

TOWN OF CLARKSTOWN
TOWN BOARD MEETING

Town Hall

5/8/84

8:12 P.M.

Present: Supervisor Dusanenko
Councilmen Carey, Holbrook, Lettre, Maloney
John Costa, Town Attorney
Patricia Sheridan, Town Clerk

Supervisor Dusanenko declared Town Board Meeting open.
Assemblage saluted the Flag.

Supervisor Dusanenko read the following proclamation:

"SENIOR CITIZEN MONTH
May, 1984

WHEREAS, the Town of Clarkstown is privileged to number among its residents over eight thousand senior citizens, a group which has proven to be vital to the growth and prosperity of our community, and

WHEREAS, these citizens can be considered a great asset to the Town of Clarkstown, and

WHEREAS, these men and women provide humor, zest and the wisdom of their years to enrich all our daily lives, and

WHEREAS, our indebtedness to our senior citizens is impossible to repay, and the Clarkstown Town Board is cognizant of the inherent socio-economic problems of our senior citizens and will continue to pursue new and innovative ways to help alleviate these burdens and, through our senior citizen groups, will solidify our social bond between ourselves and our elderly persons, and

WHEREAS, we now wish to reaffirm the affection, concern and profound respect we feel for this group of individuals;

NOW, THEREFORE, be it

RESOLVED, that I, Theodore R. Dusanenko, Supervisor of the Town of Clarkstown, on this 8th day of May, 1984, do hereby proclaim the month of May as "SENIOR CITIZEN MONTH" in the Town of Clarkstown and urge all our residents to join with us in recognizing all our senior citizens in an appropriate fashion.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Town of Clarkstown to be affixed this 8th day of May, 1984.

THEODORE R. DUSANENKO, Supervisor
Town of Clarkstown"

Supervisor Dusanenko stated that there would be a public meeting on May 17, 1984 regarding the congestion at Exit 10 of the Palisades Interstate Parkway.

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Supervisor Dusanenko mentioned the Rockland Rape Crisis Service needed assistance. There would be a fund drive on Saturday, May 12, 1984 and he asked anyone interested in assisting to please call 425-0112.

Supervisor Dusanenko declared the Public Portion of the meeting open.

Appearance: Mrs. Lee Pound, President
Clarkstown CSEA

Mrs. Pound mentioned that negotiations have been going on for a year and a settlement has not yet been reached. She stated that the membership had demonstrated peacefully to show the Town Board that we do have solidarity here tonight and urge the Town Board to sit down and come up with a fair and equitable contract. Mrs. Pound then quoted from the October 1983 budget hearing minutes as follows: "Additional funds are also included to cover an anticipated CSEA contract settlement." After this hearing individual councilmen did say there would be no problem and that we would have a contract by the end of 1983. This is now May of 1984. She said that we have in the past taken freezes. The contract that was signed in 1979 reduced contractual benefits for our new employees. Now the Town wants additional give-backs. This was not asked for or done by the other town bargaining units and we are not second class employees. We would like to be treated equally. The majority of Town employees live in Clarkstown. We pay taxes. We shop locally and we vote for local and county representatives. These employees should be considered a valuable asset. She urged the Town Board to assess the worth of all the members of the town's work force and settle their contract.

Appearance: Mr. Ray O'Connor, President
Region 3 CSEA

Mr. O'Connor said that Region 3 represents 37,000 CSEA employees and that they were 100% behind the Clarkstown unit in their efforts here tonight. He asked where you would be without your public employees. He said that he has attended hundreds of meetings such as this one tonight and all that they ask for is equity. He urged the Town Board to deal fairly with the membership.

Appearance: Mr. Frank Bosco, President
Rockland County CSEA

Mr. Bosco said that he was impressed with the number of people who had come out tonight and he was also disappointed that they had to come out because the contract should not be open but settled. He said the Board should lay aside their differences and give the members what they need. He said give-backs were not necessary. Paid negotiators from outside the Town were not necessary either. He said unity among the Board members was necessary for a fair contract.

Appearance: Timothy O'Neill, Clarkstown Police
Officer and President of the
Rockland County PBA

Officer O'Neill said he was a negotiator for the Clarkstown Police Department. He said that they were behind the CSEA employees. The County Executive Board supports them. He said that the police work very closely with the CSEA people. He said they rely on town services particularly in emergencies. He said they will be here if the CSEA members have to come back. We all have the same bosses and there is no animosity between civilian employees and the police department.

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Appearance: Chris Goodyear, Police Officer and
President, Clarkstown PBA

Officer Goodyear said that the Clarkstown PBA supports their fellow town employees and they will stay here and demonstrate with them. There should be a fair day's work for a fair day's pay. He said our town is growing daily and the town board is expanding the role of our town government to meet that growth. The initiation of new programs call for a greater workload and these CSEA members are the ones who bear that load. He mentioned the civilian dispatchers in our police department. He said that the program has served as a model for other police departments in our area and in other counties. He stated that this was one small facet in the great machine which runs the Town of Clarkstown. He stated that we serve 80,000 people here and this is big business. We need the people here to keep the Town of Clarkstown a great place to live and work. He said they deserve a fair labor agreement negotiated honestly and in good faith.

Appearance: Mr. John Lodico
Birch Drive
New City, New York

He said his remarks were addressed to the members of the Town Board. "Shame on you all for allowing the circumstances to reach this particular stage." He said he has always believed that individuals should be dealt with and bargained with fairly. He said the Town Board has always given to the police first and if there was anything left over they took care of themselves and if there happened to be anything left after that they would negotiate with the working people who keep our government together. He said that the Town Board had given the police what they wanted, the Town Board took their own raises and now the working people have to come and demonstrate. It was up to the Town Board to come up with a fair settlement.

Appearance: Mr. Sandy Golonda
27 Overlook Road
New City, New York

Mr. Golonda said he was there for Jack Cuff who could not be present at this meeting. He read a prepared statement which commended the Town Board for the budget for 1984. This statement mentioned that the Town Board had taken their raises but had not given the work force their raise. He urged a fair settlement of the workers' contract.

Appearance: Mr. Michael Kelly
New City, New York

Mr. Kelly said that he had attended the last two workshop meetings and stated that he had problems in his area with storm drains, eroding roads, non-working water easements. He said he had been asking for help for six months. Councilman Lettre said that he had been speaking to Mr. Les Bollman, Director of Environmental Control, and that an evaluation would be made and recommendations given at a workshop meeting on Thursday, May 17, 1984.

Appearance: Mr. Nicholas Longo
Superintendent of Highways
Town of Clarkstown

Mr. Longo stated that he and his crew had been at the location of which Mr. Kelly spoke but that because of the wet ground they were unable to get the equipment onto the property. He said that tomorrow they would be there with the Federal Disaster people.

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Councilman Holbrook asked to what depth must a road be paved? Mr. Longo said the wearing course would be about two inches and then you have a base course. Mr. Kelley said "Could you please tell me how thick it was?" Mr. Holbrook said approximately three quarters of an inch thick. Councilman Holbrook asked if Mr. Longo would go out tomorrow and check the depth of the blacktop. Councilman Holbrook asked also if catch basins should be installed in some parts of the cul-de-sac. Supervisor Dusanenko told Mr. Longo that they would like to have the thickness of the finish coat, the thickness of the base coat and, working together, a complete report of what has to be done to rectify the situation once and for all on the roads and on the drainage.

There being no one else wishing to speak at the Public Portion, Supervisor Dusanenko asked for a five minute recess.

On motion of Councilman Maloney, seconded by Councilman Holbrook and unanimously adopted, the Public Hearing re: Renewal of Franchise Agreement with TKR Cable Co., was opened, time: 3:45 P.M.

On motion of Councilman Carev, seconded by Councilman Holbrook and unanimously adopted, the Public Hearing re: Renewal of Franchise Agreement with TKR Cable Co., was closed, DECISION RESERVED, time: 10:05 P.M. (NOTE: Councilman Lettre was absent from the auditorium for this vote.)

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On motion of Councilman Maloney, seconded by Councilman Holbrook and unanimously adopted, the Public Hearing with regard to Amendment of Official Map - Tram Quill Associates, was resumed, time: 10:05 P.M. (NOTE: Councilman Lettre was absent from the auditorium for this vote.)

On motion of Councilman Maloney, seconded by Councilman Lettre and unanimously adopted, the Public Hearing with regard to Amendment of Official Map - Tram Quill Associates, was closed, DECISION RESERVED, time: 12:05 P.M.

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RESOLUTION NO. (499-1984)

AUTHORIZING ATTENDANCE AT GOVERNMENT CONFERENCE IN WASHINGTON, D.C. MAY 23 AND 24, 1984 (SUPERVISOR DUSANENKO)

Co. Lettre offered the following resolution:

RESOLVED, that Supervisor Dusanenko shall attend the Local Government Conference sponsored by Senator Alfonse D'Amato in Washington, D.C. on May 23 and 24th, 1984, and be it

FURTHER RESOLVED, that all proper charges for travel, meals and lodging be charged to Fund A - 1010-414.

Seconded by Co. Maloney

All voted Aye.

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RESOLUTION NO. (500-1984)

DENYING SPECIAL PERMIT FOR GROUP HOME (SUMMIT SCHOOL AND CHILDREN'S RESIDENCE CENTER)

Co. Lettre offered the following resolution:

RESOLUTION NO. (500-1984) Continued

WHEREAS, the Town Board of the Town of Clarkstown by resolution adopted on the 27th day of March, 1984, provided for a public hearing on the 24th day of April, 1984, at 8:45 P.M., to consider an application of the Summit School and Children's Residence Center for a Special Permit for the purpose of operating an agency group home at 285 New Hempstead Road, New City, New York, and

WHEREAS, notice of the public hearing was duly published as required by law and the public hearing was duly held at the time and place specified in the notice;

NOW, THEREFORE, be it

RESOLVED, that after public hearing, the Town Board finds that the location is not suitable for the issuance of a Special Permit for an agency group home because the property is located on a busy town road in an area where sight distances are poor and ingress and egress to the facility will subject the residents of the group home, staff members, and members of the general public to traffic hazards and the risk of personal injury and property damage and therefore the within application is hereby DENIED.

Seconded by Co. Holbrook

On roll call the vote was as follows:

| | |
|---------------------------|-----|
| Supervisor Dusanenko..... | Yes |
| Councilman Carey..... | Yes |
| Councilman Holbrook..... | Yes |
| Councilman Lettre..... | Yes |
| Councilman Maloney..... | No |

Councilman Maloney said he felt they were setting a precedent by denying the application for a group home on the grounds that it was on a busy road or site. He said that if he moved in there with eight children no one would be concerned about how they would get back and forth. This excuse was a cover-up.

* * * * *

Supervisor Dusanenko said that the following resolution is regarding amendment to the zoning ordinance (Section 106-23C) so that the Town Attorney would have the jurisdiction of looking over leases on additional parking by various agencies rather than the Building Inspector.

Mr. Donald Tracy wanted this amended to delete the words "approval of Town Attorney." He stated that the Town Board gives approval. The Town Attorney advises because he has no legal authority to approve something. The Town Attorney gives his opinion that the deed or lease is in legal form. Approval given to anyone by anyone other than the Town Board is improper. The Town Attorney should only recommend.

Councilman Holbrook requested that this be referred back to the Town Attorney for possible rewording. This suggestion was not acted upon.

RESOLUTION NO. (501-1984)

DENYING PROPOSED AMENDMENT
TO ZONING ORDINANCE (SECTION
106-23C) REGARDING OFF-STREET
PARKING SPACES

Co. Lettre offered the following resolution:

RESOLUTION NO. (501-1984)

WHEREAS, the Town Board of the Town of Clarkstown by resolution adopted on the 27th day of March, 1984, provided for a public hearing on April 24, 1984 at 9:15 P.M. to consider the adoption of proposed amendment to Section 106-23C of the Zoning Ordinance of the Town of Clarkstown, and

WHEREAS, notice of said public hearing was duly published and posted as required by law, and said public hearing was held as required by law, and said public hearing was held at the time and place specified in said notice;

NOW, THEREFORE, be it

RESOLVED, that for reasons of public health, safety and welfare, the proposed amendment to Section 106-23C of the Zoning Ordinance of the Town of Clarkstown be and it hereby is DENIED.

Seconded by Co. Maloney

On roll call the vote was as follows:

| | |
|---------------------------|---------|
| Supervisor Dusanenko..... | Yes |
| Councilman Carey..... | Abstain |
| Councilman Holbrook..... | Abstain |
| Councilman Lettre..... | Yes |
| Councilman Maloney..... | Yes |

* * * * *

With regard to the following resolution Supervisor Dusanenko said that what this would basically do is remove 50%, for example, suppose someone has a business and the zone has been changed - therefore they have a non-conforming use. They then want to increase that non-conforming use. They cannot get a variance. This way they would be able to get one up to 50% of the original non-conformity. The elimination of this would delete that entirely. Whatever is non-conforming in the town would not be allowed to be increased in the future.

Mr. Donald Tracy said that as he understands the ordinance as it is written it eliminates the ability to go in and increase a non-conforming use. In zoning law as in common law with zoning ordinances changing it would do nothing but encourage extensive litigation under a doctrine (here Mr. Tracy cited law case). If there is a rational basis in a zoning ordinance which constitutionally is recognized in the State of New York to continue a non-conforming use which is not obnoxious - for instance, a residence in a commercial zone without forever sterilizing and preventing a change in that use without a person having to go in and get a use variance, which requires proof of absolute hardship, in many many areas we have non-conforming uses as a result of comprehensive amendments to zoning ordinances which uses were legal at the time that the zoning ordinance amendments were changed. He said he felt that would start a tremendous amount of litigation and present the Town with increased legal expenses and be contrary to accepted zoning practices with the exception of certain obnoxious non-conforming uses which, of course, can be amortized and indeed, under our ordinance, are amortized, which amortization has never been enforced.

Councilman Lettre said they can still go to the ZBA. Mr. Tracy said they have to go to the ZBA for a use variance but not for an extension of the variance. Mr. Tracy said that presents a very hard burden of proof. What they are going for now is a special permit.

RESOLUTION NO. (502-1984) FAILED

AMENDING ZONING ORDINANCE OF
TOWN OF CLARKSTOWN (106-28D(2))
(NONCONFORMING USES, EXTENSION
OR ENLARGEMENT)

Supervisor Dusanenko moved to deny the following resolution:

WHEREAS, the Town Board of the Town of Clarkstown by resolution adopted on the 27th day of March, 1984, provided for a public hearing on April 24, 1984, at 9:30 P.M. to consider the adoption of the following proposed amendment to the Zoning Ordinance of the Town of Clarkstown, and

WHEREAS, notice of said public hearing was duly published and posted as required by law, and said public hearing was held as required by law, and said public hearing was held at the time and place specified in said notice;

NOW, THEREFORE, be it

RESOLVED, that the Zoning Ordinance of the Town of Clarkstown be and it hereby is amended as follows:

Delete from the Code of the Town of Clarkstown Section 106-28D(2), Nonconforming uses, extension or enlargement.

Co. Lettre seconded the motion to deny the above resolution

On roll call the vote was as follows:

| | |
|---------------------------|-----|
| Supervisor Dusanenko..... | Yes |
| Councilman Carey..... | No |
| Councilman Holbrook..... | No |
| Councilman Lettre..... | Yes |
| Councilman Maloney..... | No |

The denial resolution failed. Supervisor Dusanenko stated that this was adopted by a 3-2 vote. Councilman Holbrook said that he wanted to get a definite affirmative vote. Councilman Lettre said that it was adopted and Councilman Holbrook asked how was this adopted? Supervisor Dusanenko noted that Councilman Holbrook was moving to adopt and Councilman Lettre said that might be the right way to do it. Councilman Holbrook then moved to adopt which was seconded by Councilman Maloney. Before a vote was taken on the motion to adopt Councilman Holbrook called upon Mr. Geneslaw for explanation of the amendment.

Mr. Geneslaw said that at the present time the expansion of a nonconforming use is permitted upon application to the Zoning Board of Appeals. There is no requirement in the ordinance to make any kind of proof. It is a very unique type of provision in a zoning ordinance and he stated that he had seen it only in a very few ordinances in Rockland County. The general literature that has been reviewed and the ordinances that have been studied from other municipalities do not include this kind of provision. Even if the Board acts on the recommendation from the Planning Board the owner of a property who wants to expand has the opportunity to request either a use variance or a bulk variance from the Board of Appeals if he can prove his case. By amending the ordinance as recommended by the Planning Board it brings our ordinance into better consistency with others and much more importantly helps to enforce the ordinance, that is in the end a legislative enactment of the Town Board.

Mr. Gerald Colucci, Building Inspector, said that people talk about the number of units. It is not the number of unit dwellings. It is floor area. Many people confuse this. He said that he works with the zoning ordinance every day throughout the year. He said he has been working with it for twenty-five years and it is growing more confusing every day. He said he did not believe that we should be doing this in this piecemeal fashion. He said it takes months for him to get the changes onto the map. Councilman Holbrook asked Mr. Colucci what his recommendation would be at this point. What he is saying is that if you approve one part of it, you should approve the other part. Supervisor Dusanenko said that you cannot do that because you have not had a public hearing. Supervisor Dusanenko said that Mr. Colucci has said to leave it alone and that is the bottom line.

Councilman Holbrook said at this point that he would withdraw his motion to adopt. He said he would like to resubmit this resolution including Mr. Colucci's comments to the Town Planner and request that this resolution be redrafted.

RESOLUTION NO. (503-1984)

REFERRING AMENDMENT TO
ZONING ORDINANCE (SECTION
106-28D(2)) TO TOWN PLANNER
FOR STUDY AND CONFERENCE
WITH INTERESTED TOWN OFFICIALS

Co. Holbrook offered the following resolution:

WHEREAS, the Town Board of the Town of Clarkstown by resolution adopted on the 27th day of March, 1984, provided for a public hearing on April 24, 1984, at 9:30 P.M. to consider the adoption of proposed amendment to Section 106-28D(2) of the Zoning Ordinance of the Town of Clarkstown, and

WHEREAS, notice of said public hearing was duly published and posted as required by law, and said public hearing was held as required by law, and said public hearing was held at the time and place specified in said notice;

NOW, THEREFORE, be it

RESOLVED, that the proposed amendment to Section 106-28D(2) of the Zoning Ordinance of the Town of Clarkstown be referred to the Town Planner for study and conference with interested Town Officials.

Seconded by Co. Carey

On roll call the vote was as follows:

| | |
|---------------------------|-----|
| Supervisor Dusanenko..... | No |
| Councilman Carey..... | Yes |
| Councilman Holbrook..... | Yes |
| Councilman Lettre..... | No |
| Councilman Maloney..... | Yes |

Councilman Lettre said he was saying "No" based on the comments of the Building Inspector. He said that the Building Inspector was saying "leave it alone" and he went along with that.

Supervisor Dusanenko stated that in the last month or so he has had serious communications with Mr. Colucci. It is not a secret that Mr. Colucci was not his choice for Building Inspector but he said he has to respect his opinions in his day to day frustrations in running a department. He said that Mr. Colucci had stated he cannot keep up with the map changes. He cannot keep up with the language in the Code. This means that if he cannot keep up with it and understand it then the Code enforcement in the Town is also suffering because if we don't know what

RESOLUTION NO. (503-1984) Continued

is the law we cannot enforce the law as it is in zoning. Councilman Carey said that is why we are sending it back. Supervisor Dusanenko said that Mr. Colucci has taken people in his department and used them for functions other than those they were assigned. The Code Enforcement Officer, for example, has to spend his time doing other things in the office because they are falling behind. Mr. Colucci is taking papers home at nights. It is difficult, if not impossible, to run the office. More staff is not necessarily the cure-all because nobody understands the Code. That gives us more litigation, more problems and more delays. The original motivation for improving the zoning code in the Town of Clarkstown, or amending them, was that most items would be clarified. With more litigation coming against this Town Board, with more cases going back to the Planning Board - with more cases and properties in this Town having nonconforming uses and more cases going to the ZBA - were making a bureaucratic nightmare. For those reasons, he stated he was voting "No."

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Councilman Holbrook requested that Item No. 5 be withdrawn (Amendment to Zoning Ordinance - Section 106.30C). Supervisor Dusanenko said he believed that this was one, where more projects after approval from the ZBA - which may take eight or nine months for approval - will make their merry trip back to the Planning Board. Councilman Holbrook said that he would like to withdraw this. Supervisor Dusanenko stated it did not have to be withdrawn - if they did not want to vote on it, it would just be removed.

Mr. Donald Tracy said that what this amendment will do is load up the Planning Board with more work and take away from the Building Inspector those matters which the Building Inspector has been able to expedite. He said that he had found the Planning Department to be very good but that there are certain matters which belong to the Planning Department and certain matters which belong to the Building Department. His criticism was that this should not be done piecemeal but all at one time to facilitate informing the public and getting things done.

Mr. Colucci said that the Building Department had over 1200 permits and during what is their "slow season" they are up to 360 permits this month. He said with this type of amendment there will be delays of up to six months. He said that if you read the contract from the Planning Consultant's firm you will see that the Planning Board is overloaded with the material they are presently working on. He said the ZBA is behind about four months now with the applications. The changes which keep occurring cause more and more delays. He is against this change.

Mr. Geneslaw, answering Councilman Lettre's inquiry, stated that all of the amendments that have come before the Board have been referred by the consultants or by the Planning Board to every department which might have an interest, months before it got to the Town Board. Maybe at the time it came to the Building Department they were too overloaded to respond immediately. The comments which you have received tonight were not received by the Planning Board or consultant so he could not comment on what Mr. Colucci is recommending.

Supervisor Dusanenko said that Mr. Colucci's office is inundated with work but he does not have the direction to know what is or what should be.

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Mr. Geneslaw stated that he would not make a recommendation to the Town Board without the Town Attorney, the Planning Board, Building Inspector and Environmental Control having reviewed the matter. Councilman Holbrook requested that this matter be tabled until Mr. Geneslaw has an opportunity to review Mr. Colucci's comments. This will come up before the Town Board at the next workshop meeting.

* * * * *

RESOLUTION NO. (504-1984)

AUTHORIZING DIRECTOR OF PURCHASING TO ENTER INTO CONTRACT WITH ACTION SECURITY CO., INC. TO PROVIDE SECURITY SERVICES AT COMMUTER PARKING LOT (FORMER NANUET STAR THEATRE) (CHARGE TO ACCOUNT NO. 5650/409)

Co. Holbrook offered the following resolution:

WHEREAS, the Town of Clarkstown has provided commuter parking at the site of the former Nanuet Star Theatre in accordance with an agreement with the present owner of the property, and

WHEREAS, the Town of Clarkstown has agreed to provide lighting and security services for said location while being used for commuter parking, and

WHEREAS, a number of incidents have occurred involving minor acts of vandalism to commuter vehicles and a proposal has been made by Action Security Co., Inc., to provide security services for all daylight hours during the summer months of July and August;

NOW, THEREFORE, be it

RESOLVED, that the Director of Purchasing be and he is hereby authorized to enter into a contract in a form approved by the Town Attorney with Action Security Co., Inc., to provide for security services at the above-stated commuter parking lot for the daylight hours during the months of July and August provided, however, that should the total amount to be expended for such services exceed \$5,000.00, in such event the Director of Purchasing is hereby authorized and directed to comply with the provisions of General Municipal Law, Section 103 and solicit competitive bids, and be it

FURTHER RESOLVED, that funds for the security services be charged to Account No. 5650/409.

Seconded by Supv. Dusanenko

All voted Aye.

* * * * *

RESOLUTION NO. (505-1984)

SETTING PUBLIC HEARING RE: AMENDING ZONING ORDINANCE OF TOWN OF CLARKSTOWN (SECTION 106.10A, TABLE 12 (COLUMN 3B(6)), TABLE 13, COLUMN 3B ADD ITEM "6", TABLE 11, COLUMN 3B AMEND ITEM "5", TABLE 11, COLUMN 6, ITEM "8", TABLE 12, COLUMN 6, ITEM "8", TABLE 12, COLUMN 3, ITEM "8", TABLE 13, COLUMN 3, ITEM "7", DELETE SECTION 106-16F AND ENACT NEW SECTION 106-16F

Co. Holbrook offered the following resolution:

WHEREAS, a comprehensive amendment to the Zoning Ordinance of the Town of Clarkstown was adopted on June 30, 1967, and further amended, and

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RESOLUTION NO. (505-1984) Continued

WHEREAS, the Town Board of the Town of Clarkstown is considering an amendment to said Zoning Ordinance;

NOW, THEREFORE, be it

RESOLVED, that the Town Board of the Town of Clarkstown will hold a public hearing on June 12, 1984, at 8:20 P.M., in the Auditorium of the Clarkstown Town Hall, 10 Maple Avenue, New City, New York, to consider the following amendments:

Amend Section 106.10A, Table 12, Column 3B(6) of the Zoning Ordinance to read as follows:

"(6) Theaters, except drive-in theaters, but including the addition of movie screens or seats in existing theaters subject to Section 106-16F."

Amend Section 106.10A, Table 13, Column 3B to add Item "6" of the Zoning Ordinance to read as follows:

"(6) Theaters, except drive-in theaters, but including the addition of movie screens or seats in existing theaters, subject to Section 106-16F.:

Amend Section 106.10A, Table 11, Column 3B to amend Item "5" of the Zoning Ordinance to read as follows:

"(5) Theaters, except drive-in theaters, but including the addition of movie screens or seats in existing theaters, subject to Section 106-16F."

Amend Section 106.10A, Table 11, Column 6, Item "8" of the Zoning Ordinance to read as follows:

"(8) Theaters - 3 seats."

Amend Section 106.10A, Table 12, Column 6, Item "8" of the Zoning Ordinance to read as follows:

"(8) Theaters - 3 seats."

Amend Section 106.10A, Table 12, Column 3, Item "8" of the Zoning Ordinance by deleting Item "8."

Amend Section 106.10A, Table 13, Column 3, Item "7" of the Zoning Ordinance by deleting Item "7."

Delete Section 106-16F of the Zoning Ordinance in its entirety, and enact the following new Section 106-16F to read as follows:

"Section 106-16F Theaters, providing:
1. No new theater building or conversion of existing building to a theater shall be located within 500' of any residential district or 1,000' of any public or private school of general instruction, or church, synagogue or other place of worship, measured from property line to property line for a school or place of worship, except however, the Town Board may modify the above requirements upon a showing by the applicant that adequate protection for residents and districts can otherwise be provided, and in the case of schools and places of worship, traffic and other public safety requirements can otherwise be met.

RESOLUTION NO. (505-1984) Continued

- "2. No new theater or conversion of existing building to theater use shall be located within 1,500' of any similar use, measured from driveway to driveway, except however, the Town Board may modify this requirement upon a showing by the applicant that traffic and other public safety requirements can otherwise be met.
3. Adequate lighting shall be provided during operating hours, installed so as not to project any light onto adjacent residential areas, or create any nuisance or hazard.
4. Entrances, exits and access points shall only be from state highways, except however, the Town Board may waive this requirement upon a showing by the applicant that a proposed site is suitably located so as to provide adequate and safe vehicular connection to a state highway.
5. For a CS or RS zone, a 50' buffer zone adequately landscaped, fenced or screened so as to protect adjoining residential districts is provided. No parking or vehicular use of this area shall be permitted.
6. All applicants must be accompanied by a traffic study by a licensed professional engineer qualified by experience or education to conduct a traffic study, which shall at least address the following points:
 - (a) Maximum seating capacity and number of proposed screens in applicants' premises;
 - (b) anticipated intervals between starting times for proposed multiplex theaters;
 - (c) expected traffic generated from proposed use;
 - (d) origin and destination projections for expected traffic;
 - (e) provision for turning lanes and signalization of existing roads based on projects of traffic;
 - (f) on site provision for storage of vehicles entering and exiting site;
 - (g) establishing by certification of the applicant's traffic engineer that the existing road and traffic control system or as proposed to be improved shall be adequate to meet the needs of the traffic generated by the proposed use; and
 - (h) any additional information requested by the Town Board.

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RESOLUTION NO. (505-1984) Continued

7. The application contains a scaled drawing prepared by an architect, engineer or surveyor showing sufficient information to allow the Town Board to determine if the above requirements can be met.

8. In case of conversion or modification of theaters which show motion pictures in existence as of the date of adoption of this amendment, the Town Board may waive Items "1," "2," and "5" as set forth above.

and be it

FURTHER RESOLVED, that the Town Attorney prepare notice of such hearing and that the Town Clerk cause the notice of same to be published in the official newspaper of the Town and file proof thereof in the office of the said Clerk, and be it

FURTHER RESOLVED, that a copy of this resolution be forwarded to the Rockland County Planning Board and the Clarkstown Planning Board for their reports and recommendations.

Seconded by Co. Carey

On roll call the vote was as follows:

| | |
|---------------------------|-----|
| Supervisor Dusanenko..... | Yes |
| Councilman Carey..... | Yes |
| Councilman Holbrook..... | Yes |
| Councilman Lettre..... | No |
| Councilman Maloney..... | No |

* * * * *

RESOLUTION NO. (506-1984)

RESCINDING RESOLUTION NO. (203-1984) AND AUTHORIZING DIRECTOR OF PURCHASING TO READVERTISE FOR BIDS FOR REPLACEMENT FLOORING FOR PORTION OF HALL OF JUSTICE BUILDING

Co. Lettre offered the following resolution:

RESOLVED, that bid award resolution #203-1984 is hereby rescinded, and be it

RESOLVED, that the Director of Purchasing is hereby authorized to re-advertise for bids for:

BID #42-1984
REPLACEMENT FLOORING FOR A PORTION
OF HALL OF JUSTICE BUILDING

bids to be returnable to the Office of the Director of Purchasing, 10 Maple Avenue, New City, New York by 11:00 A.M. on Thursday, May 24, 1984 at which time bids will be opened and read, and be it

FURTHER RESOLVED, that bid specifications and proposal documents can be obtained at the Office of the Clarkstown Director of Purchasing.

Seconded by Co. Holbrook

All voted Aye.

* * * * *

RESOLUTION NO. (507-1984)

AUTHORIZING TOWN ATTORNEY TO ENGAGE SERVICES OF ALBERT APPRAISAL COMPANY, INC. (RE: THE DELLS, INC. v. THE TOWN BOARD OF THE TOWN OF CLARKSTOWN, ET AL.) - TRANSFERRING FUNDS FROM ACCOUNT NO. A 1990-505 TO A 1420-409

Co. Holbrook offered the following resolution:

RESOLVED, that the Town Attorney is hereby authorized to engage the services of the Albert Appraisal Company, Inc., 383 South Riverside Avenue, Croton-on-Hudson, New York, for appraisal services in connection with an action instituted against the Town of Clarkstown entitled, The Dells, Inc. v. The Town Board of the Town of Clarkstown, et al., which action seeks to restrain a proposed zone change from LO District to R-160 District affecting property designated on the Tax Map as Map 42, Block A, Lot 1 and Map 61, Block A, Lot 1; and be it

FURTHER RESOLVED, that the sum of \$12,500.00 is transferred from Account No. A 1990-505 to Account No. A 1420-409 to cover the anticipated cost of the appraisal, trial preparation and testimony as expert witness.

Seconded by Co. Carey

On roll call the vote was as follows:

| | |
|---------------------------|--------------------|
| Supervisor Dusanenko..... | Abstain |
| Councilman Carey..... | Yes |
| Councilman Holbrook..... | Yes |
| Councilman Lettre..... | Yes with objection |
| Councilman Maloney..... | Yes |

Supervisor Dusanenko said that in his opinion the fee was just too high and he was going to abstain.

* * * * *

RESOLUTION NO. (508-1984)

AUTHORIZING SUPERVISOR OF TOWN OF CLARKSTOWN TO SIGN EXTENSION OF AGREEMENT WITH PLANNING CONSULTANT FIRM (RAYMOND, PARISH, PINE AND WEINER, INC.) - COMPTROLLER TO MAKE PAYMENT IN MONTHLY INSTALLMENTS

Co. Holbrook offered the following resolution:

WHEREAS, Raymond, Parish, Pine and Weiner, Inc., are presently performing planning consultant services for the Town of Clarkstown pursuant to contract entered into on May 12, 1976 and duly extended to provide continuous service up to and including May 14, 1984, and

WHEREAS, the Town desires to continue receiving the technical and professional services of Raymond, Parish, Pine and Weiner, Inc.;

NOW, THEREFORE, be it

RESOLVED, that the Supervisor of the Town of Clarkstown is hereby authorized and directed to sign on behalf of the Town, an extension of said contract with Raymond, Parish, Pine and Weiner, Inc., designated

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RESOLUTION NO. (508-1984) Continued

as "Fifth Amendment to Contract for Professional Services by and Between the Town of Clarkstown, New York and Raymond, Parish, Pine and Weiner, Inc.," and be it

FURTHER RESOLVED, that compensation shall be in the sum of \$74,160.00 for the period May 15, 1984 up to and including May 14, 1985, and \$77,868.00 for the period May 15, 1985 up to and including May 14, 1986, and be it

FURTHER RESOLVED, that the Comptroller make payment of the above sums in monthly installments as provided for in said agreement.

Seconded by Co. Lettre

All voted Aye.

Supervisor Dusanenko stated that he would like to see before the next year and one half the conclusion of the Master Plan and all of its changes.

Councilman Holbrook asked if the Supervisor had paid the firm and said that should be done before any criticism is leveled with regard to the Master Plan. He felt the contract should be signed and the money due paid to the firm.

Supervisor Dusanenko said that he was not taking umbrage at Mr. Geneslaw or the firm because they receive direction from this Town Board. They do not create new items and zones without direction from this Board or the Planning Board. I am not taking any umbrage with them but at the same time this Town Board has been updating the Master Plan for over ten years. The Building Inspector by his own admission tonight says he does not know where he is and his department as far as evaluation and code enforcement of what we have or where we're going - he is totally inundated and the Supervisor said he is just making a sincere request to Bob and his firm to finish this up in the next two years. He said if anyone in the town - he said he had been accused of being an obstructionist. I'll vote yes or no - abstain. He asked Mr. Geneslaw if he (the Supervisor) had ever asked him to slow down anything. In four years and four months he had never said sit on it - it's bad for elections.

Supervisor Dusanenko said he is not criticizing Mr. Geneslaw or the firm which he is employed by. By Mr. Geneslaw's own remarks Supervisor Dusanenko stated that he has not been an obstructionist to delay the planning or master planning in this Town as I have been accused of politically but at the same time Mr. Geneslaw receives his direction from the Planning Board and from the majority of this Town Board and I'm asking that before the next year and one half that the Master Plan and the updating of the code and zones be once and for all finished. If all of us agree on the changes - fine. If all of us disagree on the changes - fine. But he stated that he did not want to have these hearings going on for another year and one half.

Supervisor Dusanenko said that regarding the outstanding \$30,000.00 to the firm Mr. Geneslaw and I have agreed to meet within the next two weeks to go over item by item no matter how long it takes and once and for all resolve that. Insofar as the payment of the plan, which should be of concern, the contract calls for no increase for 1984 or for the next year and he said he believed it was 5% for the second year. Supervisor Dusanenko said that after that he is on record - "I ain't voting for nothing, Bob, insofar as any renewals." He said he would only vote for a decreased contract just to keep up with the day to day flow. He said that he was putting himself on notice just to be fair and that it was all above board.

Continued on Next Page

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RESOLUTION NO. (508-1984) Continued

Councilman Lettre said that everyone agrees that we would like to get the Master Plan completed, finished, implemented and working effectively for the Town as soon as possible. But as far as the payment of it, whether you disagreed or agreed with it, because he said that he had some objections to it in its initial phase, but it seems to be a pretty clearcut contract and they should be paid for services rendered.

Supervisor Dusanenko stated that normal monthly services have been paid. What is in dispute is the extra \$30,000.00 above and beyond the contract. Supervisor said he would love to find out from Bob just what it is that he is doing above and beyond the normal contract above and beyond the \$30,000.00.

* * * * *

RESOLUTION NO. (509-1984)

ACCEPTING PROPOSALS FROM
ORANGE & ROCKLAND UTILITIES,
INC. FOR STREET LIGHTING AT
GERMONDS HOMES, BARDONIA

Co. Maloney offered the following resolution:

RESOLVED, that based upon the recommendation of the Director of the Department of Environmental Control, the Town Board of the Town of Clarkstown hereby accepts proposals from Orange & Rockland Utilities, Inc. for street lighting at the following location:

Germonds Homes

Bardonia

Seconded by Co. Holbrook

All voted Aye.

* * * * *

RESOLUTION NO. (510-1984)

AUTHORIZING INSTALLATION OF
ONE HYDRANT WEST SIDE ROUTE
9W, SOUTH OF CENTERLINE OF
LAKE ROAD, CONGERS

Co. Maloney offered the following resolution:

RESOLVED, that based upon the recommendation of the Director of Environmental Control, the Spring Valley Water Company is hereby authorized to install one (1) fire hydrant on the west side of Route 9W, approximately 83 feet south of the centerline of Lake Road, Congers.

Seconded by Co. Holbrook

All voted Aye.

* * * * *

RESOLUTION NO. (511-1984)

AUTHORIZING TOWN ATTORNEY TO
DEFEND PROCEEDING AGAINST
TOWN OF CLARKSTOWN (GUBITS
AND SAVIA V. ZBA)

Co. Lettre offered the following resolution:

WHEREAS, a proceeding has been instituted against the Town of Clarkstown entitled as follows:

In the Matter of the Application of

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RESOLUTION NO. (511-1984) Continued

DAVID B. GUBITS, RUTH M. GUBITS,
JOSEPH SAVIA and ANGELA SAVIA,

Petitioners,

-against-

THE ZONING BOARD OF APPEALS OF THE
TOWN OF CLARKSTOWN,

Respondent.

For an Order Pursuant to Article 78
of the Civil Practice Law and Rules,
annulling and reversing a Decision
granting four variances made by
Respondent on the appeal of Albert
and Mary Jeney.

NOW, THEREFORE, be it

RESOLVED, that the Town Attorney is hereby authorized
to take all necessary steps to defend said proceeding.

Seconded by Co. Holbrook

All voted Aye.

* * * * *

RESOLUTION NO. (512-1984)

MEMORIALIZING RESOLUTION
RE: AMENDMENT TO SECTION
SEVEN OF ARTICLE SEVEN OF
STATE CONSTITUTION IN
RELATION TO LOCAL ASSISTANCE
(LATEST PRECEDING DECENNIAL
FEDERAL CENSUS TO BE USED)

Co. Lettre offered the following resolution:

RESOLVED, that section seven of article seven of the
Constitution be amended to read as follows:

7. No money shall ever be paid out of the state treasury or any of its
funds, or any of the funds under its management, except in pursuant of
an appropriation by law; nor unless such payment be made within two
years next after the passage of such appropriation act; and every such
law making a new appropriation or continuing or reviving an appropriation,
shall distinctly specify the sum appropriated, and the object or purpose
to which it is to be applied, and it shall not be sufficient for such
law to refer to any other law to fix such sum. Any appropriation of
per capita state aid for the support of local government must be
determined with respect to the population as shown by the latest
preceding decennial federal census completed and published as a final
population count by the United States bureau of the census preceding
the commencement of the state fiscal year in which the apportionment
and payment are made, or by a special population census certified to
the state comptroller.

Seconded by Co. Maloney

All voted Aye.

* * * * *

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RESOLUTION NO. (513-1984)

DECREASING APPROPRIATION
ACCOUNT NO. D 5142-443 AND
INCREASING APPROPRIATION
ACCOUNT NO. D 5140-438

Co. Lettre offered the following resolution:

RESOLVED, to decrease Appropriation Account No. D 5142-443 and increase Appropriation Account No. D 5140-438 by \$240.00.

Seconded by Co. Maloney

All voted Aye.

* * * * *

RESOLUTION NO. (514-1984)

DECREASING CONTINGENCY
ACCOUNT NO. A 1990-505 AND
INCREASING APPROPRIATION
ACCOUNT NO. A 5650-409
(COMMUTER PARKING)

Co. Lettre offered the following resolution:

WHEREAS, there is a need for security at the Theatre-Ground Commuter Parking Lot,

NOW, THEREFORE, be it

RESOLVED, to decrease Contingency Account No. A 1990-505 and increase Appropriation Account No. A 5650-409 by \$5,000.00.

Seconded by Co. Maloney

All voted Aye.

* * * * *

RESOLUTION NO. (515-1984)

DECREASING CONTINGENCY ACCOUNT
NO. A 1990-505 AND INCREASING
APPROPRIATION ACCOUNT NO. A
3120-203 (POLICE DEPARTMENT)

Co. Lettre offered the following resolution:

WHEREAS, the Police Department will be purchasing police vehicles,

NOW, THEREFORE, be it

RESOLVED, to decrease Contingency Account No. A 1990-505 and increase Appropriation Account No. A 3120-203 by \$9,400.00.

Seconded by Co. Maloney

All voted Aye.

* * * * *

RESOLUTION NO. (516-1984)

DECREASING APPROPRIATION
ACCOUNT NO. A 1680-204 AND
INCREASING APPROPRIATION
ACCOUNT NO. A 1680-438
(DATA PROCESSING)

Co. Lettre offered the following resolution:

WHEREAS, the Town of Clarkstown has a maintenance agreement for the Wang equipment,

NOW, THEREFORE, be it

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RESOLUTION NO. (516-1984) Continued

RESOLVED, to decrease Appropriation Account No. A 1680-204 and increase Appropriation Account No. A 1680-438 by \$5,000.00.

Seconded by Co. Maloney All voted Aye.

* * * * *

RESOLUTION NO. (517-1984)

DECREASING CONTINGENCY ACCOUNT NO. A 1990-505 AND INCREASING APPROPRIATION ACCOUNT NO. A 1010-204 (COUNCILMEN)

Co. Lettre offered the following resolution:

RESOLVED, to decrease Contingency Account No. A 1990-505 and increase Appropriation Account No. A 1010-204 by \$798.00.

Seconded by Co. Maloney All voted Aye.

* * * * *

RESOLUTION NO. (518-1984)

AWARDING BID FOR BID #37-1984 SOFT DRINKS (SODASYSTEMS, INC.)

Co. Maloney offered the following resolution:

RESOLVED, that based upon the recommendation of the Director of Purchasing that

BID #37-1984
SOFT DRINKS

is hereby awarded to:

Sodasystems, Inc.
34 Garden Street
New Rochelle, New York 10801

as per the following price schedule

| | | |
|---------------------|------------------|---------|
| Coca Cola | 5 Gal. Container | \$27.00 |
| Tab | " " " | 17.00 |
| Sprite | " " " | 27.00 |
| Fanta | " " " | 27.00 |
| CO ₂ Gas | 20 lb. cyl. | 7.50 |

Seconded by Supv. Dusanenko All voted Aye.

* * * * *

RESOLUTION NO. (519-1984)

AWARDING BID FOR BID #36-1984 CHEMICALS (JONES CHEMICALS, JERSEY CHEMICALS, INC., GMF CHEMICAL INC., ZEP MANUFACTURING CO., QUICK CHEMICAL CO., INC.)

Co. Maloney offered the following resolution:

RESOLVED, that based upon the recommendation of the Director of Purchasing that:

BID #36-1984
CHEMICALS

are hereby awarded to the following vendors:

RESOLUTION NO. (519-1984) Continued

JONES CHEMICALS
P.O. Box 280
Warwick, New York 10990

JERSEY CHEMICALS, INC.
775 River Street
Paterson, New Jersey 07524

GMF CHEMICAL INC.
200 Route 17 South
Mahwah, New Jersey 07430

ZEP MANUFACTURING CO.
10 Fadem Road
Springfield, New Jersey 07081

QUICK CHEMICAL CO., INC.
3 Ellen Street
Spring Valley, New York 10977

as per the attached schedule.

Seconded by Supv. Dusanenko All voted Aye.

(PLEASE NOTE - RESOLUTION NO. * (520 appears on Page 21)

RESOLUTION NO. (521-1984) AUTHORIZING SUPERINTENDENT OF HIGHWAYS TO ERECT SIGNS "NO PARKING, MONDAY - FRIDAY FROM 8:00 A.M. TO 4:00 P.M." NORTH SIDE PRIDES CROSSING FROM ETHEL DRIVE TO BARNSTABLE COURT, NEW CITY

Co. Maloney offered the following resolution:

RESOLVED, that based upon the recommendation of the Traffic and Traffic Fire Safety Advisory Board, the Superintendent of Highways is hereby authorized to erect signs to read, "No Parking, Monday - Friday from 8:00 A.M. to 4:00 P.M." on the north side of Prides Crossing from Ethel Drive West to Barnstable Court, New City.

Seconded by Co. Lettre All voted Aye.

* * * * *

RESOLUTION NO. (522-1984) ACCEPTING DECLARATION OF COVENANT (WEATHERWAX - ZBA APPEAL NO. 1758)

Co. Holbrook offered the following resolution:

RESOLVED, that the Declaration of Covenant dated April 12, 1984, by Charles A. Weatherwax and Barbara L. Weatherwax to the Town of Clarkstown for future road widening purposes in connection with ZBA Appeal No. 1758 is hereby accepted upon the recommendation of the Town Attorney and ordered recorded in the Rockland County Clerk's Office.

Seconded by Co. Maloney All voted Aye.

* * * * *

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RESOLUTION NO. (523-1984)

ACCEPTING DECLARATION OF
COVENANT (BARBIER - ZBA
APPEAL NO. 1756) - ACCEPTING
DRAINAGE EASEMENT RE: SAME

Co. Holbrook offered the following resolution:

RESOLVED, that the Declaration of Covenant dated March 12, 1984, by Joseph Barbier and Marie Elena Barbier for future road widening purposes in connection with ZBA Appeal No. 1756 is hereby accepted upon the recommendation of the Town Attorney and ordered recorded in the Rockland County Clerk's Office, and be it

FURTHER RESOLVED, that the drainage easement offered to the Town of Clarkstown in connection with the above Appeal No. 1756 is hereby accepted upon the recommendation of the Director of the Department of Environmental Control and the Town Attorney and ordered recorded in the Rockland County Clerk's Office.

Seconded by Co. Maloney

All voted Aye.

* * * * *

(PLEASE NOTE - FOLLOWING RESOLUTION IS OUT OF ORDER)
RESOLUTION NO. (520-1984)

AWARDING BID FOR BID #38-1984
ICE CREAM TO BE SOLD AT TOWN
SUMMER REFRESHMENT STANDS

Co. Maloney offered the following resolution:

RESOLVED, that based upon the recommendation of the Superintendent of Recreation and Parks and the Director of Purchasing that

BID #38-1984
ICE CREAM - TO BE SOLD AT TOWN
SUMMER REFRESHMENT STANDS

is hereby awarded to:

McDERMOTT BROS ICE CREAM
18 Bobby Lane
West Nyack, New York 10994

as per the following price schedule

| <u>ITEM</u> | <u>PRODUCT</u> | <u>PK/SIZE</u> | <u>PRICE</u> |
|-----------------------------------|----------------|----------------|--------------|
| ICE CREAM SANDWICH | LA SALLE | 36/3 oz. | \$5.92 |
| STRAWBERRY CRUNCH BAR | LA SALLE | 24/3 oz. | 4.20 |
| CHOCOLATE CRUNCH BAR | LA SALLE | 24/3 oz. | 4.20 |
| TWIN ICE POP | VILLAGE TREAT | 24/3 oz. | 2.52 |
| ITALIAN ICE CUP | MARINO | 12/6 oz. | 2.63 |
| ICE CREAM DIXIE CUP (VAN/CHOC) | LA SALLE | 24/3 oz. | 4.20 |

Seconded by Supv. Dusanenko

All voted Aye.

* * * * *

RESOLUTION NO. (524-1984)

ACCEPTING DECLARATION OF
COVENANT (TSEKOURAS - ZBA
APPEAL NO. 1611) - ACCEPTING
DECLARATION OF COVENANT
(JINGLO CONSTRUCTION CORP. -
ZBA APPEAL NO. 1611)

Co. Holbrook offered the following resolution:

RESOLUTION NO. (524-1984) Continued

RESOLVED, that the Declaration of Covenant dated August 15, 1983, by Fotis Tsekouras and Marina Tsekouras in connection with ZBA Appeal No. 1611 is hereby accepted upon the recommendation of the Town Attorney and ordered recorded in the Rockland County Clerk's Office, and be it

FURTHER RESOLVED, that the Declaration of Covenant dated August 15, 1983, by Jimglo Construction Corp. submitted in connection with ZBA Appeal No. 1611 is hereby accepted upon the recommendation of the Town Attorney and ordered recorded in the Rockland County Clerk's Office.

Seconded by Co. Maloney

All voted Aye.

* * * * *

RESOLUTION NO. (525-1984)

AUTHORIZING ATTENDANCE AT ASSOCIATION OF TOWNS - HIGHWAY SEMINAR (SUPERINTENDENT OF HIGHWAYS, FIRST DEPUTY, THIRD DEPUTY AND DISPATCHER)

Co. Lettre offered the following resolution:

RESOLVED, that the Superintendent of Highways, First Deputy, Third Deputy and Dispatcher are hereby authorized to attend the Association of Towns - Highway Seminar - to be held at Cornell University, Ithaca, New York on June 3, 4, 5, 6, 1984, all proper charges to be charged to the Town of Clarkstown.

Seconded by Co. Maloney

All voted Aye.

* * * * *

RESOLUTION NO. (526-1984)

AUTHORIZING ATTENDANCE AT SCHOOL AT H.O. PENN (HIGHWAY DEPARTMENT - (PSCHERER AND CAGLIONE)

Co. Maloney offered the following resolution:

BE IT RESOLVED, that W. Pscherer and L. Caolione, the Shop Foreman and Assistant Foreman attended school at H. O. Penn for the purpose of learning new techniques on Caterpillar engines from October 17 through 21, 1983, and be it

FURTHER RESOLVED, that the sum of \$350.00 be charged to Account No. 1010-414.

Seconded by Co. Holbrook

All voted Aye.

* * * * *

RESOLUTION NO. (527-1984)

AUTHORIZING ATTENDANCE AT SEMINAR - PACE UNIVERSITY SCHOOL OF LAW (JOHN COSTA, TOWN ATTORNEY)

Co. Maloney offered the following resolution:

RESOLVED, that John A. Costa, is hereby authorized to attend a seminar to be held in White Plains, New York at Pace University School of Law on May 18, 1984, for the sum of \$15.00, plus reasonable travel expenses; and be it

FURTHER RESOLVED, that the expenses for the above shall be charged to Account No. 1010-414.

Seconded by Co. Carey

All voted Aye.

* * * * *

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RESOLUTION NO. (528-1984)

AMENDING DESCRIPTION OF ITEM
NO. 8 CONTAINED IN RESOLUTION
NO. 353 (RE: NORMANDY VILLAGE)

Co. Holbrook offered the following resolution:

RESOLVED, that the description of Item No. 8 contained in Resolution No. 353, adopted by the Town Board of the Town of Clarkstown on March 27, 1984, is hereby amended to read as follows:

"8. Change from an RG-2 zoning district to an MF-3 zoning district, property known as Normandy Village Sections III, IV, V, and V+2, designated on the Clarkstown Tax Map as Map 13, Block A, Lots 21, 3 and 4."

Seconded by Co. Maloney

On roll call the vote was as follows:

Supervisor Dusanenko.....No
Councilman Carey.....Yes
Councilman Holbrook.....Yes
Councilman Lettre.....Yes
Councilman Maloney.....Yes

Supervisor Dusanenko asked whether the above resolution had been adopted and Town Attorney said no, that it was part of the clean-up scheduled for May 22, 1984. Town Attorney said that they had been advised that there had been an omission of three lots from that which had been prepared for publication. This is to correct what is going out for publication. Supervisor Dusanenko said that this is changing Normandy Village from RG-2 which it is built to MF-3. Town Attorney said that this is just a part of the public hearing to be held May 22, 1984.

* * * * *

RESOLUTION NO. (529-1984)

SETTING PUBLIC HEARING FOR
EXTENSION OF CLARKSTOWN
CONSOLIDATED WATER SUPPLY
DISTRICT TO INCLUDE DAVID
RILEY CONSTRUCTION, INC.)

Co. Holbrook offered the following resolution:

WHEREAS, a written Petition dated April 26, 1984 in due form and containing the required signatures has been presented to and filed with the Town Board of the Town of Clarkstown, Rockland County, New York for the Extension of the Clarkstown Consolidated Water Supply District (David Riley Construction, Inc.) in the said Town, to be bounded and described as follows:

(Description on File in Town Clerk's Office)

NOW, THEREFORE, be it

ORDERED, that a meeting of the Town Board of the said Town of Clarkstown shall be held at the Meeting Room of the Town Hall of the Town of Clarkstown, 10 Maple Avenue, New City, Rockland County, New York, in said Town of Clarkstown, on the 12th day of June, 1984, at 8:30 P.M. DST time to consider the said petition and to hear all persons interested in the subject thereof, concerning the same and for such other action as may be required by law or proper in the premises.

Seconded by Co. Carey

All voted Aye.

* * * * *

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RESOLUTION NO. (530-1984)

APPOINTING POSITION OF
TYPIST - PURCHASING DEPARTMENT
(ALICE ORTIZ)

Co. Holbrook offered the following resolution:

WHEREAS, the Rockland County Personnel Office has furnished Certification of Eligibles Typist CR-1 84-19, which contains the name of Alice Ortiz,

NOW, THEREFORE, be it

RESOLVED, that Alice Ortiz, 18 Windmill Lane, New City, New York, is hereby appointed to the position of Typist - Purchasing Department - at the current salary of \$9,300.00, effective May 21, 1984.

Seconded by Co. Carey

All voted Aye.

* * * * *

RESOLUTION NO. (531-1984)

RE-APPOINTING POSITION OF
TEMPORARY REAL PROPERTY
DATA COLLECTOR (TRAINEE) -
ASSESSOR'S OFFICE (THOMAS
ISENBEK)

Co. Holbrook offered the following resolution:

RESOLVED, that Thomas Isenbek, 23 Sunrise Drive, Stony Point, New York, is hereby re-appointed to the position of Temporary Real Property Data Collector (Trainee) - Assessor's Office - at the current salary of \$9,300.00, effective and retroactive to April 27, 1984 - for the period of time up to and including June 29, 1984.

Seconded by Co. Carey

All voted Aye.

* * * * *

RESOLUTION NO. (532-1984)

TRANSFERRING TOWN OF CLARKSTOWN'S
FUNDS FOR COMMUNITY DEVELOPMENT
PROJECT 9120-298 (1982) TO
COMMUNITY DEVELOPMENT ALLOCATION
FOR THE VILLAGE OF NYACK
PROJECT 9103-220

Co. Lettre offered the following resolution:

WHEREAS, the Town of Clarkstown had programmed \$5,600.00 in 1982 for Community Development Project 9120-298, and

WHEREAS, the Village of Nyack has programmed some of its 1982 Community Development funds for improvements at the same facility, and

WHEREAS, the intended purpose of this Project means the same, and

WHEREAS, it will be easier to facilitate the completion of the Project by the transferring of these funds to the Village of Nyack,

NOW, THEREFORE, be it

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RESOLUTION NO. (532-1984) Continued

RESOLVED, that \$5,600 be allocated to the Town of Clarkstown's 1982 Community Development Project 9120-298 be transferred to the 1982 Community Development allocation for the Village of Nyack Project 9103-220, and be it

FURTHER RESOLVED, that we request the approval of the Rockland County Community Development Office and Chairman of the Rockland County Legislature in order to expedite such transfer.

Seconded by Co. Maloney All voted Aye.

* * * * *

RESOLUTION NO. (533-1984)

SETTING PUBLIC HEARING ON PROPOSED AMENDMENT TO THE ZONING ORDINANCE OF THE TOWN OF CLARKSTOWN (AMEND R-160 ZONING DISTRICT, TABLE 18 GENERAL USE REGULATIONS, COLUMN 8, ITEM 9)

Co. Holbrook offered the following resolution:

WHEREAS, a comprehensive amendment to the Zoning Ordinance of the Town of Clarkstown was adopted on June 30, 1967, and further amended, and

WHEREAS, the Town Board of the Town of Clarkstown desires to further amend the said Zoning Ordinance;

NOW, THEREFORE, be it

RESOLVED, that a public hearing pursuant to Section 264 of the Town Law be had at the Auditorium of the Town Hall, 10 Maple Avenue, New City, New York, on the 26th day of June, 1984 at 8:15 P.M., to consider the adoption of the following proposed amendment to the Zoning Ordinance of the Town of Clarkstown:

Amend R-160 Zoning District, Table 18 General Use Regulations, Column 8, Item 9, to read as follows:

9. For residences, no more than fifty percent (50%) of any land under ponds or marshes in a natural state, or shown as within the hundred year flood line on the Flood Insurance Rate Maps or with rock outcrops greater than fifty (50) square feet, or with slopes over thirty percent (30%) or within a designated street line of any road shall be counted as part of any minimum lot area requirement of this district. For nonresidential uses, the same provisions shall apply except that slopes over twenty (20%) shall be used.

Seconded by Co. Carey

On roll call the vote was as follows:

Supervisor Dusanenko.....Abstain
Councilman Carey.....Yes
Councilman Holbrook.....Yes
Councilman Lettre.....Yes
Councilman Maloney.....Yes

* * * * *

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There being no one wishing to be heard and no further business to come before the Town Board Meeting, on motion of Councilman Carey, seconded by Supervisor Dusanenko, and unanimously adopted, the Town Board Meeting was declared closed, time: 12:52 A.M.

Respectfully submitted,



PATRICIA SHERIDAN,
Town Clerk

TOWN OF CLARKSTOWN
PUBLIC HEARING

Town Hall

5/8/84

8:45 P.M.

Present: Supervisor Dusanenko
Councilmen Carey, Holbrook, Lettre, Maloney
John Costa, Town Attorney
Patricia Sheridan, Town Clerk

RE: RENEWAL OF FRANCHISE AGREEMENT WITH TKR CABLE CO.

On motion of Councilman Maloney, seconded by Councilman Holbrook and unanimously adopted, the Public Hearing was declared open. Town Clerk read notice calling Public Hearing and testified as to proper posting and publication. Town Attorney said display ads indicating the public hearing to be held were published in the Rockland Journal News on April 30, 1984 and May 7, 1984.

Supervisor Dusanenko stated that TKR is requesting an extension of their franchise. This is a non-exclusive franchise which would permit other companies to apply if they so desire.

Town Attorney said that was correct. The law would not permit an exclusive franchise to be granted.

Supervisor Dusanenko asked how long a period of time was being requested in the asked for extension and Town Attorney said ten years. Supervisor Dusanenko asked if there had been any changes in price. Town Attorney stated that most of the prices are not subject to Town control other than the base price and there is no request for an increase according to Mr. Resnik, who is the attorney for TKR.

Councilman Holbrook said it was his understanding that this is a non-exclusive franchise and that we could grant others besides this. Supervisor Dusanenko said that was correct.

Town Clerk read the following letters at the request of Supervisor Dusanenko:

"64 Green Road
West Nyack, New York
April 30, 1984

Town Board of the Town of Clarkstown
Clarkstown Town Hall
10 Maple Avenue
New City, New York

Dear Sirs:

This letter is concerned with the proposed renewal of the cable franchise to TKR Cable Company by the Town of Clarkstown.

I (and my family) have been tax-paying residents of Clarkstown for over 28 years. We have subscribed to cable TV here to many, many months (starting with CATV).

When the TKR company assumed management, they eliminated channels which our family had enjoyed, including WGN from Chicago and WLIW (Ch. 21).

Also, about a year ago, I saw listings in the TKR program guide for CBN. When I called TKR Cable, the company told me that channel would be available to subscribers in the fall, when a needed part would be ready. However, when I called TKR when this channel still did not appear after a year of waiting, I was told that it would only be offered if enough subscribers asked for it.

I wrote a letter to TKR requesting this channel (CBN) as suggested by the office at TKR, but received no word in reply.

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"As of now, the big fad is rock movies. TKR offers one channel exclusively devoted to rock film. In addition, almost every television station (including the commercial networks as well as HBO and USA) offer many rock music specials. I realize that there is a large audience for rock music, but also there is another audience (probably larger) which is not interested at all in such presentations and which should have access to some choice in viewing.

I believe CBN would appeal to a substantial number of subscribers because of the movie and comedy tv shows it runs (including Jack Benny and Burns & Allen). This channel is available to its Westchester subscribers to TKR. WHY MUST ROCKLAND CITIZENS ALWAYS BE TREATED AS SECOND CLASS? I am sure no poll was taken in Westchester before CBN was made available there. HOW MUCH does TKR save for itself by depriving Rockland subscribers of this channel for which it has a channel available and which is not being used.

TKR has a monopoly for cable television in Rockland. It is very important therefore that it be responsive to the community in variety of programs offered as well as being reasonable in cost and giving good service.

I am looking forward to the Town Board of Clarkstown to protect the interest of its constituency when it takes up the renewal of the TKR Cable Company to supply cable television service to the Town of Clarkstown.

Truly yours,

/s/ Edwin R. Smith

Edwin R. Smith"

Supervisor Dusanenko requested that Mr. Resnik, after hearing the letter which will be entered into the record and after hearing other presentations, please jot down the complaints and comments so that they can be addressed in his summary statement. Mr. Resnik replied that he would prefer to save his comments for the summary statement after all comments have been made to the Town Board by the residents.

"15 Wesel Drive
Nanuet, New York 10954
Tel. 623-2677
April 5th, 1984

Supervisor & Members of
Clarkstown Town Council
Town Hall
Town of Clarkstown
10 Maple Avenue
New City, New York 10956

Dear Sirs:

I wish to communicate to the Town Council a problem with TKR Cable Company.

I am outreach director of the New York branch of Concerned United Birthparents, (CUB.), a non-profit, tax exempt organization, which supports adoption reform issues.

About a year ago, I called TKR to request a CUB video tape, which contained NO advertising, be aired on TKR's. access channel. I was told by the TKR staff person, that TKR did not air "public access"

programming. The reason the staff person gave for refusing my request was that the state Cable Commission had issued new regulations, which were (and my memory is not good on this point) being contested by the state Cable Television Association.

I respectfully request that the town council require that, pending the outcome of any court action, TKR provide the access channel mandated by the TKR franchise.

I request that this letter be read at the TKR franchise renewal hearings. I also request this letter be included in the hearings record.

/s/ Edward Branca, Jr.

EDWARD BRANCA, JR.

Carbon copy to Town Attorney."

"From: Mr. James Kohut
41 Pine View Road
West Nyack, NY 10994
Home: 358-7537 Work: 358-0065

"WARNED"

Well, I was warned by some of my friends that I would have problems with TKR Cable. But did I listen, no. I wanted Cable TV. So I called and made an appointment to have them hook me up. They said the service man would be here on Thursday, April 26th, anytime between 9 A.M. and 5 P.M. I told them I worked only 4 minutes from my home and asked if they could call me at my job when the service man was on his way, and I could meet him there. This way I wouldn't have to stay home all day and lose a day's pay. But they said they don't call anyone in this situation and couldn't make any exception. (So much for Customer Service) I then told them I would be working out in my yard during the day and asked if I had to stay by the phone for any reason, again they said no because they wouldn't be calling anyway.

So I took the day off and worked in my yard. At 11 A.M. I thought I'd better call to make sure they didn't forget me. The girl assured me they would be here today, before 5 P.M. I waited until 4:45 before I called them again. This time I was put on "hold". I hung on until 4:55, still no one came back on the line. I knew they closed at 5 P.M. so I hung up and drove to their offices. Here they told me they have been trying to "call me all afternoon". The service man claims "he was at my house and banging on the door, but no one answered". This is impossible since I was working right in front of that door for the last 7 hours. Also, I live on the end of a dead end street and can see anyone coming or leaving the area.

So, I end up with a day's aggravation, no cable TV, and worst of all I'm out a day's pay.

NEXT TIME I'M GOING TO LISTEN TO MY FRIENDS.

As a follow-up, on Tuesday, May 1st TKR called me at my job. Something they said they couldn't do. They asked me if I wanted to re-schedule my installation date or if I wanted my deposit back. I told them I wanted my money back because I couldn't afford to lose another day's pay.

/s/ James Kohut"

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Appearance: Dr. Frank Arone
Asst. Supt. of Clarkstown Schools

Dr. Arone said that the posture of the Clarkstown Schools has always been one of cooperation. He said that the school system had invested considerable resources and have made instructional television an integral part of the program of the Clarkstown schools. He stated that they had previously communicated with the Board with regard to the concerns that we have held. Dr. Arone stated that the audio visual equipment which TKR provided was poor. There were time delays which caused problems with programming. He said they addressed the failure of the cable company to install drops in each of the junior high schools. He stated they had attempted to communicate with the company without proper response. He requested that the Town Board demand accountability and also thought a shorter time period for the franchise was desirable. He said the quality of service to the young people in our area was the most important factor involved. Mr. Arone stated that there had been a recent meeting between school officials and officials of the cable company and that it had certainly been a meeting of cooperation. His hope was that the community would be well served and a franchise would come forth which would be of benefit to all.

Appearance: Mr. Joel Levy, Member
Clarkstown School Board

Mr. Levy referred to a previous letter sent to the Town Board dated April 3, 1984 and which he requested be a part of the record. He said that before this letter the school board was unable to get a response to their problems from the TKR management. He said that new management was in control and had met with them this past week. They are now talking about addressing the issues. He said his concern was that if you grant the franchise, which is up in June, and they have not done the deliverables, the line drops, etc. - the quality of the audio visual is not acceptable - what protection do we have in a community which tries to use TKR lines and its facilities. Over \$150,000.00 of equipment has been invested in the school district for the TV studio. Something like \$80,000.00 or \$90,000.00 has been budgeted for employees and supplies for the TV station this year. We would like to open that up to all of the classes and perhaps to all of the community. He stated that the new management seemed to be responsive and he had hopes that the problems would be solved before a new franchise is granted.

(The letter to which Mr. Levy referred is on file in the Town Clerk's Office.)

Appearance: Ms. Marian Marcinek
Representing Senator Linda Winikow

Ms. Marcinek read the following letter from Senator Winikow:

"May 8, 1984

Hon. Theodore Dusanenko, Supervisor,
and Hon. Members of the Town Board,
Town of Clarkstown, New York

You have before you the request of TKR Cable Company for a five year extension of its franchise agreement with the Town of Clarkstown. That agreement expires on June 26, 1984.

It is the Town of Clarkstown, through the franchise agreement, that has the greatest power to influence the quality of service by TKR. It is that agreement which provides the "rules of the game" under which TKR operates. It is the franchise agreement that can set the goals as well as the standards by which TKR is permitted to operate in Clarkstown.

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"In recent months TKR has made some improvements in its service. It has made a substantial investment in equipment and operations to remedy the serious defects of which we have all complained in the past.

Furthermore, TKR has made a major change in its management, replacing the previous general manager with a new person. However we may feel about TKR's past performance, I believe that we should allow the new manager a chance to show us what he can and will do.

Therefore, as a basic premise underlying the issue of franchise extension, I propose that no new agreement be signed at this time. I propose that the Town of Clarkstown formally ask the New York State Commission on Cable Television to grant TKR a 90-day Temporary Operating Authority, beginning on June 26 and ending on September 26, 1984. This 90-day period should provide sufficient time in which to judge the new management and to permit negotiation of certain changes to the franchise agreement for the benefit of the Town and its residents.

I have four specific recommendations to you for negotiations on the new agreement. I also strongly urge you to consult with the state Cable Commission staff and to review other franchise agreements that contain appropriate and desirable provisions.

The points that I believe should be included in the new franchise agreement are:

1. Completion of service to all areas of the Town of Clarkstown, at least in compliance with the state regulations of 35 homes per mile of aerial construction and of aid-in-construction by subscribers in accordance with the state formula for underground construction. This will assure all the people of Clarkstown of the availability of cable television service should they wish to subscribe.
2. Establishment of a security fund and a penalty clause that requires the company to provide Clarkstown with a \$5,000 escrow fund to be used by the municipality for assessment of fines and penalties against TKR for non-compliance with franchise provisions, standards of service, and remedial action in response to consumer complaints. This security fund and penalty clause is a feature of most cable TV franchise agreements and provides the most effective means of making sure that the company lives up to its agreement and promises.
3. Inclusion of an equity of rates provision guaranteeing that if the company provides any other municipality in Rockland with a rate for basic service lower than that in Clarkstown it must reduce the rate in Clarkstown to match the lowest rate in any other franchise.
4. The company should immediately provide an increase in staff and investment for public access programming. The minimum addition to equipment should be portable equipment and staff to operate it. In addition, the company should increase the number of hours of public access programming and establish complete connections with local educational television systems.

Careful review by you of other franchise agreements in New York State will, I am confident, provide you with many other worthwhile items to seek in the new franchise agreement. The four I have proposed are those which I believe to be most important.

The most critical point is to obtain the 90-day temporary authority so that you will have the opportunity both to evaluate the new manager and the performance of TKR under him and to properly negotiate on those items beneficial to the consumer which the franchise agreement should contain.

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"I want, also to clarify some information recently published in The Journal News. TKR was quoted as claiming that the most recent evaluation of its operations by the state cable commission resulted in outstanding marks. I have met with commission staff as recently as yesterday and been officially informed that the evaluation results are not yet complete and that the commission itself does not know TKR's grades. While it may be that TKR will get good marks, certainly TKR cannot accurately claim to have been judged as outstanding or better than any other system. In fact, TKR was told by the commission that the results were not available and cautioned not to make such statements. I hope that this is merely an instance of confused communication and is not indicative of what we will experience under the new manager's 90-day trial period.

LINDA WINIKOW
State Senator
38th S.D."

Appearance: Mr. Hy Shuster, Director
Clarkstown Central School
District Television Studio

Mr. Shuster said as the chief practitioner in that studio he was primarily concerned with one thing and that is the dissemination of information. Years ago tapes were made and just sat on a shelf and no one ever saw them. He did not want that process repeated. The Board has spent a great deal of money trying to get a channel to reach the community. We are not asking for production equipment because through the foresight of the Clarkstown School System we have it. He said his primary concern is the same as everyone else - that if a renewal franchise is granted for 10 years, what is the recourse if it does not work as promised. He felt it was unrealistic to think that the area could be opened up to another cable company. We would have to go along with TKR's renewal but they must be made accountable. We have been burned once and we must have some recourse if this franchise is renewed.

Appearance: Ms. Sue Adelstein
West Nyack, New York

Ms. Edelstein said she has been a subscriber to cable tv from the beginning. The service is a nightmare. Her reception is poor. There is absolutely no accountability and when you call the company you are put on hold for interminable periods of time. Mrs. Adelstein gave a memo to the Town Clerk listing her complaints which is on file in the Town Clerk's Office.

Appearance: Mr. Charles Donovan
New City, New York

Mr. Donovan stated that the cable company gives nothing, charges extra for everything and the cost is just too high.

Appearance: Mr. Vinod Kotecha
Sedge Road
Valley Cottage, New York 10989

Mr. Kotecha said he would request that the Town Board deny the request for a ten year contract. What is the real justification for such a long contract? Is there a minimum acceptable to TKR? He suggested that we contact Albany and obtain from them all the complaints from Clarkstown residents which have been forwarded up there.

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Appearance: Mr. Orin Goetz
New City, New York

Mr. Goetz stated that since the equipment from the phone company has been deregulated why shouldn't the TKR equipment be deregulated. If you can do your own wiring for your phone why not for TKR cable. Mr. Goetz gave detailed information. He also requested a period of time for review after the granting of the contract. He felt very strongly that there should be a clause for liquidated damages. What is the future for cable television - and he gave suggestions for this.

Appearance: Mr. John Lodico
Birch Drive
New City, New York

Mr. Lodico said now the popular thing is to knock TKR. The original contract was to serve all of the Town. He inquired as to whether the Town received a percentage of the profit. Supervisor Dusanenko said it was a percentage of the gross. He felt that cable should be tied into all public buildings by right and that the cables should be put under ground and no wires should be strung aboveground the way they have been doing. Their installers should be better trained so that this could be accomplished.

Supervisor Dusanenko read from a memo from Dr. Louis Alpert, Chairman of the Clarkstown Consumer Affairs Commission. He quoted the recommendations:

1. Equipment options.

The residential cable customers in Clarkstown should be permitted several equipment options including:

(a) The purchase of their own approved terminal equipment (i.e., control units).

(b) The purchase of their existing imbedded equipment currently being rented at a depreciated value.

(c) Continue to lease equipment as in the past.

2. Cabling options.

(a) Customers should be allowed to install and maintain their own cabling within their own premises and connection to the franchise cable system and authorize demarkation point.

(b) For existing cabling located within their own premises, customers should have the option to purchase such cabling from TKR.

(c) Continue to lease cabling as in the past.

3. Recommendation to benefit the business community in Clarkstown.

The cable TV company should, within one year, supply a comprehensive plan to businesses with enhanced state of the art communications services such as televideo conferencing, broadband communications and other related services. The above mentioned will induce industries to locate within the Town of Clarkstown since it is essential to many modern industries to have these facilities.

Respectfully submitted,

/a/ Louis Alpert

Louis Alpert, Chairman

LA:LB
Dated: May 3, 1984"

Mr. Resnik spoke again. He recalled the history of TKR in particular the assignment of the franchise hearing about a year or so ago. He said that the warranties made at that time have been fulfilled. He said that over \$6.6 million was invested in the Town of Clarkstown in the year ending 1983. He stated that over \$3 million is scheduled to be invested in the year 1984. He said that the complaints over the telephone answering have been markedly reduced. It will be reduced even further. A new system was ordered from AT & T which increased the number of lines 60%. It has not been completed yet but we have made the effort. He said that they had promised the Planning Board that they would try to work out an arrangement whereby the cable would be installed first. We found that this was not practical due to gardening, etc. The service we render is far more reliable when we come in later. He said they have provided a mechanism whereby there is an obligation within the development of the subdivision to install the full cable within one year after.

Supervisor Dusanenko said that prior to dedication of the final wearing cost so that we still don't have to scar road but at the same time where there has been some ownership established where you can get the permission of the owners to go to a hookup underground right up to someone's house. Mr. Resnik said that the information conveyed to him by technical staff that it just doesn't seem to work. He said it would be much cheaper for them to go in before the road cap is on but our experience is showing that it really isn't so because the local fellow going in to dig just doesn't know where our cable lines are and he cuts it. He said he did not want to get into the technical aspects of how, when and where cable should be laid. He said that TKR would be willing to sit down and work things out with our Planning Board and try again.

Mr. Resnik said, in short, what you have is a company that came in here and will effectively by the end of this year have invested \$34 million dollars with continued growth and continued improvement. He said that of the 24,000 subscribers in Rockland County more than 10,000 are in the Town of Clarkstown. He said he knew there were complaints and was sure they are justified but compared to what it was 15 months ago his client had complied and tried to keep its promises. It is not perfect but we never said it would be. We said it would be markedly better and it is.

In answering a letter from Mr. Smith, Mr. Resnik said that they are obliged under FCC regulations to carry certain stations. He said that a station called Trinity would carry the same type of programs as CBN and that they may be obliged to carry that station. We will find out as soon as possible about that. With respect to WGN and WLIW, WLIW is a public station. He said they are carrying four public broadcast stations and two spanish stations and they are meeting their public responsibilities in that respect. When we dropped LIW we had to because we had a must-carry. The same thing happened with WGN. We were able to hold on to Boston but WGN came out of Chicago. We had to let it go in order to pick up other stations.

Mr. Resnik said that the Board had received a letter from Mr. Ed Branca regarding televising of a particular tape. He said that is not what public access is for. It is not for the airing of every non-profit organization irrespective of the merits of their cause. It is there for access for the public, for government, for things being done in the public interest, etc.

Mr. Resnik said he did not feel he had to comment on complaints regarding the phone system. He knew that many people had complaints from time to time. We have taken whatever steps are possible for us to take to improve the situation. The new system is supposed to go on line on June 1st. There will be more phones and more operators. They are being hired and are being trained.

Mr. Resnik said with regard to comments made by Supt. Arone and Mr. Levy, as well as the comments made in writing by Mr. Shuster, I think a close examination of those comments and what was said makes them more fearsome in their volume than in their real complaint. When I became aware, the night of the Workshop Meeting that such a situation existed, that things were done that had not been done before. Mr. Resnik said he was available for any public organization at any time that thinks something should be done by TKR that is not being done. Any public organization can contact him but he will not be around for any private consumer as that is not his job.

Councilman Holbrook said the programs were made and then aired. The quality of the sound was dreadful. People would take time out to watch the program and you couldn't hear it. He said that that was the type of thing, before he would even consider or entertain the extension of a contract, that he wanted to see attended to. Mr. Resnik said he would let Mr. Joyce, the new manager, attend to that. He did not know what arrangements had been made. He said there is a meeting scheduled for the 17th of this month and an operating test to be done on the 18th of this month. There had been a difficulty in getting the parties together but not from TKR's end.

Mr. Resnik said that with respect to the junior high school, the drops are on order. It will cost TKR over \$3,000.00 to move into each of those junior high schools. This is not done easily or automatically. A cable company is very complex. It is not as simple as it seems. It is more than a signal coming back and forth and while we may fall down in one or two areas, again I emphasize the improvements we have made and the dollars we have spent have got to be a clear indication to the Board of our commitment to the municipality and to good cable service. Nobody invests that kind of money to worry about a couple of thousand dollars interfering with the right to get a return on that kind of capital.

Councilman Holbrook said that he has had comments on the great potential of Clarkstown and people cannot understand why the service is so bad. Mr. Resnik said they are in business to please people and that is the way to make money not to have people come in and say take your cable out. He said their aim is to be as reliable as the telephone company.

Mr. Resnik said with respect to Senator Winkow's statement he said that they are not prepared to accept a 90-day anything. We have invested millions of dollars in this community and we are not about to stand by and be treated like little boys being tested. If we have done something wrong the Town Board has authority it can use. New York State Cable Commission has authority it can use. The FCC has authority it can use. They know how to do it. They've done it before. They have not come down on us. We have \$100,000.00 sitting up in the New York State Cable Commission. They have not attempted to take a dime of it. The reason it is sitting up there is because weather prevented us from completing the Ramapo extension. That money sits there as a guarantee not to be released until then. He said they had posted a \$50,000.00 bond to guarantee performance. He stated that a check had been delivered to this Town in the amount of \$111,000.00 as a franchise fee. You don't treat someone who does that kind of work like a little boy and say we'll try you out for 90 days. He said give back the \$111,000.00 and we'll talk. Waive your franchise fee - give up that money and maybe we'll have something to negotiate.

Mr. Resnik said that he has said to this Board and to every other municipality that they have appeared in we grant to each municipality a most favored municipality clause. Whatever is in any agreement in any municipality in Rockland County that may appear to be

more favorable to one municipality, we grant to the other. That includes rates. It is in the existing one and it is in the proposed one. Mr. Resnik said that Clarkstown has been completed.

Councilman Lettre said that he knows of an area where the line has been in the ground for over a year but the homes have not yet been hooked up. He was answered that you must continue the underground run from the pedestal which is in the right-of-way to the home. You cannot dig frozen ground. Mr. Resnik said the energizer trunk is there.

Supervisor Dusanenko said that everyone in Clarkstown who wants cable has it? That is not the case as Mr. Resnik previously stated. What is the case is that the cable is in the streets in many areas but not hooked up until the spring thaws. Supervisor Dusanenko said there are a few people who, because they live so far from a public street, must bear the installation because TKR will provide installation only up to 150 feet. Therefore, everyone who wants it does not have it.

Mr. Resnik said what he refers to is energized trunk line. We have completed the installation of the energized trunk line within the streets even though the direct hook up may not have yet taken place.

Supervisor Dusanenko said that most people who want it have it but there are other constrictions such as subdivisions where builder and/or residents will not allow you to go in because they are not dedicated yet.

Councilman Lettre said that the particular one to which he referred was done early in the spring last year and he found it hard to believe that these homes could not be hooked up. The area is Dellwood Drive in New City.

Mr. Resnik said there are limits to how much can be done in a short time. If the houses to which you are referring had been connected then probably there would have been some in other areas that were not. He stated that this was a company with substantial capital but not unlimited capital. We do not have an unlimited work force and we had to make choices. Things must be budgeted and planned and developed on a schedule. There are energized truck lines throughout the Town and it may take time to go to each individual house.

Councilman Lettre said that when they appeared a year and half ago the inference was made that any individual home that wanted service would be able to obtain it. Mr. Resnik said he did not know how far off he was from that statement but most people who wanted cable have it now. Supervisor Dusanenko said that there are restraints prohibiting the company from making some hook-ups which Mr. Resnik had previously mentioned.

Mr. Resnik said that as far as the Consumer Protection's recommendations are concerned if the Board will examine them briefly they will find that those items are available but through the telephone company. Mr. Resnik gave an explanation regarding computers and television screens through use of telephone lines in a digital set-up. He was not prepared to discuss anything regarding state of the art because it is so new.

Supervisor Dusanenko asked what percentage of the system had to be replaced within the last calendar year? A major portion of the system had to be completely replaced but accurate figures were not available. Supervisor Dusanenko asked how much of the money budgeted for 1984 was for repair, maintenance, etc., and how much was available for hook-ups. Mr. Resnik said that kind of breakdown was not available.

Supervisor Dusanenko stated that the company should notify by signal on the cable station the numbers to be called when there is a complaint after TKR has been notified. One is the New York State Cable Commission and the other is the Chief Executive Officer of whatever town or village they have a franchise in. Councilman Carey said that the supervisor should not be a trouble shooter for TKR. Mr. Resnik said he agreed with that and it should not be. Supervisor Dusanenko said that he can't solve a problem unless he is aware of it.

Supervisor Dusanenko also stated that he had requested that there be a data compiling service at the TKR office, possibly through the use of computers, so that complaints, suggestions, etc. are recorded and are available as a back-up. Unless this information is collected somewhere these problems cannot be solved.

Councilman Carey asked Mr. Resnik how much revenue the Town will derive and how is it calculated. Mr. Resnik said it is calculated on 5% of the gross receipts of the company from users. Are those rates predicated on the basic service which is \$6.95 a month or on -- Mr. Resnik said it is predicated on gross revenue not basic service rates.

Town Attorney requested that the language in the proposed contract be clarified. Mr. Resnik said he some things to be worked out with Mr. Costa and that was one of them. Another thing was the interface with another cable company about which Mr. Costa was concerned. He said he had been notified by the FCC that they would not allow it. We will still have to send it up, if the agreement is approved, and allow them to reject it and then modify the agreement all over again. Town Attorney asked if the paragraph referring to the basic service payment to the town would be modified? Mr. Resnik said that was correct.

Councilman Carey asked what the basic anticipated revenue was for 1984 for the Town. Mr. Resnik said he hoped it would not be less than in the past and hopefully it would be more.

Councilman Carey stated that TKR was asking for a 10 year contract and was that the maximum allowed by law. Mr. Resnik said that was correct. Councilman Carey asked what the minimum allowance was and Mr. Resnik said that he had no idea.

There being no one further wishing to be heard, on motion of Councilman Carey, Seconded by Councilman Holbrook and unanimously adopted, the Public Hearing was closed, DECISION RESERVED, time: 10:05 P.M.

(PLEASE NOTE: COUNCILMAN LETTRE WAS NOT PRESENT FOR THIS VOTE.)

TOWN OF CLARKSTOWN
PUBLIC HEARING

Town Hall

5/8/84

10:05 P.M.

Present: Supervisor Dusanenko
Councilmen Carey, Holbrook, Lettre, Maloney
John Costa, Town Attorney
Patricia Sheridan, Town Clerk

RE: AMENDMENT TO OFFICIAL MAP - TRAM QUILL ASSOCIATES (Continuation of Meeting begun on March 13, 1984)

On motion of Councilman Maloney, seconded by Councilman Holbrook and unanimously adopted, the Public Hearing was declared open and continued from March 13, 1984. (Councilman Lettre was not present for the vote at this time.) Town Attorney said the applicant was to provide an additional affidavit of mailing of notices. Town Attorney called upon the attorney for the applicant to give a brief explanation of the matter.

At this point a five minute recess was called to give Councilman Lettre a chance to return for this hearing.

Mr. Costa said that at the last hearing an affidavit had been presented to the effect that the hearing had been noticed for public hearing in the Journal News.

Mr. Costa read the following:

(Letterhead of Town of Clarkstown Planning Board)

"February 15, 1984

The Honorable Town Board
Town of Clarkstown
10 Maple Avenue
New City, New York 10956

Gentlemen: TOWN BOARD REFERRAL: PROPOSED AMENDMENT TO THE OFFICIAL MAP TO DELETE A PORTION OF GREEN AVENUE AND REALIGN SUCH AVENUE IN A CUL-DE-SAC ON THE PREMISES OF SD 109A1.02+ TRANQUILL ASSOC., VALLEY COTTAGE.

At the Planning Board meeting of February 8, 1984 Member Cunningham made a motion which was seconded by Centra and carried 6:0 with Aves of Smith, Yacvshyn, Nowicki and Paris, approving the following...

RECOMMENDATION TO THE HONORABLE TOWN BOARD: The PB has reviewed this request for relief under Sections 273 or 279 by the Town Board and taking into account recently approved subdivision for industrial uses, availability of proposed industrial roads; existing residential uses and existing condition of Green Avenue, the PB recommends that the Town Board NOT grant the requested relief.

Since this subject was first reviewed the adjoining parcel, Associates of R.C. was granted Preliminary subdivision approval for industrial development with proposed connections to the Brega property and to the proposed road as on the Official Map, for the Food Emporium connection. This enables the entire area to be developed for industrial uses, and would not diminish the industrial land bank for the Town. The Town Board had originally disapproved the zone change request when the matter came to the Town for change to residential uses. As pointed out by the PB at that time existing Green Avenue has some 65-70 homes on it, far in excess of that allowable under the SD Regulations of the Town:

Green Avenue is not wide enough, and from a planning point of view adding 10 additional homes would exacerbate an already bad condition. At this time there is a definite possibility that this parcel can be developed for industrial uses using the proposed road connections.

If the Town Board sees fit to grant the requested relief, the Planning Board respectfully requests that the Town Board secure an analysis of the legal ramifications of the easement and whether or not easement can be legally dedicated to the Town.

Very truly yours,

/s/ Richard J. Paris

Richard J. Paris,
Chairman

cc: Town Attorney
Town Clerk"

* * * * *

(Letterhead of Peter Brega, Inc.)

May 1, 1984

Subject: Hearing - May 8, 1984
Re: Tramquill Associates

Honorable Town Board
Patricia Sheridan

I would like you to record this letter into the minutes on the subject above, as I will not be in town. I am going on a vacation.

The story is the same as all the other hearings that I attended in regard to the parcel and the others that join it.

My name is Pete - and I quoted to all the Board as Pete, Pete, and repeat.

I know that the Honorable Board is trying to solve the drainage problem, and I hope and pray that it will come to a final decision.

It seems to me that our streams in the town of Clarkstown are behind progress in widening and dredging and this causes flooding. I had up to 4½ feet of water in the last flooding season because of more roads and faster run-off of the water, and, of course, I am referring to the Kill Von Beaste River from the Railroad West to Lake DeForest Reservoir. My land is 35 feet higher than the reservoir, and I have 4 feet of water, as stated above.

I also feel that from Route 303 West should be left in L10 until a road would be made and progress continues. The Tramquill Associates should have patience and pay taxes like I did for the last 25 years, and see what progress will take place for the best of our community.

/s/ Peter Brega

Peter Brega"

* * * * *

Town Attorney, in response to a question from Supervisor Dusanenko, stated that the Rockland County Planning Board, had approved subject to local recommendations.

Mr. Donald Tracy, attorney for the applicant, appeared and presented affidavits of notice of posting and certified mail receipts all submitted in contradiction of Section 106.32(C).

Mr. Tracy said Tram Quill Associates originally requested a zone change from L10 to R-15. Hearing was held before the Planning Board on July 29, 1981 and the matter was referred to the Town Board. The recommendation from the Planning Board is germane only from the point of view of showing that planning is not an exact science and the letter which was furnished to this hearing by the Chairman of the Planning Board isn't quite accurate. The recommendation of the Planning Board was to recommend approval of the zone change. It did not carry because it was a recommendation for approval by a three to two vote. Mr. Tracy quoted from a letter from the Planning Board dated August 6, 1981 which said "The Planning Board has examined the above petition in relation to the surrounding area, the topography, the Master Plan Update and the statutory requirements, and finds that the petition should be Granted with the following modification: a) the principal development problem on this parcel concerns the closeness to the water table, increased runoff and possible disturbance of the stream; all drainage problems to be resolved in accordance with recommendations of the Department of E.C. and b) the Town Board has approved an industrial road to the 100+ acres of property to the north: some provision is to be made to allow for this proposed road, in that the property be set aside for such use by offer of conveyance, in the understanding that it will be built by others." (Mr. Tracy said that he would like to point out that the industrial road is the subject of a petition which will be heard on May 22nd. He said it was his humble opinion that the industrial road will never be built.) The letter went on to say "It is further recommended that in the event the Town Board determines that zone change should be granted that consideration be given to Green Avenue being a cul-de-sac with no possible future access to Rt. 303."

Mr. Tracy said that was the plan that was submitted to this Town Board tonight and he would indicate just why we are here. That was the recommendation from three years ago that I just read. The recommendation you heard tonight was a 6 to 0 against resolution. The Town Board reserved its decision until a determination concerning easement rights which you also heard the Planning Board - after much effort on our part to try to educate them as to just what these easement rights really consist of and a presentation to be made to you tonight by Jeffrey McCall as to what these easement rights are and whose they are - that matter will be cleared up later. However, Mr. McCall will testify as to acquisition of rights which will permit the dedication of Green Avenue to the municipality. After the Town Board denied the zone change it was determined to make an application to the ZBA with a request for alternate relief. We requested that they permit us to develop in an L10 zone and vary the requirements of the zoning ordinance which prohibits us from entering an L10 use off of a non-major or secondary road. In other words the site zoned L10 has no access.

The alternate to that proposed to the ZBA was that in the event they did not wish to give the variance for a commercial use the ZBA give a use variance to permit the residential use on the grounds of hardship in view of the fact that the applicant's property was totally sterilized and not usable. The ZBA, after a public hearing, determined that they would grant the use variance it being their judgment that the

property was more appropriately to be used for single family residences rather than L10 use. Mr. Tracy said at that meeting that various exhibits were submitted to mitigate against the claim that the variance would be contrary to the public health, safety and welfare. Letters in that vein were received from the Police Department, Fire Department and Ambulance Department - saying that they could service a 10 lot subdivision. On August 15, 1983 we filed a petition that we come before you on tonight. The reason we came before you is that when the ZBA granted our use variance and permitted us to build ten lots they incorporated these provisions of the Planning Board's recommendation which was affirmative but a non-carrying recommendation that we cul-de-sac Green Avenue and that we realign Green Avenue.

Supervisor Dusanenko asked if the ZBA did what the Planning Board recommended to make it a cul-de-sac? Mr. Tracy said "No" - we submitted to the ZBA a plan showing what the Planning Board recommended and the ZBA approved that plan.

Mr. Tracy said that they come before you tonight in possession of a use variance which would permit construction of 10 residential lots on Green Avenue. We want to build them a certain way and we want to relocate Green Avenue and cul-de-sac it to prevent the incursion of industrial traffic through to Green Avenue. We can build 10 houses without relocating the road and Mr. Atzl will be called upon to verify that. Basically all that we are here before this Board at the present time is for an amendment to the Official Map which would slide Green Avenue over into a more proper alignment and would cul-de-sac it. This would prevent any future incursion of industrial traffic from the property on the hundred acres of Rockland Associates or anyone else who might want to connect in there from coming out that way in the future. A question has been raised about whether or not we can dedicate this extension of Green Avenue to the municipality. Mr. Tracy said he will submit as his first witness a land title expert who will demonstrate to this Board that not only can you dedicate it but we have superior rights to the Town of Clarkstown who took dedication in ignorance of an agreement which had been entered into between the parties prior to the taking of that dedication.

Mr. Tracy said he wanted to explain what happens if the Board should say they turn us down. If that is the intention of the Board and the Planning Board refuses to permit us a subdivision which we would build without realigning Green Avenue the ten lot subdivision then our property has been effectively confiscated and Mr. Tracy said he would respectfully submit that the doctrine of inverse condemnation would apply. What we are asking for is to build ten houses, five on each side of the street - granted there are already seventy or sixty as the Planning Board has said on that street but if the Planning Board has already seen fit to allow that many on to the street and the Police Department, Fire Department and other municipal agencies say they have no problem servicing them then I respectfully submit that we are entitled to some consideration on this matter and with that short preface he said he would introduce --

Supervisor Dusanenko said that in the event the Town grants this request then ten more homes would be built on the extension of Green Avenue to end in a cul-de-sac not tying up with Rockland Associates property because it would be a cul-de-sac to make the road impossible -- Mr. Tracy said that was correct. He also said the preliminary approval of Associates of Rockland property does not show the road tying into their property.

Supervisor Dusanenko said if the Town Board denies this request what will the consequences be? Mr. Tracy said they would then go to the Planning Board to build ten houses without realigning Green Avenue showing Green Avenue as a through street into the industrial area and laying out the ten houses in accordance with the way the street presently is. Supervisor Dusanenko said it would not end in a cul-de-sac but would go up to the abutting Rockland Associates property? Mr. Tracy said that is correct

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assuming the approval of the Clarkstown Planning Board. This must still go back from this Board to the Clarkstown Planning Board. Supervisor Dusanenko stated that our decision is not as crucial if we approve - then you start - you do not have to go back to the Planning Board - is that correct? Mr. Tracy said "No, we have to go back to the Planning Board anyway." Supervisor Dusanenko said "If we deny you still have to go back to the Planning Board?" Mr. Tracy said that was correct - either way, they still have to go back to the Planning Board. He said they are coming to this Board since last year to make a better alignment of Green Avenue and to carry out the positive recommendation of the Planning Board made at the time of the zone change application.

Supervisor Dusanenko said does the ZBA want this to end in a cul-de-sac and not tie into an industrial parcel. Mr. Tracy said that is correct. Supervisor Dusanenko said the Planning Board wants to make it a through street tying into the industrial? Mr. Tracy said "No." The Planning Board wants to leave it industrial and tie it into a road that will never be built. Councilman Holbrook asked what the vote was on the ZBA in terms of for or against? Mr. Tracy said he thought it was unanimous but he would have to check it out. He said he would be surprised if Mr. Niehaus voted for it but he would look into it. After checking, Mr. Tracy said the vote was five to one in favor.

Mr. Tracy said he thought the Board now knew why they were here. He stated that they were asking the Board to amend the Official Map to slide over Green Avenue and cul-de-sac it. He said they were not asking them to approve a subdivision, we are not asking you to approve ten lots and we are not asking you to disapprove ten lots. We are before you because the ZBA in their resolution told us to come before you to do this. In response to a question from Councilman Lettre, Mr. Tracy said this does not change the total lot count. Mr. Tracy said it makes for a nicer lay out and it permits a cul-de-sac at the end of Green Avenue. It realigns it with the existing Green Avenue. Mr. Atzl will explain that.

Mr. Tracy said that first he would like to call upon Mr. Jeffrey McCall.

Mr. McCall was sworn in by the Town Attorney.

Mr. Jeffrey McCall
McCall Abstract Corp.
56 Maple Avenue
New City, New York 10956

(At this time Mr. Tracy was handing out a scenario which Mr. McCall had prepared. Mr. Tracy noted that he thought the Town Attorney would be interested in this and the Town Councilmen might be able to understand.) THIS PRESENTATION IS ON FILE IN THE TOWN CLERK'S OFFICE AND IS A PART OF THE FILE.) Mr. McCall read the following letter:

(Letterhead of McCall Abstract Corp.)

"April 6th, 1984

The Honorable Town Board of the
Town of Clarkstown
10 Maple Avenue, New City, N.Y. 10956

Re: Tram Quill Associates, Inc.
Green Avenue, Valley Cottage, N.Y.

Dear Chairperson, Ladies and Gentlemen of the Town Board,

I have been requested by Donald S. Tracy, Esq., of Tracy & Werner, Esqs. to issue my expert opinion as concerns the status of Green Avenue as the same runs northerly from the northerly terminus of said avenue as dedicated to the Town of Clarkstown in Liber 985 of Deeds at Page 114 to the southerly

line of lands now or formerly of Associates of Rockland (the 50 acre P.E.D. parcel to the north of the Tram Quill proposed subdivision.) The following sequence of conveyances/events/filings accurately reflect the status of Green Avenue.

1. Henry Hess conveys to Alastair D. Jeffrey by the deed in Liber 665 cp 424 the bed of Green Avenue Extension (being the southerly terminus of same as depicted upon the filed map of Green Acres northerly to lands of Huffman (now Associates of Rockland) and a branch road also known as Green Avenue Extension (being the westerly extension of Green Avenue running to lands now of Peter Brega).
2. Henry Hess reconveys to Alastair D. Jeffrey by the deed in Liber 770 cp 625 the bed of Green Avenue (only as the same is within the filed map of Green Acres), this time by a formal metes and bounds description.
3. Alastair D. Jeffrey conveys to Aldo Homes, Inc. (Jeffrey being the president of said corporation) the bed of Green Avenue within the filed map of Green Acres - the same lands described in Item #2 above (Liber 770 cp 625) by the deed in Liber 770 cp 627.
4. Aldo Homes, Inc. conveys to Amos Construction Corp. in Liber 770 cp 630 land that becomes Lots A1, A2, A3, A4, the westerly semi-circle of Green Avenue cul-de-sac and the bed of Green Avenue as the same appears on the filed map of Green Acres.
5. Amos Construction Corp. conveys to Alastair D. Jeffrey in Liber 810 cp 893 a right-of-way and easement for ingress, egress and the further right to construct a road thereon, provided said road is constructed in accordance with and under the supervision of the proper municipal authorities. The right-of-way, easement and right to construct said road is upon the bed of Green Avenue as the same runs through the Green Acres filed map and also through lands of Bertoldi (Lot A1) and Taicner (Lot B1).
6. On July 3rd, 1967 the map of Green Acres is filed in the Rockland County Clerk's Office in Book 73 of Maps at Page 33 as Map No. 3587. Green Avenue is shown (proposed extension) and Green Avenue as referred to in the prior instruments above is also labeled as "50' Easement Mentioned in Old Deeds". The map also states an irrevocable offer of dedication of all streets, easements, parks & required utilities as shown on the within subdivision plat & construction plans.
7. Amos Construction Corp. conveys to Bertoldi Lot 1 in Block A on the map of Green Acres in Liber 833 cp 760.
8. Amos Construction Corp. conveys to Taicner Lot 1 in Block B on the map of Green Acres in Liber 835 cp 34.
9. Alastair D. Jeffrey dies in 1971.
10. Amos Construction Corp. conveys to the Town of Clarkstown the bed of Green Avenue as the same appears on the map of Green Acres, Map No. 3587 in Liber 965 cp 114.
11. John M. Jeffrey, as executor of the Last Will and Testament of Alastair Douglas Jeffrey, deceased conveys to Jeffrey L. McCall in Liber 12 of Land Records at Page 2542 the bed of Green Avenue lying north of Bertoldi running northerly to Associates of Rockland (formerly Huffman) and those rights acquired by Alastair D. Jeffrey from Amos Construction Corp. as concerns construction and dedication of a road over the lands of Bertoldi and Taicner, their lands being the remaining lands subject to the right of said road construction and dedication as created in Liber 810 cp 893-SEE ITEM #5 ABOVE.

"12. Jeffrey L. McCall conveys to Tram Quill Associates, Inc. in Liber 12 of Land Records at Page 2550 the bed of Green Avenue and the right of road construction and dedication as set forth above as Item #11.

The above accurately, in my opinion, sets forth the sequence of effects that affect Green Avenue, and rights therein. From the above the following determinations have been made.

a. Alastair D. Jeffrey had fee simple ownership of Green Avenue from the north line of lands of Bertoldi to the south line of lands of Associates of Rockland by virtue of the deed in Liber 665 cp 424. Thereafter, said fee simple ownership passed to Alastair D. Jeffrey's executor upon his death (Item #9) was thereafter conveyed to Jeffrey L. McCall (Item #11) and thereafter conveyed to Tram Quill Associates, Inc. (Item #12).

b. As concerns the bed of Green Avenue as labeled "50' Easement Mentioned in Old Deeds" upon the filed map of Green Acres which are now parts of Lot 1 in Block A (Bertoldi) and Lot 1 in Block B (Taicner) same is subject to the rights of construction, dedication and ingress and egress as set forth in Liber 810 cp 893 (Item #5). Bertoldi and Taicner became the successors (assigns) of Amos Construction Corp. and Tram Quill Associates, Inc. became the successors (assigns) of Alastair D. Jeffrey as concerns the agreement in Liber 810 cp 893.

c. The deed of dedication in Liber 965 cp 114 DOES NOT CONTAIN the signature of Alastair D. Jeffrey. The Agreement in Liber 810 cp 893 provides that upon construction of a road that they will join in a deed of dedication to the proper municipal authorities. This condition was not met by said deed therefore Tram Quill Associates would have an outstanding interest in Green Avenue since the Agreement in Liber 810 cp 893 IS PRIOR IN TIME to the offer of dedication or the filing of the Green Avenue map.

In closing, to dedicate the new Green Avenue Extension through the lands of Bertoldi, Taicner and Tram Quill Associates, Inc. all of the immediately named parties would have to execute and deliver a deed of dedication to the Town of Clarkstown and therefore finalize all lands affected by the agreement in Liber 810 cp 893. Enclosed herewith please find copies of all deeds set forth above and a portion of Green Acres filed map to aid in the review of the above.

Respectfully submitted,

/s/ Jeffrey L. McCall

Jeffrey L. McCall
President

JLM/z
Enc."

Mr. Tracy asked Mr. McCall if this meant that they had the absolute right to dedicate Green Avenue including those portions of the land of Bertoldi, the lands of Taicner to the municipality if required to do so? Mr. McCall said yes, because the agreement is superior in time to the Green Acre map, superior in time to Bertoldi's acquisition of land and also superior in time to Taicner's acquisition of land. Also superior in time to the Town of Clarkstown's deeds for Green Avenue on that map.

Mr. Tracy said that just as an aside would Mr. McCall be glad to say that his company did not insure the title of those aforementioned individuals for that property. Mr. McCall said yes, because there would be a claim at this point.

Supervisor Dusanenko asked Mr. McCall if his company had insured the deed to the subdivision to the south. Mr. McCall said that State Abstract had done that. Supervisor Dusanenko said that he was not questioning the report that Mr. McCall had given under oath here indicating all

these transfers of deeds, ownerships, etc. but from what he understood, Mr. McCall may or may not have information to this effect - in the case of the subdivision built to the south which was referred to as Green Acres - that was built on one third acre subdivision, is that correct? Mr. McCall said he believed that to be so. Supervisor Dusanenko said he thinks that Mrs. Bertoldi's lot which abuts your property and Mr. Brega's ... may in one corner ... (There was reference to maps at this point.) Supervisor Dusanenko stated that Mrs. Bertoldi has way more than one third acre. He said he believed that Mr. Taicner does not have one third acre without this piece. Mr. McCall said that was correct. Supervisor Dusanenko said to Mr. McCall "Therefore, how could somebody, not yourself, sell him a lot that had to have a minimum of 15,000 square feet when part of this 15,000 square feet was in a road bed?" Mr. McCall said that he could only make the presumption that the land area within the right-of-way, because Green Avenue in effect was superceded by cul-de-sac in this manner, achieved enough area to add to that lot so that he would get that additional lot. Otherwise he would be undersized.

Councilman Holbrook asked Mr. McCall if he were stating that the house is now nonconforming? Mr. McCall said it would be if that land area is deleted upon dedication. Supervisor Dusanenko said that if what Mr. McCall said is correct, and he had no reason to doubt that it was, that land is not Mr. Taicner's and that land will be dedicated to the Town regardless of what decision is made here then Mr. Taicner's lot is a non-conforming lot because it has less than 15,000 square feet because of somebody's boo-boo in the past - who we don't know.

Mr. McCall further stated that the agreement in Liber 810 893 is basically an agreement that laid in the records and really wasn't given any consequence. When we started getting into the property and we looked at titles, Mr. McCall said that he communicated with the executor of Mr. Jeffrey and Mr. McCall went up to Massachusetts one night and got a deed for those rights (there is a copy in the presentation) and he immediately transferred into the corporation - Tram Quill Associates - that is superior to the rights of the Town of Clarkstown, it is superior to this map because it is prior in time.

Supervisor Dusanenko stated that (referring to a map in hand) this map was filed in July of 1967. When was it built, do you have any idea? (this directed to Mr. McCall). Mr. McCall said that if you take a look at the deeds in Taicner and Bertoldi you will have the dates of their conveyances. Supervisor said that this map was approved in 1967 and the homes were built in 1967. Mr. McCall said then he immediately developed it.

Town Attorney John Costa asked Mr. McCall if he had an opportunity to discuss his findings with someone from State Abstract and the title insurance company which issued the policy on Green Avenue and also insured the fee into Bertoldi and Taicner. Mr. McCall said he had not. Mr. McCall said that he had copies of Bertoldi's and Taicner's fee policies which were issued when they bought the property and no mention is made of that agreement in Liber 810 893 so that was superceded. Mr. Tracy said that he had reason to discuss this situation with the attorney who formerly represented one of the parties who said when he saw the papers and reviewed them he almost dropped dead. Supervisor Dusanenko said this might be considered an omission by whoever had the title insurance. Mr. McCall said it was missed, the agreement was hopped. It wasn't given the consequence and the weight it should have especially when the deed was given to the Town of Clarkstown. Supervisor Dusanenko stated that it was taken lightly. Mr. McCall said it was disregarded totally. It also wasn't set forth in the Bertoldi or Taicner title policies. If that was in their policies they would have known all this time that they are subject to this dedication agreement because they are now Amos Construction Corp. because they are their assigns. If you look at that 810 893 it does say their successors and assigns. Tram Quill is now the assigns of Jeffrey and

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Taicner and Bertoldi are now the assigns of Amos Construction Corp. so they are obligated under that agreement because it followed down in title to them. They are now the owners of the property affected by the agreement.

Town Attorney John Costa said but at this time we would not be able to say whether or not the title insurance company would undertake to defend the Town's interest and/or the interests of the assured. We don't know whether they indicated they would defend or they would pay the claim. Mr. Tracy said he didn't think there was any problem with the Town's interests. He said he did not think the Town should be concerned with the assured's interests. Mr. Costa said he didn't say that it was but he wanted to know for the record if the defect has been acknowledged by the company that has insured the title. Mr. Tracy said that the attorney who represented them was also a member of that abstract company at the time and had an interest in the abstract company at that time. Mr. Costa asked if his name was available for the record and Mr. Tracy replied "No." Mr. Costa said "It is not?"

Councilman Carey said is it because his name is not known or because you prefer not to -- Mr. Tracy said it was not really relevant. Supervisor Dusanenko asked if there were any more questions for Mr. McCall. There were none.

Supervisor Dusanenko called upon Mr. Atzl.

Town Attorney swore in Mr. Atzl.

Mr. Tracy asked Mr. Atzl if he would briefly explain the ramifications of the realignment of Green Avenue vis-a-vis would could be built if they don't realign it and how it would be built if it is realigned.

Mr. Atzl referred to two maps which he had in his possession. The one which was approved by the ZBA or has the ZBA modifications on it which he presented to the Supervisor. There was discussion regarding the maps - about the ten lots and Green Avenue and the pros and cons of deleting or not deleting.

Mr. Tracy asked Mr. Atzl if he also represented Associates of Rockland in your capacity as a land planner, surveyor and engineer. Mr. Atzl said he did. Mr. Tracy asked him if he was aware that Associates of Rockland had preliminary approval of the Planning Board. Mr. Atzl said of an LIO subdivision. Mr. Tracy asked if the preliminary approval of the Planning Board in any way hooked up a road from Associates of Rockland to Tram Quill's property. Mr. Atzl said it did not. Mr. Tracy asked if there was any other way, other than Green Avenue, for Tram Quill Associates property to have access. Mr. Atzl said there is no other way. Mr. Tracy said he had no further questions.

Mr. Tracy said that was the extent of his presentation reserving his right of rebuttal which he said would be sparingly used.

Supervisor Dusanenko asked if they could now hear from the people directly affected by this.

Appearance: Mr. Ted Taicner
756 Green Avenue
Valley Cottage, New York

Mr. Taicner read the following letter:

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(Letterhead of Association for Sensible Zoning)

"March 11, 1984

Honorable Town Board
Town of Clarkstown
Town Hall
10 Maple Avenue
New City, New York 10956

Re: Tramquill Associates, Valley Cottage

Gentlemen:

We recommend that you deny Tramquill Associates' request to realign Green Avenue (SD 109A1.02). (We understand that approving their request would permit the erection of 10 or more houses along an extension of Green Avenue.)

Our recommendation to deny is based on the following reasons:

1. Building homes on the Tramquill property, which is zoned for light industry, would effectively constitute a zone change. The honorable Town Board previously denied a residential zone change for this parcel.
2. Extending Green Avenue with more houses would cause safety and emergency service problems. It is our understanding that, for safety purposes, having 60 or more houses on a dead end is contrary to Town subdivision regulations.
3. On February 8, 1984, the Town Planning Board recommended denial of Tramquill's request by a 6-0 vote. Their recommendation is on record.

It would be better for the Town to preserve the property for light industrial use:

1. The Town Board has consistently advanced the goal of preserving industrial land and bringing more industry into Clarkstown. You have been for increasing industrial rates and providing employment for local residents.
2. If the property were used industrially, access to Route 303 could be provided through the industrially zoned Associates of Rockland Property or through the approved Town road (60' Food Emporium right of way) planned near the Lake Ridge Shopping Center Property. During a recent public meeting at Town Hall, representatives of the State Department of Transportation agreed to consider a traffic light for the Lake Ridge road where it will intersect with Route 303.

Again, we respectfully request that you deny Tramquill's request.

Sincerely,

/s/ James E. Hershberger

James E. Hershberger
President"

Mr. Taicner said that Tram Quill bought this property knowing full well that it was for LIO use. They figured they would put a few houses on it for a little money but they bought it knowing it was LIO and that was their investment. They can get in through two different ways: the north end and they can get in from Route 303. He stated that in two

Continued on Next Page

weeks Mr. Tracy wants to close off the 60' right of way. How can the people get into the back lots there. He said there was a man sworn in here stating there was no way to get into that property. The Planning Board mentioned that he could get in there. The Sensible Zoning stated that he could get in two ways and here is a man sworn in denying it. Mr. Taicner said he just could not understand that.

Mr. Taicner said he did not know where Mr. Jeffrey came from. Three years has elapsed since 1981. Why wasn't this presented before? Where was all this knowledge and information? He was told this was on record. Mr. Taicner then asked "Why wasn't this presented to the Town Board three years ago?" Also if it was known that my property didn't belong to me why didn't he notify us years ago when this happened in 1967? They had to know something about it. They had to look at the papers they had in front of them. If this is true, it is a very important issue.

In effect, Mr. Tracy is saying - if you don't allow this, we are going to do this to you. He could not understand it. He stated that the Town Board had voted on this and the ZBA turned around and made a zone change. To him it was a zone change. The legality of it is they allow a use variance. It boils down to that they allow a use variance but they won't allow you to build houses on there. There is no way they can allow a use variance. They need your help. They need to realign the road to get a use variance. Technically, in my book allowing a use variance is dead. They can't allow it just as they can't allow a curvature of the road. They have to come back to you. That means that you are the ones who allow the use variance.

Mr. Taicner said other speakers would be discussing water problems, sidewalks, etc. He said in conclusion, Tram Quill Associates is asking for a zone change which you Honorable Town Board Members had previously turned down. He requested that the Town Board disapprove this road modification.

Supervisor Dusanenko asked Mr. Taicner if there were concrete curbs in front of the house. Mr. Taicner said there were. Supervisor said what about the sidewalks. Mr. Taicner said the sidewalks were part of his property too. Not on both sides. Councilman Lettre said he thought it was mandated that in third acre zoning you had to have curbs and sidewalks. Mr. Taicner said that in fact the curb is not on his property. The sidewalk in front of his house is not part of his property. It belongs to the town. Mr. Taicner said he did not know if anyone had looked into the problem with the agreement. He said he had the feeling that what is being talked about is an area from approximately from Toni Court and Sequoia Drive on Green Avenue north up to Green Avenue development. That's how Mr. Taicner perceives what is being talked about. The parcel of land bought by Mr. Romana was bought with a right to dedicate it to the Town from the beginning of Green Avenue down to Mr. Taicner's house. Mr. Romano fulfilled the agreement on that and he also fulfilled the agreement on Jeffrey here. He said he was pretty sure that what he is talking about runs from Toni Court on Green Avenue to Mr. Brega Jr.'s property. That's the easement they are talking about and it has nothing to do with Green Acres Subdivision. (Here Mr. Taicner referred to the map which he went over with Mr. Dusanenko.) Supervisor Dusanenko asked Mr. Taicner who he had bought his property from and Mr. Taicner said Amos Construction Co.

Appearance: Ron Royster

Mr. Royster thanked the Supervisor and Councilman Carey for coming down and taking a look at the problem they were having. We explained the water problem to you and you know the problem. You know the problem of the sidewalk. There are a number of children who live in the area who walk down that street. Mr. Royster said he took note that the Supervisor had said to let the experts speak and they told what they

were going to do with Green Avenue and how they were going to widen it or extend it on. He wanted to know where the experts got their information from. They went to the Fire Company, they went to the Ambulance Corps and were told that the area could be serviced. Where did they do their homework? Have they ever tried to come down that street on a Sunday? We have new homes at the end of Green Avenue with no way a fire truck can get in on the street there. An ambulance would have trouble making the turn there. You have new houses in there. You have young couples living there and they have a lot of company on Sundays and Saturdays and there is just no way a fire truck can get down that street. If you park on either side of the street it is difficult maneuvering down the street. There is a safety hazard. If anything should happen at the end of the street there would be a delay in the fire truck getting down there. There are no sidewalks except in front of a few new duplex houses and that goes for only about ten feet. Mr. Royster said that when you talk about safety he said he and Mrs. Bertoldi were the last to be plowed and if the street were extended there is no way Clarkstown could service the area as well as they were being serviced now and that was not too good.

Appearance: Mrs. Bertoldi
757 Green Avenue
Valley Cottage, New York

At the time the subdivision was handed into the Town Board in 1966 or 1965 Green Avenue was a street. There was no cul-de-sac. At the request of the Planning Board, Mr. Romano was told to make a circle and cul-de-sac it as they did not want Green Avenue open. At the time he said what do I do with this easement. They were told to divide it between the two lots. Also, Mr. Romano (Mrs. Bertoldi's attorney) is not here tonight and neither is my attorney from White Plains. The easement began on the southern end of the property where Mr. Romano first bought to the end of Mrs. Bertoldi's property. This was all an existing easement and this easement was paved and dedicated as per the deeds.

Mrs. Bertoldi said there is a danger on that road. There are 71 homes which would mean 140 cars at least. She said she has 3 cars; her neighbor has 5 cars. The new homes have 2 to 3 cars each and 11 more homes would bring at least 20 or more cars into the area. This road leads on to Old Lake Road with 10 stores and two houses and there is a traffic problem there already.

Appearance: Mr. Jack Schmidt
767 Birchwood Court
Valley Cottage, New York

Mr. Schmidt stated that he had a flooding problem. The last flood covered a four foot fence which he had on his property. The sewer backed up in the street and he had to call the Highway Department for sand bags. He said at one meeting they had mentioned that there would be no flooding problem. However, they are building above his location even though it is behind him, it is still above.

Appearance: Mr. Paul Tiramani
766 Birchwood Court
Valley Cottage, New York

Mr. Tiramani said there was a water problem. He said his property had been flooded out. He said he assumed that the water would be channeled into Peter Brega's property which his property is backed up onto now. He stated that he had applied for a Federal Disaster Loan because of the recent flooding. His property is being eroded away. The Town came with sandbags the last time. He wants to go on record as being opposed. He also wanted to know if there would be any major plan for the water.

Appearance: Ms. Ann Ashmore
23 Green Avenue
Valley Cottage, New York

She wanted to go on record as being opposed to any more houses going up on her block. She said that this is the busiest dead end street she had ever seen in her life. She thought it would be good to live on a deadend street because she has two young children. There are so many cars there already and there are no sidewalks. She said she would like her street to stay the way it is and have no realignment.

Appearance: Mr. Rocco Ida
760 Green Avenue
Valley Cottage, New York

Mr. Ida stated that he was in opposition to the additional houses and the extension of the road.

Appearance: Mr. Charles McKenna
754 Green Avenue
Valley Cottage, New York

Mr. McKenna said that they had come to this Board for a change of zone (Tram Quill Associates) and the Town Board had said "No." They went to the ZBA and they said "Yes, depending on whether Green Avenue can be realigned." Mr. Tracy now says that whether it gets realigned or not they are going to build but they want it to be esthetically pleasing. He felt there was something else involved and they were not really concerned with how the neighborhood was going to look for the residents. He wanted the Town Board to find out if Tram Quill can build without the realignment. He reiterated that it is a very dangerous road right now.

Appearance: Mr. Leonard Hess
Tramquill Avenue

Mr. Hess stated that he owned property on Tramquill Avenue. He requested a look at the map and an explanation of how the proposed extension would affect his property.

Appearance: Mrs. Barbara Taicner
756 Green Avenue
Valley Cottage, New York

Mrs. Taicner said that she did not understand what Mr. Tracy said about the ZBA giving approval to the building of homes no matter which way the road goes. She said then she did not understand why we are here. She said it was her understanding that with the cul-de-sac that it had to be closed off. Now Mr. Tracy says it is going to be straight. She said they have a problem with flooding. At one time, Mr. Bollman or one of his associates stated that the water flowed to the north. She said she questioned the experts because while at one small point it flows to the north it then curves and certainly goes down and across Kings Highway. She felt that Mr. Bollman had treated the problem very lightly as the only solution was to dig out a few sewer drainage systems. Mr. Brega's problem will certainly increase if this problem is not taken into serious consideration. She wanted to know where Mr. McCall came up with the situation here tonight. She said that Mr. Costa had their deeds and had checked through the records and it was not there. Mr. Colucci spent an extraordinary amount of time checking through records and he could not find anything either. This was all prior to the ZBA. Right after the ZBA Mrs. Taicner stated that she had gone back to question them about something and was told that Mr. Tracy had a letter. Mr. Tracy

did not present that letter to the ZBA because he did not want it to be reopened. She was there when that was said. She is questioning Mr. McCall. She wants to know just who is Tram Quill Associates? Who are the silent partners of Tram Quill Associates? Is it Mr. Tracy? Is it Mr. Atzl? Is it Mr. McCall? She said there is someone else who has more property and he is supposed to be building condominiums on Route 303. Mr. Tracy was involved in cutting off Ahern Avenue. The map that Mr. Costa submitted for the May 22nd hearing shows Ahern Avenue which is actually Tramquill Avenue. I said that is not Ahern Avenue that's Tramquill Avenue and he said that's just for tax records. Is nothing really important? You are all we have. She said she is crying tonight because she is very angry and very upset with all of this. She said she hates coming here. She said she finds it terribly upsetting that after all these years she has this property which now she doesn't have. She said that she has been telling you that whether they do this legally or not they do not have 15,000 square feet and that they have been telling you this since the first day they appeared before the Town Board. Whether it was with title or without title they have told you this. What is the big upset now? We have been telling you all along to take it we don't have it. She said she would be back on May 22nd to question the next process that is coming up regarding Green Avenue. She said they will still try to come out onto Green Avenue somehow.

She said she was very upset the last time they talked about building a road behind the Food Emporium. She said that Supervisor Dusanenko had said "How could you build a road over a stream?" She said they built it over the Hudson River - they built bridges. What does a little stream have to do with that roadway behind the Food Emporium that's right there on the map that Mr. Tracy will be here next week to try and turn off. She said she had said that she was afraid of Mr. Mann. She is afraid of Mr. Mann. She said that the Supervisor had told her that they were going to do what they eventually did. Now, are they going to build the rest of those houses? This was Watermill Estates. She said he came in and built his houses on his 28 acres and he's left with how many more acres? We know they can get out through there. We've known that since we first came here. Supervisor Dusanenko stated that some of those homes have been built. Others he cannot even begin to build until he completes those industrial roads. Mrs. Taicner said that then she apologizes. Supervisor Dusanenko stated that people do not come to Town Hall when they want to have a party they usually have a problem. She said she was not interested in what they could build - she only knows that they can get out that way. She said that finally someone made sense and that was the Planning Board.

She stated that when someone at the end of the street has a party there is no way anyone can get out of the street. She said not to allow them to have this thing. She said they would settle the problems they have with their property but please let them go out to Route 303 and not down Green Avenue.

Mrs. Taicner went on to state that she had brought her deeds into the Town Attorney and been told that they were fine. Now she is being told to get a lawyer and she resents that. She said much as they would like them to go away they are getting stronger and they will not go away. She told them not to get their information from the Zoning Board who does not know what they are talking about but to come to the residents and find out what the situation really is like.

Town Attorney John Costa said that when Mrs. Taicner brought her deed in he told her there was a problem with a triangular piece of property and she should consult with a private attorney regarding this. The triangular piece of property to which Mr. Tracy was referring today was also described in the deed to the Town and that problem was called to the attention of the abstract company and he asked them to obtain a correction deed because the Town did not intend to have that triangular piece of property dedicated to it.

She asked what happened then. Did they submit this? Did they tell you it was fine? Did they do what you requested? Town Attorney said that the corrections have not yet been provided to the Town.

Councilman Lettre asked Mr. Costa if he had reviewed Mrs. Taicner's deed as a private attorney? There would be a conflict as the Town Attorney is supposed to represent the Board. Mrs. Taicner said that Planning Board had directed this. Councilman Lettre said that just because the Planning Board had said to do something did not mean that it was proper or ethical. Councilman Lettre said if Town Attorney is reviewing deeds and then giving advice to the Town Board he did not think that was proper.

Town Attorney said that Mrs. Taicner bought a copy of her deed and a copy of her title insurance policy to the Town Attorney's office about the time that Tram Quill had made its application for the variance many weeks ago. She said that at that time she had raised the question of the ownership of the triangular piece of property referred to by Mr. Tracy before the Planning Board and was referred to my office. He stated that he took a look at her deed and her title policy and on the face of these instruments the title policy did seem to insure into the Taicner's that triangular portion that appears in the road bed. Town Attorney stated that he referred the matter to Mr. Fogel, who at the time was the attorney for the Zoning Board of Appeals, so that he would inform the ZBA of the information that had been presented. He said he felt at the time that it might be material and relevant to the application that was coming before the Zoning Board of Appeals for a use variance. Town Attorney reviewed the deed further because the question of the dedication of Green Avenue was raised. He found that the deed to the Town on Green Avenue described the very same triangular piece of property that was on the Taicner deed. The deed into the Town was at a point of time later than the deed to Taicner. Town Attorney said he contacted Mr. DeGennaro of the title company (State Abstract Corporation) and it took some time to convince him that there might be an error but eventually he did meet with me and he did say that there might possibly be an error in the deed into the Town. Mr. DeGennaro said that he would take steps to contact Mr. Romano to get a correction deed. Town Attorney said at no time did he offer any opinion as to the state of title except to acknowledge what appeared to be on the papers. Mr. Costa said he referred Mrs. Taicner to private counsel. He said he told Mrs. Taicner that it was a title problem between her and other parties and that aspect of it was private. The public portion was that which would have bearing on the ability of the ZBA to grant a variance to the applicant. Mr. Fogel, who was serving as the attorney to the ZBA, reported back to Mr. Costa that Mr. Tracy had indicated to the ZBA that his client had obtained clear title although Mr. Fogel did not provide Mr. Costa with any documents explaining how this had happened. Mr. Fogel seemed satisfied that the title was sufficient for the ZBA to act on the variance. Mr. Costa stated that was the sum total of his involvement.

Councilman Lettre stated that the purpose of the Town Attorney's department was to be there to service other departments of the Town. Mr. Costa stated that was exactly what he had done. Councilman Lettre said that Mr. Costa had taken a legal document from a private citizen and evaluated it and made comments to a citizen based upon it. He said he felt that was improper to do. Mr. Costa stated that he had to make comments to private citizens everyday in his capacity as Town Attorney. Councilman Lettre said there was a big difference in making comments and in receiving legal documents from a private citizen, evaluating them and then giving them your opinion on it.

Town Attorney said that Councilman Lettre was mistaken. He did not offer an opinion as to title. All he said was that the title policy seemed to cover the deed - period. Councilman Lettre said that Mrs. Taicner had said - and Mr. Costa said that Mrs. Taicner was then incorrect because he was telling Councilman Lettre what he had said.

Mrs. Taicner said that Mr. Costa had told her to "Get a lawyer." Councilman Holbrook said that is what he was supposed to say. Councilman Lettre said that is not what happened. He said to get a lawyer after he evaluated the documents. Mrs. Taicner said they were told to give the documents by the Planning Board and so was Mr. Tracy. Councilman Lettre said he was not saying that the Taicners did anything wrong but that he felt that Mr. Costa should not have given an opinion on it to you as individuals - that's all.

Appearance: Mr. John Lodico
Birch Drive
New City, New York

Mr. Lodico said he was an unofficial, unpaid ombudsman for the industrial land. Is any part of the LIO being removed for residential construction. Councilman Holbrook said the ZBA granted a zone change. Mr. Lodico said a zone change by any other name whether you call it use variance or whatever is a zone change from -- Supervisor Dusanenko said that determination has already been made by the ZBA and is not before us tonight. Mr. Lodico said that this Board is the legislative body - they are the advisory body. Supervisor Dusanenko said that the ZBA is a quasi-judicial board and under Town Law its decisions are binding. Mr. Lodico said then why do they send them back to you? For what reason? He said he is concerned with the concept. He said they were dealing herewith a situation where you had legal determination as to what is happening, what is the proper role of the Planning Board, what is the proper role of the Town? He said he disagreed with Councilman Lettre - he thought it was incumbent that when a citizen has a question which relates to his property, that would come before any board that the Town Attorney has a responsibility as a Town Attorney to inform them of basic concepts of law and then refer them to a personal attorney.

Mr. Lodico said in regard to the area of the LIO and the statement that was made about the industrial road never being built. He said in his opinion it would never be built. A year and half ago he had protested under the same grounds that removing commercial, industrial and LIO, etc. and they said we need the houses so we can pay for the industrial road. You can't have it both ways. Some of the community said go and they had some moral support from the community. He said they were violating their own ordinance by having that number of homes on a cul-de-sac. He said they were compounding their legal problems themselves.

Mr. Lodico said as far as the claim about the deed the Board is not an adversary in that particular situation. That's a civil action. But to approve a variance use and remove whatever amount of commercial land into residential you are violating your own oath of office.

Appearance: Mr. Vinod Kotecha
29 Sedge Road
Valley Cottage, New York

Mr. Kotecha referred to the statement read by the Association for Sensible Zoning and said they had all approved of that statement. He said that the legal ramifications that have come into play tonight, in his opinion, are so large that it would be better for the Town not to get into them until the whole issue is settled by the owners themselves and by the parties who signed the documents. They are serious issues and he would suggest that the Town stay out of it whether it takes five years to settle or longer. He said that he omitted in the letter the problem they have with drainage. He requested it be considered very seriously. When the LIO develops there are a couple of possible solutions which he was sure the Board was aware of which could take care of the problem. He would request regarding the landlord problem that this matter be tabled and be brought up again after the lawsuits have been resolved.

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Supervisor Dusanenko asked Mr. Tracy to summarize. Mr. Tracy said there are no silent partners in Tram Quill Associates. Tram Quill Associates is a partnership made up of Jay Theise, Atzl & Scatassa and Jeffrey McCall. He said he had no interest in it. With regard to the allegation of Mrs. Taicner that Mr. Tracy had said that they will do this or that Mr. Tracy said that he did not believe he had ever done any such thing to a Town Board. He said we have presented our case here to you with one simple principle - the principle of whether or not the Town Board will amend the Official Map to move a road over. Mr. Tracy never said that they had a fait accompli with regard to a subdivision approval because we don't. Whether we go back with the road as it is to the Planning Board or whether we go with the road as aligned to the Planning Board the decision will still be that of the Planning Board to make.

Mr. Tracy said with regard to the title problem that seemed to come out of the woodwork and everyone seems to sense some sinister air about. The title problem came up because there was much ado originally started by Everett Johns at the zone change as to our inability to dedicate Green Avenue as a fully dedicated town street because of these two gores belonging to Bertoldi and Taicner. The title was investigated to determine that we could in fact dedicate it. With regard to the Town's position on the title the Town has certainly acquired title to that street and certainly has good and marketable title to that street. Mr. Tracy said he did not think there was any defect in Mrs. Taicner's title that would hurt her ownership of her property. What has been brought forth shows that Tram Quill has a prior right to compel a dedication of that portion of the property. He said they did not intend to defeat anybody's property rights. They do not intend to such an action to obtain anybody's property rights. This was brought forth after extensive research by Mr. McCall because the Town prodded us to do so and because the neighbors said that we couldn't do it. Mr. Tracy said the decision belongs to the Town Board.

Mr. Tracy said he understood the position of the residents. He said the last gentlemen who said let this be in litigation for five or more years summed up the position that the people want. The people want the land to stay vacant and they know that by leaving it undeveloped in an LIO state that it will not only be vacant, it will be sterile because he said he could assure them in all of his years appearing before these boards if this property were to remain in an LIO state and through some fluke of nature and a provident road was about to be developed the very same people who talk about these ten houses would be in screaming about the warehouse or other use in LIO which would be out on the property. The aim of the people is frustrate it, leave it alone, litigate, do something and it stays vacant. He said he had clients who are paying taxes on the property. He said that he had clients who have certain inalienable property rights guaranteed to them by Article I, Section 7 of the Constitution of the State of New York. That gives them the right to the enjoyment of their property - to the use of their property. They are asking to build ten houses. It will bring more people, more cars, more usage on the road. That cannot be avoided unless it is left vacant and sterilized. If that happens then his clients constitutionally guaranteed rights will have been infringed upon.

Supervisor Dusanenko asked Mr. Tracy that if this is approved will it go to the Planning Board? Mr. Tracy said yes. If this is denied it will go to the Planning Board, is that right? Mr. Tracy said yes. If it is tabled where does it go? Mr. Tracy said then they will have to keep extending it because the Planning Board is running out of time to rule on a subdivision. We have been extending it since we submitted the subdivision last August. Mr. Tracy said the result of a reserve decision means that they go no place and that the Planning Board has no recommendation from the Town Board and they say to us we will either deny you or further extend the time. Mr. Tracy said a tabling motion would be heartily discouraged by him on behalf of his clients unless it were being tabled

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for good reason other than the reason to place Tram Quill Associates in limbo.

Supervisor Dusanenko asked for a motion to close. It was asked that the Public Hearing be closed with a decision to reserve. On motion of Councilman Maloney, seconded by Councilman Lettre and unanimously adopted, the Public Hearing was declared closed, DECISION RESERVED, time: 12:05 A.M.

Respectfully submitted,

Patricia Sheridan

PATRICIA SHERIDAN,
Town Clerk