

A Planning Board Meeting was held on Monday, December 3, 2007 in the Tannersville Village Hall.

Present: Lee McGunnigle, Mayor
Linda Kline, Trustee
Greg Landers, Trustee
Tony Lucido, Trustee
Mary Sue Timpson, Trustee
Mark Hyer, Planning Administrator
Catherine Palmieri, Deputy Clerk

Also present: Howard Bates, Greg Lubow, Laura Murin, Jeff Prince, Berna Showers, Judy Terns, Karen Terns, Daniel Weston

The Mayor opened the meeting with the Pledge of Allegiance. He then closed the Planning Board Meeting and turned the proceedings over to Mr. Hyer, Planning Administrator. Mr. Hyer called the Zoning Board of Appeals Meeting to order and said the first order of business would be to open the Public Hearing for 91 S. Main Street Corporation which is seeking an area use variance.

Present: Mark Hyer, Planning Administrator
Judy Terns, ZBA Member
Karen Terns, ZBA Member

Mr. Hyer said, before the Board discusses this, is there anybody here from the public who would like to speak to this matter. Mr. Hyer then indicated that he received several phone calls this week because the present Subdivision Law reads that everybody within 500 feet would be notified as opposed to the change we are proposing that would notify contiguous neighbors and people across the street. Mr. Hyer said he got phone calls from people on Church Street but, once they found out where it was and that it was a townhouse, they had no interest and didn't come tonight.

Mr. Hyer asked again if anyone from the public would like to speak. Ms. Laura Murin spoke as follows: The property at 39 South Main Street is in both my brother's and my name and my brother was the only one to be notified. He doesn't live in the area on a regular basis and I am in the area so I was wondering why they chose to send the certified mail to him." Mr. Hyer: "that's a good question. The applicant coordinates with the Village on getting all the names and, as you can see, these are all the people that were notified...there's got to be 50 names here. And you say you weren't notified?" Ms. Murin: "my brother was. I have the letter. The property is in both our names." "Mr. Hyer: Stephen, Box 512..." Ms. Murin: "Well, that's not his box...that's my mother's." Mr. Hyer: "So the letter went to your mother instead of to you and Stephen, right?" Ms. Murin: "Yes...we got the letter but the point is that if correspondence is going to be sent for someone to speak at a meeting, it would make sense that the person who lives in the area would be notified. He has a box here, his house is here and the land is in both our names." Mr. Hyer: "They should go by the Tax Assessor in the Town and we look at

what the assessment roll is around the property. I am assuming that that's the same procedure here but I will check and follow up on that with you." Ms. Murin: "I'm not really sure if I can give my opinion when I don't understand what they are asking for. I would like to have the variance explained to me. Mr. Hyer: "That is the purpose of this meeting." Mr. Hyer asked if there was anyone else present who has a question who is a contiguous neighbor or is within 500 feet. No response.

Mr. Hyer said he will then address Ms. Murin's questions. "There are two townhouses that are being applied for and the Village Subdivision Law says that they can only build one house on a lot in the Village. That is one lot right now. They want to build a townhouse. When you build a townhouse you own the land under the building. They want to do two townhouses, one building, which is a common construction for townhouses. The townhouses in some places will have 25 townhouses, but they are all attached, all one building. They share a party wall like condominiums. For your edification, in a condominium you don't own the land under the building. So if they did a condo there, they wouldn't need a subdivision. They could apply for a condo on that

lot. Then the issue would be if they would do one residence or two. In this case they decided to apply for a townhouse. It's going to be a two-family unit, one building, a townhouse on each side. But because it's a townhouse they have to divide the land because they own the land under it. Right now it's one lot. So they want to have a two-lot subdivision. The building will be right on the property line, sharing a party wall... a townhouse here, a townhouse there. The setback line in the Village... the Village Zoning Document that you have is very minimalistic. It's a one page document and what it says is that you have to be 20 foot from your property line, 40 foot from the front. They are not seeking a variance for that from this Board tonight. They are seeking a variance from themselves. They are building the house in the middle of the lot. They are going to meet the variances on right and left, in front and back. They are going to be within the setbacks, do you follow me? But because that lot is going to be divided like this, and they are putting the building in the middle of the lot, they are going to apply to the Village Board, subsequent to this meeting, for a two lot subdivision. There will be a party wall down the middle, a townhouse on each side. So they need the area variance from themselves because when he divides the lot, he will own both lots and he wants to build the buildings right to the property line."

ZBA Member Karen Terns: "Mark, (Mr. Hyer) do you have a picture of this so we can show it to the public?" Mr. Hyer: "Yes, (addressing the public) if you wish to come up and see this, you may come up and look at it. That's how they are going to build the house and this is how they are going to divide the lot. The house will be right on the property line when they divide it."

Ms. Murin: "So then anyone that wants to do this, this is how they would come and get a variance to do it?" Mr. Hyer: "If they were to build townhouses, not condos, because you don't need that variance for a condo. For a townhouse you own the land under the building." Ms. Murin: "Right, I get it. So this is 53 feet this way and this is 24 feet so that's within the whole..." Mr. Hyer: "20 foot setback on each side. Yes, they made that variance here and 40 foot from the front and back. I did the math on this one here: 24 foot here and 25 foot there. 53 feet there." Ms. Murin: "Tall, I guess?" Mr. Hyer: "wide." Ms. Murin: "I mean the building is going to be tall so you have enough

space." Mr. Hyer: "The applicant is here and he will describe that in a minute. Does Berna (Showers) have any questions?" Ms. Murin: "She doesn't own the land." Mr. Hyer: "ok. Where is your land?" Ms. Murin: "I own where Mom is. Mr. Hyer: "Where is your land in relationship to the project? You're not contiguous neighbors?" Ms. Murin: "No, I'm within 500 feet... I guess that's why I got the 'adjoiner' letter." Mr. Hyer: "That doesn't tell us whether you are contiguous or not. You're not a contiguous neighbor?" Ms. Murin: "I am not." Mr. Hyer: "Is there anybody else here from the public that wishes to speak to that who got the letter within 500 feet?"

Berna Showers: "Do they get two different fire numbers that way?" Mr. Hyer: "Yes." Ms. Showers: "Why don't they just build one house, like mother/daughter?" Mr. Hyer: "We don't tell people how to do their business. This is what they applied for. This is America... you can apply for anything you want and, if the Board gives permission, you can get it. Your question 'why don't they do this?'. We can say that if there is an issue under the State Environmental Quality Review Act. Then we could say there is an environmental issue here, a view shed issue, a change of character of the neighborhood, etc. We could try to steer them in a different direction, but that issue has to rise to a level of significance. If it's a violation of the law, we can make them do it. Right now it is within the perimeters of the law unless something comes out of this meeting with the ZBA Board. The Board hasn't discussed this yet. Judy Terns, Karen Terns and I have not discussed this... we're getting input from the public. When the applicant came in, going over his application with him, doing a field inspection of the site, it looks to me that he is within the perimeters of the law in making this application."

Mr. Hyer continued, "procedurally, this is the Zoning Board of Appeals. They are looking for an area variance. In other words, they want a setback variance from themselves. They don't want to be separated by 20 feet. There's going to be a zero lot line. If we grant that here tonight, then the second part of this, when I turn this back over to the Village Board which does the subdivision approvals and site plan approvals, then

you will decide if you want to give him a subdivision approval. He will walk into that meeting, he hopes, with a variance from this ZBA Board here tonight.”

In response to a question from the public, Mr. Hyer said “yes, he is asking for an area use variance from himself. He is going to own both lots. He is not asking to build closer to a neighbor. He is asking to build closer to himself. Let’s go down the road a year from now. He’s going to sell those townhouses, we assume, and those people who buy the townhouses will understand and see that, as all townhouses are, that they have zero lot lines and party walls. With contiguous townhouses, a lot of them are built with that configuration.”

Ms. Murin asked for clarification regarding ownership of one townhouse. Mr. Hyer responded “The variance runs with the title. Once you get a variance, you can sell it and that variance, that permit, goes with the property. So the next owner has that variance. When a variance is granted by a Zoning Board and when a variance, or waiver, is granted by a Town Board, Village Board or a Planning Board, it runs with the title. The next owner gets it. If we grant the ZBA then the person who buys the townhouse has that

variance.

Ms. Murin asked “Is there any restriction in the Village based on how much acreage you need to build a house?” Mr. Hyer: “it’s setback and whether you can get Village water and sewerage. Lot size is usually prescribed through your zoning document. The Zoning Document in the Village of Tannersville is about a page and a half long and prescribes only setbacks. However, the Village Law does say you can build only one residential house on a lot. Zoning deals with use of land.

Inaudible question or comment from public. Mr. Hyer: “No, first part is correct; second part is not correct. We are going to grant a set back variance and, once he gets that variance, then he’s applying for subdivision to the Village Board at the next meeting.” “O.K, so the Village Board can agree to do that?” Mr. Hyer: “Yes, ZBA’s cannot do subdivision approvals.” Inaudible comment. Mr. Hyer: He’s applying for an area variance from himself now. Of course, you know that it runs with the title when he sells it and then a subdivision of the lot.” Inaudible comment. Mr. Hyer: “You can’t grant a subdivision unless you have an area variance. That’s why you have to do a variance first. I am sorry to disagree with both of you, but you’ve got to walk into your subdivision with an area variance. The subdivision board can’t give him the variance. We’re giving a variance contingent upon him getting a subdivision approval.” Ms. Murin: “So if you grant “yes,” they can still grant “no?” Mr. Hyer: “Yes, then it’s out. We’re granting our variance contingent upon his getting a subdivision approval. If we don’t grant the variance, then he’s back to square one.” Mr. Lubow(?): “The purpose of the side lot variance is to allow at least 40 feet between houses on Main Street.... (inaudible) and fire safety...” By allowing a concrete wall, you’re zeroing out fire safety issues...” Mr. Hyer: “It’s one building...two families or two residential units I should say.”

Ms. Murin: “That’s fine on Dec 3, 2007 but what happens on January 15 when someone else wants to do it?” Mr. Hyer: “It’s America. They can come in front of this board and apply.” Ms. Murin: “Once you grant one...” Mr. Hyer: “Every case stands on its own merits. They have to meet the criteria of the law. You can’t come here and make the argument, ‘Joe got it...why can’t I get it?’ You put your application in. If you meet the letter of the law and there’s no reason under SQRA, ZBA or subdivision or site plan, whatever you are applying for, for you not to get it, then the board actually has to grant it. The board can’t say ‘sorry guys, we don’t like you getting it. You’re not getting it.’ What you are alluding to is zoning. If the Village were to rewrite the Zoning Law and say ‘here is the section of the Village where you can put townhouses and condos in, and this is residential, and this is commercial, that would be “use.” This board cannot tell people what they can and can’t do with their land outside of the underlying law. That’s what we’ve got to follow. They are asking for a variance from the Zoning Document that we do have. The New York State Courts have said if you have Zoning you have to have a Zoning Board of Appeals so that people can come for variances.”

Mr. Lubow: “If you grant a variance, you are setting a policy of your board saying that we will consider this and, what I am suggesting, is that perhaps that is more of a legislative function of the Village Board to set the policy of whether or not the Village

should be looking at this.” Mr. Hyer: “We don’t set policy. We operate under the law that has been written by the legislators of this Village. They have written a Zoning Document that has a ZBA and anyone can come in front of this board and apply for an area or a use variance. It does not set policy...we are following the law.” Mr. Lubow: “Is there a criteria to grant or deny a variance?” Mr. Hyer: “Yes, there is. There are four items and this board will go over those items when this board convenes for this application.” Mr. Lubow: “Can I hear what those four criteria are?” “Yes, you can.”

Mr. Hyer asked ZBA Member, Karen Terns, to read the criteria. Ms. Terns read as follows:

“What must be proven in order to be granted an area variance. Requesting an area variance, that is permission to build in an otherwise restricted portion of the property, such as in the required front, side or rear yard, or above the required building height or in excess of the lot coverage regulations, State Law requires the applicant to show that the benefit the applicant stands to receive from the variance will outweigh any burden to health, safety and welfare that may be suffered by the community. State law requires the ZBA to take the following factors into consideration in making its determination:

- 1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance,
- 2) whether the benefit sought by the applicant can be achieved by some method which will be feasible for the applicant to pursue but would not require a variance,
- 3) whether the requested area variance is substantial,
- 4) whether the proposed variance would have an adverse effect, or impact, on the physical or environmental conditions in the neighborhood or district, and
- 5) whether an alleged difficulty is self created.

Mr. Hyer: “And that is the criteria we will go over when this board convenes and reviews the application, as we do with every application. And that is why each application stands on its own merits and we are not setting any policy or procedure. Any further questions?”

Ms. Murin attempted to ask a question but it was unclear what she was trying to get at. Mr. Lubow tried to clarify for her by saying “she mentioned that this is an area variance which means building in an area such as a side lot where you’re not otherwise allowed to build. And the question becomes is this going to create a change in the neighborhood and, if so, who is the appropriate arbiter of what the neighborhood should look like...the ZBA, the Town Board or the Village Board? Mr. Hyer’s position is that it is always the Village Board but we are living within this Zoning Law. Essentially, you’re not setting policy but you are living within the law as you see it.” Mr. Hyer: “Exactly.” Mr. Lubow: “And it is up to the Village to change that law if they want to or...” Mr. Hyer: “And our decisions are based upon the five criteria that Ms. Terns just read. OK, let’s not have any side meetings; the board needs this information to help make its decision. Any more questions?”

The Mayor asked a question: “In reviewing this, did you look at the total lot size of the

single lot now...two thirds of an acre?” Ms. Karen Terns confirmed that it measured 6.66 acres. The rest of the Mayor’s statement was inaudible. Mr. Hyer responded as follows: “I think a lot of things you are speaking to is your job, not our job. Regarding the Build Out Analysis and what it is recommending, I think that is the Village Board’s job, not the ZBA’s job. The ZBA is very descriptive of the law we are to follow. It’s very definitive. We don’t have free range here. There are five criteria and the only underlying law that we can kick in here is the SQRA Law. I personally take a very traditional, conservative, strict interpretation of the law that we are to follow. The ZBA doesn’t have free range. A Planning Board has a little more latitude, a little more dimension and discretionary action. We don’t really have a lot of discretionary action because the applicant can go and have this overturned in the courts.”

The Mayor made reference to the five items that must be taken into consideration by the ZBA in making its determination. Mr. Hyer: “It speaks of ‘character of the neighborhood’ and so I guess the argument that you are making is that the character of the neighborhood is not townhouses, but I am sure the applicant is going to make the argument that the character is ‘residential.’ So it’s going to be an interpretation and we

will engage in conversation with Dan Weston who is the applicant's representative. The issue is whether we are changing the character. In my opinion, to change the character of the neighborhood, for example, might be if the applicant were applying for a bar, that would be a real change of character for the neighborhood. When you say 'residential,' a lot of those houses on South Main Street are already rentals, and now this house may or not be a rental, but it is residential. I'll have to ask this board, Karen Terns and Judy Terns, what they think, if it meets that criteria. That's my personal opinion. I am not speaking for this board."

Mr. Lubow: "I appreciate your views on that and I agree with many of them, except that when you talk about the character of the area I think you are mixing metaphors. You are talking about occupancy and you are talking about density which is what the Mayor is talking about...the nature of the Village and the efforts of the Village to control or get a handle on development in the Village by saying there is a minimum lot size. It's not clear if there is a minimum lot size or they are looking to establish a minimum lot size. And there are some lots where people have built two buildings on a single lot. Remember this came out of the old Fromer property and, before it was subdivided many years ago, it had a back house on it and there was a garage in front. I am just pointing out that in the past there were properties like that. It can be a rental property without having a negative connotation to the neighborhood."

Mr. Hyer: "Mr. Lubow, let me step back and read this to you:

The ZBA cannot act as a legislative body, has no authority to amend a zoning law.
the ZBA cannot set aside a zoning law on the ground that it is arbitrary,
unreasonable.

Cannot render an advisory opinion concerning the meaning of a zoning regulation.

Cannot review a decision of a legislative body (Village Board).

Cannot review other provisions of Municipal Law or the NY State Building Code...

The ZBA is a quasi-judicial board given specific authority by state statute.' It goes on...

Mr. Hyer: It is very prescriptive of what we can do. I think this board will concur with me in that we are not going to act as the Zoning Board in this Village. We are not the Zoning Board. If we were, we would gladly take that in charge."

Mr. Lubow: "My only point in this is that you are being asked to apply an unspecified standard to the first item read about changing the character of the neighborhood. I don't know that the legislative body has given you sufficient direction as to what exists and what criteria you are going to apply to the character of the neighborhood. It can't be just what you feel is the right way. I agree with you in that you are restricted to what the zoning issues look like. Unfortunately, in the Village and the Town we do not have a true zoning ordinance. We have something that looks like zoning to a limited extent. I am just trying to understand what criteria you apply to your own criteria."

Mr. Hyer: "Ms. Terns read them to you. We are going to follow the letter of the law."
Discussion continued.

Mr. Hyer said if no one else wished to speak, the Public Hearing would be closed. Public Hearing was closed.

Mr. Hyer addressed the ZBA Board as follows: "If, procedurally, we approve the application, it is going to be contingent upon them getting a subdivision approval. If they do not get the subdivision approval tonight, then the variance is not granted because we can't grant approval that is illegal and they can't build two residential units on one property."

Ms. Karen Terns had a question and Mr. Hyer called Dan Weston representative of the applicant, Ben Weinschneider, to come up front. Ms. Karen Terns asked Mr. Weston if he had the plans with him this evening. Mr. Weston replied that he does not have plans but, in response to a question from Ms. Judy Terns, he stated that he knows that the dimensions listed are exactly what they plan to do. He stated that originally they had planned on doing a little bigger unit and they could have asked for a variance for that, but they decided to make a smaller unit so they would stay 20 feet away from any adjoining properties. In response to questions, Mr. Weston said there would be no garage but it would have two levels. And it would look like a single house when you drive up. It is a duplex because it has a divided firewall right down the middle on all three levels, including the basement. Board discussion continued.

Mr. Hyer said that before the Board voted on the issue, it was time to consider the criteria by which every variance request is considered, the first one being whether an undesirable change will be produced in the character of the neighborhood. Mr. Hyer stated that it is a residential street and townhouses and condos are classified as residential units. A change of character traditionally in Planning Law has been a bar or a business such as a used car lot.

Ms. Karen Terns said that to her a 'change in character of the neighborhood' would be putting townhouses in the middle of a street of single family houses. "Absolutely, if a bar were to be put in there it changes the whole thing...it becomes commercial. That is just something that I would look at."

Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than an area variance: Ms. Karen Terns suggested "It's a

big property; come to the Village and divide it in half. Put up two houses." Mr. Hyer said to Mr. Weston: "Karen is stating that you can do this some other way without doing a townhouse." Mr. Weston: "There is no way with the Flag Lot regulations that they have. By the time we make this width to have access to the lower lot, there leaves no room to build the house over here."

Ms. Karen Terns: "This lot is 82 feet wide at this point." Mr. Hyer: "Isn't there some way you can divide this lot and still build two houses on it?" Mr. Weston: "No, that's what we tried to do in the first place. We need forty foot by Village rules to have a Flag Lot. It has to be forty foot wide. That's half of this width. That leaves us only forty foot wide total. That'll leave me 1.85 feet to build on." Mr. Hyer: "That is the Subdivision Law. They would need a variance from the Subdivision Law to do it, Karen. That's why you should stay with the point because it would good if they could get a variance from the Subdivision Law. Let's let that sit for a minute, Dan."

Next criteria: Whether the requested area variance is substantial. Mr. Hyer: In this case, the area variance is twenty foot and they are going from twenty to zero. So that is substantial. The issue there being not with a neighbor, but with themselves.

Next criteria: Whether the proposed variance would have an adverse effect, or impact, on the physical or environmental conditions in the neighborhood or district. Mr. Hyer: "I think the townhouse is going to look like any other large residential house on the street, in my personal opinion, so I don't see where there is going to be an impact there. As for environmental, if you have water and sewerage, there is no environmental impact. What does the Board think? Any issue on that? Karen Terns? Judy Terns?" No recorded response. Mr. Hyer: "We are going to come back to the other issue."

Next criteria: Whether an alleged difficulty is self created. Mr. Hyer: "What that means is did the applicant create the problem himself. At first blush, you would say 'yes, he did' but he didn't because he came in front of the Village Board for subdivision review and the Subdivision Law won't allow him to build, by that standard, a house on each lot without a waiver from the Subdivision Law." Ms. Karen Terns: "Did he ask for a waiver from the Subdivision Law?" Mr. Hyer: "I don't believe he did. So, Karen, you would be justified in stating the position that he should have gone in front of the Subdivision Board and asked for a waiver first before coming to the ZBA. You could make that argument." Dan, did you hear what we just discussed? Do you have any response to that?"

Mr. Weston: "Well, this is the process that we picked based on advice we had gotten from Mark Hyer. If we had been advised to go in that direction, we would have gone in that direction. We went in the direction that we had been brought to by the Village."

Ms. Karen Terns: "When you asked to do that subdivision, you were going to put two single-family homes, one down towards the Lake and one up by the road?" Mr. Weston: "Exactly, but with a forty foot width for a flag lot to get back access to the back lot, there would be no room to build at all without being on the other property."

Mr. Hyer: "Dan, if you got a waiver from the Subdivision Law, would it be do-able?"

Mr. Weston: "Two houses?" Mr. Hyer: "Yes." Mr. Weston: "I'd have to talk to the

client to see where he is with it." Mr. Hyer: "The reason you were sent to the ZBA was because the plan you presented did not comply with the Subdivision Law. That's why

you were sent here.” Mr. Weston: “Right.” Mr. Hyer: “Now, again, I don’t speak for the ZBA, I am one vote and, obviously, the ZBA Board is leaning in a different direction. I think they are going to articulate their position very shortly.

If I can summarize what I think Karen Terns and Judy Terns are stating it is that they feel they would rather see him divide it into two lots and build two houses and get a variance from the Subdivision Board?” Karen Terns: “Absolutely, the reason being, and well before Mr. Lubow said it, I feel that if we give them this variance for a townhouse, somebody can come in here with one of those tiny little skinny lots... I know you said we don’t make legislation and we don’t do this and that but, we might say no to the next guy who has the same or a little smaller lot because he can’t subdivide it. These people have the room to do this. But you get a guy who only has a little lot and all he wants is an area use variance so he can build two townhouses. If we say no to him but we said yes to these people, we have started a precedent. Maybe it means nothing to anyone, but if they get a crafty attorney, he’s going to take it to court (and I would want him to do it for me if I were his client) and say ‘they gave it to Mr. Smith but they won’t give it to us.’ So I am afraid if we do that we will start a precedent of building townhouses on little tiny lots and then we have two houses on a lot that should only have one.”

Mr. Hyer: “We are ready to have a vote on this. Judy Terns, would you want to articulate your feelings?” Ms. Judy Terns: “I feel the same way Karen does...I think there should be two separate homes...I don’t think it’s big enough.” Mr. Hyer: “I personally don’t see the impact of a two-family townhouse. It’s all one unit together. It’s not spread out over the land. They have a lot of front view all the way down to the lake. I refused lawyers who have told me that you are setting a precedent...and now Joe Blow comes in here and says I’ve got this and you’ve got to give me that... I don’t buy that, Karen, from people...They try to bully you when they say ‘well, you gave him the approval.’ Every application stands on its own merit. But, anyhow, we’re going to wrap this up and come to a vote.”

Vote on Negative Declaration: Mr. Hyer explained that this means there is no environmental impact. It has nothing to do with the vote that will come up on the project. He asked if he could have a motion for Negative Declaration on the Environmental Assessment – SQRA Review. Mr. Hyer made the motion for Negative Declaration, Judy Terns seconded. Motion passed, all in favor. SQRA approved.

Vote on Townhouse: Mr. Hyer made a motion for approval of the area use variance for the Townhouse. As there was no second to the motion, the motion died.

Mr. Hyer asked if there was a motion for denial of the application. Judy Terns made the motion to deny the application for area use variance, seconded by Karen Terns. Mr. Hyer voted no for denial of application. Motion denied 2 votes to 1. Discussion: we are listing the reason for the denial:

The primary reason why the application was turned down by the majority of the members of the board was #2: “the benefit sought by the applicant can be achieved

by some method which will be feasible for the applicant to pursue but would not require a variance.

Mr. Hyer to Mr. Weston: “With that method they are sending you to the Subdivision Board which will be convening here in five minutes for you to get a subdivision in order to build a house on each lot.

Mr. Weston asked whether he can come back to the ZBA and reapply if he is turned down by the Subdivision Board. Mr. Hyer said that Mr. Weston cannot reapply to the ZBA but he could appeal the decision. Mr. Hyer said he will call the State of New York to make sure he is giving him the right information.

Ms. Karen Terns made a motion to close the ZBA meeting, seconded by Judy Terns. All in favor, motion carried. No discussion.

The Mayor opened the Public Hearing for a 2-lot Subdivision for 91 S. Main Street Corp. and made the following statement:

“There has been a Comprehensive Build Out Analysis done for the Village of Tannersville. It’s been recently completed and has not been fully digested. The bottom line is that the minimum lot size under that study is one acre or larger. The Mayor said he did not think it would be fair that an existing lot of less than one acre would not be able to be developed. In his opinion that would be burdensome and a financial hardship for any applicant to not be able to build a home. To take lots that are already small and make them smaller, given the infrastructure build out for this community (water and sewer: the final sewer number being unknown), in his opinion would make it impossible to subdivide this lot to create two separate building lots. It’s just too small to begin with according to the good documentation that we already have. He stated that he does not feel that would limit Mr. Weston’s representing the land owner’s getting the most value for his property. That might be the land owner’s argument, that his property is being devaluated. The Mayor said that he feels that they could still build a beautiful home, a nice garden and receive full value for what the two-thirds of an acre is. The current burden on the infrastructure in this community, in his opinion, would make subdivision of any lot this size not favorable.”

Mr. Weston replied, “by the same token, I could build a 32’ by 62’ house, which is basically what we are proposing, as a single-family unit, not even go through the Subdivision Board or anything, just apply for a building permit, that’s ok. And still have the same amount of usage of everything.” Mayor: “seems to be a loophole...”
Mr. Weston: “The only thing that I can see that you could do to include that would be to start stipulating how many bedrooms and how many baths each house has and that’s it.”
Mayor: “You know, you kind of made a good point, but would a house of that magnitude want to be built on a small lot? It might limit the value. Would two smaller pieces, such as two townhouses that have six bedrooms and can fit ten people in each household be a

a strain on the infrastructure? Would someone want to build a mansion on two-thirds of an acre on South Main Street? They may or may not. I guess that’s up to the property owner. But certainly as far as impact on infrastructure, I think there’s less of a chance of a gigantic home being built on two-thirds of an acre with twenty bedrooms than there is two separate dwellings being able to house twenty people using the infrastructure.”

Mr. Weston: “I fully understand that the Village has water problems, etc. that need to be addressed.” Mayor: “It’s not water problems. We’ve addressed the water problems. We have a Build Out Analysis, an accurate document that says ‘this is how many homes should be built in this community given your infrastructure, roads, schools, character of the community.’ It’s based on a lot of factors, not just water. It is my contention that this Village Board is on task to provide enough water, certainly minimally, to that Build Out Analysis. And the sewer piece is going to come from the City and negotiations with them. So you have equal strain on both systems. This Board is not prepared to have the availability of water for everyone who has a lot. But to take small lots and subdivide them, currently that does not make sense to me given that the lot size build out should be an acre.”

Trustee Landers: “A question for Mark Hyer...there was an original home there. Is there any kind of grandfather clause, something like that?” Mr. Hyer: “Original home, build another home.” Trustee Landers: “Do you know how big that original home was?”

Mr. Weston: “No, I’d have to look it up.” Mr. Hyer: “But it wasn’t two homes there...”

Trustee Lucido: “It was a big house. How many bedrooms are going in the townhouses?” Mr. Weston: “Four bedrooms in each one.” Trustee Lucido: “The problem I have is that there are two hook-ups. We will have to deny someone else water use which is not fair. Each lot in Tannersville is supposed to have one hook-up.”

Mr. Weston: “I can build the exact same house, just call it a single home and it’s ok. I don’t even have to go through the process.”

Trustee Landers: “That’s also my problem...to give you two water hook-ups separately and two sewer hook-ups. I do have a problem with giving you a 20 foot right of way to get to that second home.” Mr. Weston: “We tried to come in and do it right the first time. We got as much info as we could. We scaled down our original plan as much as we could so we wouldn’t have to ask for variances.” Trustee Lucido: “You have a 20 ft variance on each side. How much parking do you have for cars?” Mr. Weston: “We set the house back an extra 13 feet because we had the driveways coming from the road in front of the house. We would have had over 40 foot. Their main reason for doing the

townhouses is that they get along great and have great families. They didn't want to have an issue in the future, such as: 'you're using more gas, using more water. If we have two separate meters, he owns his half and I own my half and there's no problem. Separate bills. They just wanted to prevent problems.'

Mayor: "Is there anyone else who wants to speak on this issue?" No response. The Public Hearing was closed.

Do we have a motion to approve or decline? Trustee Lucido made a motion to decline the 2-lot subdivision request for 91 S. Main Street, seconded by Trustee Kline. All in favor, motion carried 5-0.

Review of Subdivision Law Changes: Mr. Hyer: "At last week's meeting the Board told myself and Mr. Bates to review the Road Grades and the Driveway Grade Specifications as Mr. Bates brought up some good points and they needed reviewing. Mr. Bates put together a graphic representation of the slopes but, unfortunately, when it was photocopied it cut off the numbers."

Mayor to Board: "It was brought to our attention that driveways are not even reviewed under these laws. It might be food for thought if we just want to eliminate driveway specifications and allow the homeowner to make his own determination on what is safe and put the liability on him as to what his driveway is like."

Trustee Landers: "But what happens if his driveway runs down into our streets and we have no recourse?" Mayor: "If he has stormwater run-off I would think we would still have some sort of direction to take. My first thought was that since we discovered that sometimes these things are not even evaluated, we may choose not to or you may choose to. I just threw it out there before we get into discussion about what the particulars of driveway grades are. If a homeowner has a dirt driveway, they are going to have other issues and we will be able to take them to task if, for example, they are running mud into the middle of the street. If we want to address the grades, that's fine also."

Mr. Hyer: "The storm drainage plan is addressed in the Subdivision Law above and beyond these recommended changes. There is a storm drainage plan that has to be addressed by the developer."

Trustee Timpson: "Is this the only thing we are changing?" Mr. Hyer: "There were four other changes we looked at last week, so if you agree to this I was going to bring them back next week in one comprehensive document for you to go over. This is the one Mr. Bates made comments on."

Mr. Hyer indicated that he met with Mr. Bates and took his suggestions under advisement. The changes to page 21 are listed below and are thus submitted for the Board's approval.

They wish to replace the following:

"E. Grades

Grades of all roads shall conform in general to the terrain and shall not be less than one (1) percent or greater than six (6) percent. In no case shall grades of roads and driveways be greater than three (3) percent within fifty (50) feet of any intersection."

Replace with:

Road Grade Specifications

"Grades of all roads shall be no more than ten (10) percent except for twelve (12) percent maximum for no more than three hundred (300) feet of length or no more than twenty (20) percent of the road length. In no case shall grades of roads be greater than four (4) percent within fifty (50) feet of any intersection.

Driveway Grade Specifications

Grades of driveways shall not be greater than eight (8) percent within thirty (30) feet of any road."

The Mayor asked if anyone else had something to add on the subject. No response.

Mr. Hyer: "We will take this change and the other four changes that we discussed last week and bring them back next month for the Board to look at one more time. Then we will send it to the lawyer and have a Public Hearing for approval. The Mayor said that

sounded appropriate. Mr. Hyer indicated that Mr. Bates donated his time, and the Mayor thanked them for their work on the project.

CC Lots: Mr. Jeff Prince came forward and said he and Mr. Bates were here to answer any questions that may have come up regarding the recent submittals.

Trustee Lucido commented that he would like to see a little more detail on how the bridge is going to be constructed and how it's going to look. Mr. Bates said he has a copy of something which shows footings, concrete arch, retaining walls and typical road cross section which should be informative. Mr. Prince offered that he and Mr. Bates would sit down with Mr. Lucido at a time convenient for him and go over everything. Mr. Prince asked if he could receive copies of the responses from the various agencies to which the CC Lots packets were mailed when they start coming in. The Mayor said he may have them.

Unbuildable Lots – Capital Improvement Surcharge. The Mayor said the Village has been approached by people who have been billed for the Capital Improvement Surcharge for water who feel that this is unfair as they can never build a house on their property. After discussion, Trustee Timpson made a motion that if owners can substantiate to the Board that their lots are unbuildable, they will not have to pay the Water Surcharge. Trustee Landers seconded the motion. All in favor, motion carried. It was further stipulated that the fact that the lot is unbuildable should be added to their deed.

The Mayor said Mr. Haines, who claims that his lot is unbuildable, should be asked to attend the next Board meeting to discuss the matter. Any other property owner who has made the same contention should also be contacted.

Trustee Landers asked if there was a list of property owners who have not paid the surcharge. He suggested that a letter be sent to them telling them they have to pay the surcharge if they are not able to prove their property is unbuildable. Trustee Timpson said she didn't think unpaid surcharges could be rolled over on to the property owners' tax bill. The Mayor said he has asked the auditors from the Comptroller's Office to look into the matter.

The Mayor made a motion to adjourn the meeting. Trustee Landers seconded. All in favor, motion carried.

Minutes submitted by Catherine Palmieri, Deputy Clerk

Lee McGunnigle, Mayor