

MR. BLASS: Sure. There's a section in the SEQRA regulations that encourages all agencies to comment and participate in the lead agency's deliberations.

I think the biggest issue in front of the ZBA, if I can read their minds, is that there is at least the potential that there will be significant discussion back and forth, or maybe not, between the applicant and this Board relative to alternative designs, and I think the ZBA was considering how do I move forward, I'm not sure, what ultimate design is going to result

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from those discussions.

CHAIRMAN LOGUE: Do you gentlemen have any comments?

MR. INTERRANTE: Not at this point.

MR. PARKER: No. Just that, you know, one thing to think about on the flip flop of the site here is, you know, there's residential behind the property. There's not really -- there's a farm across the street, but the houses are closer behind the property than they are in front of.

We are familiar with one of the examples that was given, and the other one is in Milwaukee, Wisconsin.

CHAIRMAN LOGUE: That was just the recommendations of the County Planning Board.

MR. PARKER: I know. There's a lot of discussion it seems to me. It wasn't necessarily something that came up at the Zoning Board but there's a lot of discussion about this alternate site design.

MS. LANZETTA: I think when you first came to us I gave you guys the information from the County about having the pre --

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MR. PARKER: Mm'hm'.

MS. LANZETTA: -- meeting. I don't know if you guys have scheduled that with the County and sat down with the --

MR. INTERRANTE: I think that was referred by the building department if I'm not mistaken. Wasn't that set up with the County for that pre-meeting? From what I read in their instructions, it's supposed to be generated from the Town, not the applicant. The request for the meeting is supposed to come from the Town, not the applicant.

MS. LANZETTA: I gave you the information on that. I can look it up. I think the applicant can make arrangements, too. I'm sure Town members would be willing to go with you and attend that meeting because, you know, the more people we have on board. I keep reiterating, the County isn't insignificant. We can't just -- as a Planning Board we can't just say ahh, we don't have to pay attention to their recommendations.

MR. INTERRANTE: We'll take the recommendations under consideration. We'll look

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at the option and see if there's benefits to it.

MS. LANZETTA: We have to see their recommendations.

MR. INTERRANTE: You have to do what?

MS. LANZETTA: We have to see their recommendations because it's up to us to explain to the County why we have decided not to take into account their recommendations.

MR. BLASS: I think it's a fair bet, having only seen the County's initial response to the ZBA, the same response will come to this Board in the form of a "required modification" in the eyes of the County Planning Board, that there be a reversal of the configuration of the site. That means if that required modification stays in place because no one can convince the County to retract it, that means that the only way to get an approval in front of this Board is by a four out of five-member vote with an accompanying statement of the disagreement with the County. Supermajority in other words. And the same with the ZBA. To get a variance -- variances at the ZBA you would need a four out of five-member vote. That would be the right to override the

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recommendation of the County.

MS. LANZETTA: That's why for the project to move forward as quickly as possible, the quicker that you're able to bring all the different agencies that are involved with this into the fold so to speak, the better the project will move forward. So that's why I would highly recommend that you look into having one of those meetings with them. It would really help your project.

MR. INTERRANTE: Okay.

CHAIRMAN LOGUE: So at this point we need to move forward with who is leading this.

MR. BLASS: Lead agency.

CHAIRMAN LOGUE: Lead agency.

MR. TRAPANI: The ZBA can not give us variances before somebody declares lead agency. I mean that's the first thing. If they say no, you're not going to get the variances, then where do you go?

MR. BLASS: That's an interesting point. Let me go back to that batting order I laid out.

MR. TRAPANI: I listened to the batting

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order, but commonsense says if they say no to the variances, we don't have spot to go by, what do we do? That's the thing.

MR. BLASS: It's really an issue of time and money, like everything is. Under the coordinated review scenario, this Board, if it becomes lead agency, will have to run the SEQRA process and complete the SEQRA process. If it issues a negative declaration, i.e. no environmental impact statement needed, only then can the Zoning Board of Appeals make a decision on the variances. That's fairly -- I don't know how much input this Board will receive once the SEQRA process gets rolling. There may be people who are interested in the subject who surface and submit materials, et cetera. So there is an element of time and money that attaches to the coordinated review process which defers, if you will, or suspends the right of the ZBA to decide thumbs up or thumbs down with the variances. So that's the price of the consistency that's a part of the coordinated review.

The only other option, I'm not too sure if the ZBA is interested in this option or not, I

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don't know, is that this Board basically says no, let's not do a coordinated review, let's have everybody do their own independent SEQRA review, which is an option under SEQRA given the Unlisted action nature here. Under that time and money scenario the matter will go back to the ZBA, the ZBA would have to have somebody advising them with respect to running it's own independent SEQRA review based on this type of full environmental assessment form. People of interest, adverse or in favor, may or may not surface at the Zoning Board of Appeals. Submissions may be given to the Zoning Board of Appeals. The Zoning Board of Appeals, which is not typically used to running a SEQRA review process, will now be burdened, if you will, or obligated to run the very same sort of SEQRA process duplicative that this Board would be running. If that SEQRA -- if that SEQRA process came to a close quickly, then arguably -- and if it issued a negative declaration, then arguably the ZBA could go thumbs up or thumbs down on the variance, but I really don't think that's how that agency sees the process turning out. Of

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course that invites inconsistency of result, and duplication of effort, and duplication of expenditures by the applicant, and duplication of consultant expenditure on behalf of the Town, defrayed by the applicant. And so, you know, maybe we should ask the applicant what it's position is on that scenario.

MR. HINES: Maybe you can explain a lot of the ZBA work is often Type II SEQRA exempt, but because with one of the variances they need is why you don't run into this very often but you need to for this project. It's not typical.

MR. BLASS: Individual lot line setbacks are typically Type II exempt, but this is a minimum lot size variance which is not exempt. Height variances, for instance, would not be exempt. So anyway --

MR. PARKER: We would prefer that the Planning Board declare themselves lead agency just so we're not dealing with multiple boards. You know, my understanding, we're not looking for approval of the site plan before we can get to the variances, we're just looking for a negative declaration on the SEQRA before they can give us

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the variances. You guys will have plenty of opportunity after we get the variances.

MR. HINES: I do caution that if the building flips after the variance, you're back to square one, if that County approval or the County -- if they don't override the County's approval and require them to do that. It would change the nature of the variance that you're receiving potentially.

MR. INTERRANTE: Pat, the County made this recommendation or is it a requirement?

MR. HINES: It's not a recommendation because they made it a mandatory -- it wasn't an advisory comment, it was a mandatory comment. It would take a supermajority vote to override that or a meeting with them to convince them why they want to issue another set of comments.

MR. INTERRANTE: Okay.

MR. PARKER: I'm always curious why on the cover page it says recommendation.

MR. BLASS: It's always a recommendation by statute.

MR. PARKER: Right.

MR. BLASS: Usually in the simplest

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sense, if they were to say it was a matter of local concern, then there wouldn't be a supermajority outcome trigger. Here, the way the Ulster County Planning Board writes it's recommendations by statute, they will say the required modifications.

MR. PARKER: Recommendation by statute.

MR. BLASS: Recommendation for a required modification is really what the sentence would be in full.

MR. PARKER: Okay.

MR. BLASS: The effect of it is the same. The effect of it --

MR. INTERRANTE: The supermajority is required by the Planning Board and Zoning Board to pass anything?

MR. BLASS: Yeah.

MR. INTERRANTE: Okay.

MS. LANZETTA: You know, under the SEQRA process there's a good likelihood that further along in the process, through public comment or what not, it could come up that you would have to show what it would look like reversed anyway. In a sense it's kind of like

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just jumping right to the issue, get it out of the way. It has to be considered. It's not saying that that's the preferred way but you have to offer, you know, some alternatives as you go through.

MR. INTERRANTE: If we resolve this with the Ulster County Planning Board and it turns out the design does not change, we don't need to show an alternative design to the Planning Board or Zoning Board. Is that true?

MS. LANZETTA: Again, it's going to go through the SEQRA process regardless. With the County's approval you're certainly in a better place.

MR. INTERRANTE: Okay.

CHAIRMAN LOGUE: At this point I'm looking for a motion to declare the Planning Board as lead agency on this.

MR. HINES: Declare your intent for lead agency.

CHAIRMAN LOGUE: Declare our intent.

MR. TRUNCALI: I'll make a motion the Planning Board become lead agency on this project.

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MR. TRAPANI: I'll second.

CHAIRMAN LOGUE: All in favor?

MR. TRAPANI: Aye.

MR. TRUNCALI: Aye.

MS. LANZETTA: Aye.

CHAIRMAN LOGUE: Aye.

So carried.

MR. HINES: Knowing the project was coming tonight, I ran the project through the DEC's database. This one is manually filled out but the DEC's website will now fill out a long form or short form interactively on their website.

MR. INTERRANTE: I tried that, Pat. It didn't work.

MR. HINES: You have to turn your pop-ups off. There's some computer restrictions. I ran it through there. There are some changes that will need to be made to the form before we -- it identifies particular archeological sites, and it just does it based on -- you select your project site, it checks their databases. It identifies threatened and endangered species potentially and also has a potential remediation

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site. That added step, if you do it interactively, it gives you a connection to the database. The threatened or endangered species could potentially be sturgeon in the river. They were within that check area so now that requires you to write to the National Heritage Foundation and get the information for the site. With the new forms and the way the process works, it populates the information in the long form. I did it the other day, just knowing this was coming, and those did pop up. It's some additional information that will need to be required. I'll provide the information to the applicant, they can change the form and we can circulate to the interested and involved agencies, which would be the ZBA, Health Department, DOT, because of the archeological New York State Parks and Recreation, and Ulster County Planning, as well as your Board as lead agency.

CHAIRMAN LOGUE: Okay. If there's nothing further, we're good.

MR. PARKER: Thank you.

MR. INTERRANTE: Thank you.

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CHAIRMAN LOGUE: Motion to close the
meeting.

MR. TRUNCALI: I'll make a motion.

CHAIRMAN LOGUE: A second?

MR. TRAPANI: I'll second.

CHAIRMAN LOGUE: All in favor?

MR. TRAPANI: Aye.

MR. TRUNCALI: Aye.

MS. LANZETTA: Aye.

CHAIRMAN LOGUE: Aye.

(Time noted: 8:04 p.m.)

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C E R T I F I C A T I O N

I, Michelle Conero, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify that I recorded stenographically the proceedings herein at the time and place noted in the heading hereof, and that the foregoing is an accurate and complete transcript of same to the best of my knowledge and belief.

DATED: May 7, 2015