

Town of Ballston
Planning Board

**TOWN OF BALLSTON
PLANNING BOARD**

Regular Monthly Meeting: October 28, 2015

Present: Richard Doyle, Chairman
Jeffrey Cwalinski, Vice Chairman
James DiPasquale
Patrick Maher
Audeliz Mtias
John VanVorst
Thomas Johnson, Building Inspector
Kathryn Serra, Town Engineer
Peter Reilly, Planning Board Attorney
Members of the General Public

Chairman Doyle called the October 28, 2015 meeting to order at 7:30 p.m. and led the Pledge of Allegiance. Chairman Doyle reviewed the agenda.

MOTION: Mr. Cwalinski made a motion to accept the September 30, 2015 minutes as written. Mr. Maher seconded the motion and all present voted in favor. **CARRIED.**

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OLD BUSINESS:

Brooks Heritage, Abele Woods; 249.-3-22, 232 252 33 (Major Subdivision) Jason Dell, PE, Lansing Engineering was present on behalf of the applicant.

The project site is located between Benedict Road and Eastline Road consisting of four parcels totaling approximately 96 acres.

The applicant is proposing to construct 123 single-family homes, 22 twin-townhomes and 60 multi-family apartment units.

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The original proposal consisted of 276 units and has been reduced down to 213 units. When the Planning Board issued a Negative Declaration it was approximately 211 units and has further reduced the density to 205 units (25%).

The proposed site to be serviced by a connection to municipal water, sanitary sewer via connection to the SCSD#1 and storm water to be managed on site in accordance with NYSDEC requirements as well as the towns.

Mr. Dell stated all comments have been addressed from C. T. Male.

Mr. Cwalinski asked if signage will be proposed at the entrance of the proposed site. Mr. Dell stated yes. Mr. Cwalinski stated the design needs to be provided to the board for their review.

Chairman Doyle stated there are minor engineering comments and C. T. Male will be forwarding a more detailed comment letter.

Chairman Doyle opened the public hearing at 7:42 p.m.

David Gibson, 107 Eastline Road

In front of the Town Board last December, you promised that there would be many opportunities to speak to you publicly about this development. This appears to be the one and only opportunity. We appreciate it, but also recognize it's the minimum required of you. I encourage you to change your current practice and grant public privilege at every Planning Board meeting.

Also, as an abutter to the subdivision we never received a mailed notice of this public hearing. I wonder if other abutters also failed to receive one. We would appreciate an explanation.

This remains a terribly damaging project, not only for today but far into the future. Not only does it destroy a beautiful, heavily forested piece of the earth in the Town, but it will cause future homeowners, project neighbors and your successors significant headaches after it is built out because it attempts to out engineer a very wet ecosystem formerly inhabited by beavers. Under the pressure they will be under as more and more intense rain events impact our area, the project's stormwater drainage systems, culverts and roads will be placed under strain and probably fail. Homeowner basements will flood. Mr. Goslin rightly challenged his colleagues on the Town Board about all of this, asking "is this the way we want our town to be developed?" And "when is a piece of land too wet to be developed?" Mrs. Gertrude Abele, the owner, told us the same thing on the telephone 20 years ago. "Don't worry, she said, this land will never be developed. It's too wet."

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There have been changes to the project, but they are minor. Overall, it's the same damaging project it was when you incorrectly declared a negative declaration in 2014. The applicant of Timber Creek phases 1-3 has claimed that phase 4, Abele Woods, is just an extension of earlier phases with no additional significant impacts. To date, the Town Boards have swallowed this line of argument. However, they are easily rebutted.

Phase IV, Abele Woods, is distinguished from earlier Timber Creek Phases because:

- Gertrude Abele, it turns out, was correct. 80% of this 96-acres site is poorly drained, on Raynham soils, which land use planning professionals agree pose severe limitations for residential development. This is a red flag waving at you.
- National Wetland Inventory Map shows practically the entire 96-acres as wetlands or wetland buffer area. You should be aware of the publication ***Wetlands of Saratoga County, Vital Resources for People and Wildlife*** issued in 2000 by US Fish and Wildlife, EPA and Saratoga County. The Abele Woods wetlands appear prominently on the Wetland Distribution Map on page 7 of that document.
- A biology professor and wetland specialist wrote to the Planning Board in 2014: "an area such as this one should be viewed as a habitat complex rather than a collection of individual wetlands. "It is my considered opinion that disruption of the vernal pool and linear wetland complex to the south would have a large negative impact on the DEC wetland to the northeast of the site. I would think that this alone would require a positive declaration on SEQRA and a full EIS on this project.
- The core of Phase IV, Abele Woods, for many years previous has been a Beaver Dam, Beaver Flow, Canada Goose Nesting area, Deer Wintering Area, Owl Roosting Area.
- 14 abutting landowners petitioned the Town Board not to rezone Abele Woods to accommodate such intensive development.
- In its Site Plan comment letters this year, CT Male has frequently issued this statement to the Planning Board: "The proposed drainage plan significantly alters the local (i.e. site wide) hydrology...We are concerned that some of the wetlands may see a significant change in their hydrology resulting in an adverse impact to the wetland." Doesn't this statement constitute a red flag you should pay attention to?
- Federal and state agencies are hardly enthusiastic about this Site Plan. In response to our questions, we have heard back expressed concerns with the impacts to the vernal pools, and with current layout of the project, the proposed impacts to wetlands and the mitigation proposed. The ACOE for instance has asked that ways be found to further reduce impacts to wetlands, to account for stream impacts which haven't been identified, and to address needs for any off-site utilities to be brought to the development and if the off-site work could affect waters of the United States. Furthermore, we were informed by these agencies that mitigation is the last step in the review and that they expect impacts to aquatic resources will be avoided and minimized to the maximum extent practicable.

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My requests are these:

- Do not issue site plan approval until the required permits from the US Army Corps of Engineers, US Environmental Protection Agency, and NYS Dept. of Environmental Conservation are in hand. Permissions in one form or another are required of all three of these agencies, or so we have been informed. None of these applications have been filed to date, at least to our knowledge.
- Changes have been made this summer by the US Army Corps of Engineers to the Wetland Delineation at this project site. Do not issue site plan approval until you can assure yourselves that the applicant has fully incorporated the latest changes into the Site Plan.
- Do not issue Site plan approval until the General Design Requirements of the Town Code have been complied with, including the Preservation of existing features. The Planning Board shall, wherever practical, require preservation of all existing features which are important to the natural, scenic, rural and historic character of the Town or which add value to residential development, such as large trees or groves." Applicant asserts this is not a mature forest and that there are no forests 100 years or older that will need to be cut down. This was contradicted by other statements that he will have to cut down nearly 100 trees 100 years or older. Which is it? In just 2-hours utilizing standard age estimates I easily found 20 trees estimated to be 100 years or older outside of the wetlands including specimens of White Pine at 200 years. What is this board doing to protect such trees and groves which are, after all, essential to prevent or mitigate flooding?
- Do not issue site plan approval until most of the vernal pools on the project site are protected. As currently designed, at least half or more of the vernal pools will be destroyed outright or degraded significantly. These pools constitute some of our forests most important ecosystems. The amphibians – frogs and salamanders which breed there are like canaries in the proverbial coalmine. Their healthy presence is a sign of a healthy ecosystem for people and animals. Their destruction is completely unnecessary and outrageous because you could require a redesign that would protect all of these small wetlands and a necessary 600-foot zone around them and still allow the applicant much of what he seeks. I surveyed a number of these pools last spring and their biological productivity is astounding. Will this Board sanction destruction of this forest biodiversity? The vernal pools and linear streams on these 96-acres comprise a single wetland system. As designed the project bifurcates or cuts up these systems which will destroy not only their form but their function for biological life and for valuable stormwater detention provided at no cost.

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David Pierce, 110 Lake Road asked if the Planning Board has received any information from SCSW (Blue Neils). Chairman Doyle stated that the board has comments from Blue Neils – nothing recent maybe three four months ago. Ms. Serra stated last year and part of the SEQRA process.

Ed Swanson, 232 Round Lake Road stated that the original plans presented to the town show from between Sweet Road and Benedict Road a berm along that road – there is no room for the buildings that are being erected presently and should be better planning for that. There is no room in the future for widening the road. The original plans also had water and sewer along Round Lake Road, but does not help the residents down the road as far as water and sewer for houses along Round Lake Road. The infrastructure along Benedict Road is not ready for more traffic with no shoulders – barely enough room for two vehicles to pass by – widen road or sidewalks installed.

Susan Gibson, 107 Eastline Road stated the clear cutting operations and pass by with trees everywhere – they are gone. The land is laid utterly bare – the void of life unable to support anything. The trees the generally absorb generous amounts of water problematic to people die. Five months later the storm water management requirements still elude the developers. This affects hundreds of trees and thousands of creatures large and small.

Robert Ward, 238 Round Lake Road state the townhouse that is approximately 30 feet back from the road does not allow for any esthetic view, which was once a beautiful field there will be populated with homes and is an atrocity of what has happened to the property.

Paul Beletsky, 4 Leach Court stated he agrees with what Mr. Gibson stated especially about getting property notification for meetings and do obviously go to the town's website, but did not know about the public hearing tonight and does not think that is not a good way for a town to conduct business and should let the residents know. "You guys are here for the taxpayers and obviously live in your town." Mr. Beletsky stated that Mr. Gosslin and Supervisor Ziegler took the time last year to come to his house in the fall to take them through his backyard and understand cause and effect of cutting down trees and moving the earth. There are two lots at the end of that cul-de-sac and were totally raped of all their trees – just the disturbance of those three lots created excess amounts of water in his (Mr. Beletsky's) backyard. Septic system has to be pumped twice in the spring and twice in the fall – the stormwater management areas are not absorbing the water now and has a concern with the proposed paved road on the back side of his property. Mr. Beletsky stated all the sign-offs should be in place with all the outside companies that are mutual parties in theory. How is the run-off water going to be fixed disturbing those all around?

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Don Simmons, 976 Benedict Road stated that he has received no notification for this development and was here for the other one in front of the board. Mr. Simmons stated that he builds buildings in Clifton Park and very clearly they send out notices to the neighbors for the public hearings. It's very disturbing that the Town of Ballston is not doing that. Mr. Simmons stated that 200 homes being proposed on 90 acres is some significant density. We already have an extremely unsafe intersection at the corner of Round Lake Road and Benedict Road – adding 400 more cars is a significant issue.

Chairman Doyle said, "If there is no one else that wants to speak, will close the public hearing for this evening."

Ms. Serra asked where the water will extend from Phase 2 as well as the sewer.

Ms. Serra asked the status of the ACOE review.

Mr. Dell stated currently the water has been extended down to southern side of Timber Creek Phase 2. The water line will be brought down and connect into the subdivision and connect also into the county trunk line on Eastline Road. The sanitary sewer will connect to SCSD#1 main that is currently on Round Lake Road. A pump station will pump the sewage up through a force main and connect into the existing line that is currently up at Round Lake Road and Eastline Road.

Ms. Serra asked the possibly of Leah Court being able to connect to sanitary sewer. Chairman Doyle stated we looked at that and did some planning and it would be serviceable.

Kevin Weed met with ACOE (Christine DeLoria) twice in June. All the wetlands that were deemed isolated previously were again deemed isolated and some reduced in size. There was a 21-day coordinated review between ACOE and EPA and issued the approved Jurisdictional Determination (JD), which is good for five years. Ms. Serra asked if an actual letter was issued saying that they reaffirmed the JD. Mr. Weed stated yes, we have an actual approved JD document. Ms. Serra stated obviously ACOE has not seen the wetland mitigation area that is provided on the plans. Mr. Weed stated they have not seen any detailed plan when we did the site walk for the JD, we did look at a few areas where we discussed wetland creation which is a form of mitigation for this project. Ms. Serra stated any approval the town gets is contingent on getting any permits. ACOE will not issue any permits until the town grants final approval. Ms. Serra asked if the applicant has any intent on submitting those plans to ACOE while this process is happening so the board is comfortable with it. Mr. Weed stated that once we are comfortable and the grading is established and any substantial changes to the plan, then will submit to ACOE – a water quality certification is the only thing needed from NYSDEC.

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Mr. Swanson stated the sewer line does not run all the way town Round Lake Road. It stops at Phase 1. Chairman Doyle stated that residents in the area decide that they would like sewer or water – the residents go to the town board get approval to start that type of committee.

Mr. DiPasquale stated that Saratoga County Planning Board gave this project a positive decision subject to SCSD#1 approval “maybe we could coordinate where we are with the capacity.” Mr. Dell stated the only area that is pumping into 6” force main is Timber Creek Phase 1.

Chairman Doyle stated that C. T. Male will have a letter forward to the applicant.

Mr. Dell asked when Ms. Serra anticipates that the comment letter be forward to the applicant. Ms. Serra stated that she is trying by tomorrow.

Application Tabled.

KT Development, Benedict Road & Round Lake Road, Ballston Lake, NY 12019; 249.—37, 249.-3-40 (Major Subdivision – 39-lots.) Jason Dell, PE, Lansing Engineering was present on behalf of the applicant.

Mr. Dell stated there are two parcels that total approximately 28 acres. The applicant is proposing 19- single-family residences – all lots conform to the zoning code (20,000 sq. ft. area). There will be two cul-de-sacs coming off of Benedict Road, three lots fronting Benedict Road and the final lot to front Round Lake Road.

The water will be supplied through the municipal water system. The sanitary sewer will be provided by an extension of a force main up-to the pump station that is currently located at Timber Creek Phase 2. Storm water will be managed on site in accordance with NYSDEC requirements – two storm water basins proposed as well as green infrastructures proposed.

All C.T. Male technical comments have been addressed.

Ms. Serra asked Mr. Dell to address the comments received from the Saratoga County Planning Board – the number pertaining to curb cuts and traffic.

Mr. Dell spoke with the county and they only received smaller scale versions of the plans. There is a significant difference from the intersection and Round Lake Road down to the southern cul-de-sac – it looks smaller on smaller plans – it’s actually about 1,630 ft. (five curb cuts within a ¼ mile).

Ms. Serra stated the county asked why a traffic study was not required by the town. Ms. Serra stated normally the town is not required Traffic Impact Studies to be done until the total trips generated during the peak hour whether it’s morning or afternoon is an excess of 50 – yet if it’s a site that has traffic

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problems the board may ask for a study with fewer than 50 19 new homes would not generate 50 trips within the peak hour.

When there was a comprehensive traffic study done, Timber Creek Phase 1 and 2 covered Phases 1, 2 and 3 and at the time they called Phase 4 (Abele Woods). The number of homes or residences in that original traffic study is well over what has been built plus what is being proposed by Abele Woods. The 19 homes from this development would be well within that previous traffic study that was done with the parcels across the street. Ms. Serra stated the reason that we did not ask specially for a traffic study for this project was that we (the town) felt that it fit into the traffic study that was done for the area.

Mr. Dell stated the project was significantly reduced and was originally proposed as a 39-lot TND and reduced to the 19-single family lots.

Chairman Doyle stated the original study was 276 and dropped to 205. Mr. Dell stated the original study was 450 it included Abele Woods, Timber Creek Phase 3 and Timber Creek Phase 2.

Mr. Cwalinski stated back on April 29, 2015 the board requested some type of history of this parcel – what is has been used for and asked again on July 29, 2015. Mr. Dell stated he does not know how much history we are going to be able to get as the previous owners have passed away. Mr. Cwainski said, “Do what you can.”

Chairman Doyle opened the public hearing at 8:28 p.m.

First and foremost, we do object to the proposed subdivision on Benedict and Round Lake Roads by KT Development, LLC. This development would destroy beautiful wooded acres which are inhabited by numerous species of animals, birds, and insects. It will also change the rural character of Benedict Road. If the members of the Planning Board are familiar with Benedict Road, they may be aware that the woods on both the East and West sides grow up close to the edge of the road. With these woods gone and replaced with a subdivision the character becomes that of a suburb.

Further, our concerns regarding the KT Development Project on Benedict Road include:

- We have been surrounded by these woods for 21 years and, from what we have seen from the proposed drawings that Tom Johnson has shown us, it seems as though there will be homes at 12:00 and 2:00 looking from our back deck. In review of the plans, it is quite obvious that we are going to be one of the most affected lots. We currently have a beautiful back yard that we enjoy and use regularly. This will be a drastic change to the landscape and to our privacy and would definitely devalue our home. If all lots are within legal use, I would propose that the developer put in high privacy fencing with impermeable high evergreen trees\shrubs

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and try not to place homes as close as legally possible. Everyone wants a backyard with a bit of space and privacy and I am sure my potential new neighbors will want the same.

- We have a dug well that is only 15 deep. We are concerned with runoff and possibly failure or contamination of our water source. We never used fertilizer or any types of chemicals, pesticides or poisons due to knowledge of the possible well contamination. If water is to be run to this development, we would hope that we could be attached to this for little to no cost. The same would be said for gas and sewer lines.

- We also have concerns with the intersection of Benedict Road and Round Lake Road. The additional traffic is going to make that intersection even more hazardous. Numerous times during the winter, the eastbound traffic on Round Lake Rd has driven straight through the left curve and proceeded into the ditch on Benedict Rd. Now with more traffic at the intersection, there is a greater possibility of a T-Bone for the person on Benedict waiting to pull out onto Round Lake Rd. We do not let our kids drive North on Benedict during the snowy months.

Thank you for consideration,

David and Tammy Munsey
972 Benedict Rd
Ballston Lake NY 12019

Chairman Doyle stated the board will look at the intersection of Benedict Road and we (the board) always provide screening as you know. The board will make a real concerted effort in fact the law states that you can't drain more water into another property so you should not be getting any drain water from the new development onto your property.

A further discussion was held on the consolidating of the water district in the town.

A resident without direct access, but could petition the town to connect via a long service laterals.

Mr. Swanson said, "You don't live there and don't see the increase in traffic and see the accidents every week and every rainy day." The study does not change that dangerous corner and Timber Creek should give up some land to make it a safer intersection. Ms. Serra stated that was looked at when The Timber Creek Phases came in and that traffic study was done and part of that safety assessment of the existing intersection. Ms. Serra and the board had a real concern with the "S" curves and the County Highway Department looked at it and the accident records and nothing in that study was considered enough to warrant a significant improvement to that intersection because of the project. Whether or not the public agrees, that was a decision that was made frankly by the Saratoga County Highway Department. Mr. Swanson stated that infrastructure for that road is not prepared for more cars on it.

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Robert Ward, 238 Round Lake Road has the same concerns for Timber Creek and it goes back to supply and demand and does not understand the concentration of homes being built in this area.

Don Simmons, 976 Benedict Road handed Chairman Doyle a wetlands map from 2009 from NYSDEC. Mr. Simmons stated before he bought that lot wanted to know what the wetlands were. Mr. Simmons stated the applicant's plan is showing significantly different wetlands than the map he provided to the board. Ms. Serra stated the mapping that is available online is just a starting point. Ms. Serra stated the applicant provided the board with a Jurisdictional Determination (JD) which is where the applicant's wetland professional and well as NYSDEC and ACOE and go out and visit the actual boundaries down to the foot (this has been done for the project). More than likely the letter you received six years ago is generally correct, but not exact. Mr. Simmons stated it's not even close. Mr. Simmons said his neighbor north would be the only ones would be able to tie in – in order to get water to his house and seeing that the Town of Clifton Park goes through my property, I could be the only person in that water district. Ms. Serra stated the decision would be made by the Town Board – they are currently in the process of a public review period and could email the Town Board and ask to be put in. Mr. Simmons has already emailed the town and asked for that and would appreciate your consideration on that since I do abut the property and the last house in the Town of Ballston (974 and 976 Benedict Road)

I would like to express some concerns regarding the subdivision proposed by KT Development, LLC. to be located on Benedict and Round Lake Roads. As you know, this is a rural area with few houses and beautiful wooded acres. Obviously the high density subdivision proposed will destroy the current ecosystem which sustains a wide variety of flora and fauna, not to mention Indian and colonial artifacts. When we purchase our property several years ago we carefully studied the local and ENCON maps regarding wetlands. Although wetlands have been included on the proposed drawings I am concerned that the size of the wetlands is smaller than the ones I reviewed several years ago, perhaps a result of the beavers and beaver dam that someone removed from the site last year. It is quite obvious that this developer is seeking to shoe-horn in the maximum houses allowed and there-by threatening these wetlands. The density proposed does not match the current environment or rural atmosphere of this road.

In addition to my concern that wetlands will be destroyed, I am also concerned that the water table itself will be contaminated. Everyone along this road uses well water for their household water source. I am very concerned that the density of this project will disturb my water sources. It does not appear that the proposed development or new infrastructure provides any allowance for neighbors like myself to access the new water, sewer or utilities. If water and sewer are to be run to this development, I would hope that the town of Ballston would consider the level of taxes that we pay and make provision to extend these services to our property.

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It is also important to note that the intersection between Benedict Road is very dangerous with blind spots coming from either direction. With added traffic in this corridor it will be a short time before a serious and perhaps fatal accident occurs at this location. Please conduct adequate study and planning to resolve this extremely dangerous situation.

Thank you for considering these comments as part of your review process.

Don Simmons
976 Benedict Rd
Ballston Lake, NY 12019

Laural Hayes, 973 Benedict Road asked if the water line goes down Benedict Road, do we have to pay from our house to the road. Chairman Doyle stated yes.

A further discussion was held on wetlands.

Ms. Serra stated that wetland over time change and have to go with what NYSDEC says is a boundary in 2015.

Mr. Munsey stated that a traffic study was performed at that intersection. Ms. Serra stated yes. Mr. Munsey stated that the accidents that are seen are just phone calls. Ms. Serra stated that is one of the downfalls of accident assessment is that you have to go report an accident. Mr. Munsey stated the majority of the accidents don't involve anyone getting hit – it's a kid in his car going off the road – that will change and be a kid t-boning pulling out of Benedict Road. Ms. Serra stated the town is aware and do have limited control on Round Lake Road as the town does not have jurisdiction.

Mr. Ward stated at the intersection of Round Lake Road and Benedict Road Mr. Brooks has a lot of crushed stone and there is a tremendous amount of crushed stone and is very dangerous and rocks do kick up and put a small dent in his wife's windshield. It would be ideal to take a street brush and clean the rocks up off the roads on a weekly basis.

A further discussion was held on wetlands.

Chairman Doyle closed the public hearing at 8:47 p.m.

Mr. DiPasquale asked about the archeological comments. Mr. Dell stated there is a small site it's right on the border of the 100' wetland buffer up in the corner of Lot 5 and that report has been submitted to SHPO and SHPO will work "hand in hand" with ACOE. Mr. DiPasquale asked could it change the lot layouts of what we are currently reviewing. Mr. Dell stated no what the end results will likely be is a small fenced off portion of the property along the NYSDEC buffer

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line. Ms. Serra stated they will not do a recovery. Mr. Dell stated he has not gotten that far and does not think so – it's small in nature.

Application tabled.

Lang Media, 20 Mourningkill Drive, Ballston Spa, NY 12020; 228.-3-36.1 (Site Plan Review – LED Billboard). Michael Fogel, Esq. with Brown Sharlow Duke & Fogel, PC council to Lang Media, Inc. and Michael Lang, President of Lang Media, Inc.

Mr. Fogel stated we do not have that much more to offer tonight we feel that the records been developed since the application was submitted back in March 2015 is sufficient for this board to issue an approval this evening. The application has been pending since March of this year. This is the fourth meeting that we are attending and the public hearing has been open since March.

The application was submitted back in March of this year it's to modify the existing Special Use Permit and Site Plan Approval to convert both sides of the existing billboard that is located at the intersection of NYS Route 50 and Everson Way. The application is to convert to existing static sign to digital copy. The board is going to remain in the same location – no site work involved. It's simply a change from the sign face from static to digital – very similar to hanging a flat screen television in your living room. The sign is going to display both commercial and public displays so you are going to see typical advertisements and public service announcements in such as Amber Alert's for other ads to assist law enforcement – for example State Police asked Lang Media to put up some ads during the course of that man hunt (escaped inmates). Remember the sign not only provides commercial advertisements, but public service benefits. The application is also going to require an approval from NYSDOT. An application has been submitted to NYSDOT. As you know, NYSDOT has previously indicated that this location is acceptable for digital billboard – although they have not issued a formal approval, but issued preliminary findings that this location is suitable for the digital board. They will not issue a formal approval until this "town board" hopefully approves this location. Going back to the initial approvals for the signs in 2013, there are actually two billboards one at the intersection of NYS Route 50 and Sherman Way and Everson Way. That location at Sherman Way is not changing at all – it's simply the one at Everson Way. The reason this application came to be is because NYSDOT changed its criteria or introduced criteria that specially regulates digital billboards. At the beginning of 2015 that prompted Mr. Lang to submit this application.

The area in which the billboard is located is zoned Business Highway-1, but located with the Billboard Overlay District – that district was created by the town back in 2003 he believes and provides the only location in the town where billboards are and allowed use subject to an issuance of a Special Use Permit by the Planning Board. That is significant in the law the State's highest court has held that by designating a certain use as a specially permitted use that essentially is a legislative determination that the use here billboards and digital billboards are an appropriate use in the district. There has already been a determination that the use is in harmony with the general zoning plan for the town and also that

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use will not adversely affect the surrounding neighborhood and is otherwise consistent with the character of the community. Now again subject to the issuance of a Special Use Permit, but that determination of whether this use is appropriate for that area has already been made by the town board. The zoning goes on to provide certain requirements for billboards that contained in the zoning law §138-35 and this application complies with all of those requirements. It complies with the lighting requirements, which is demonstrated in the Daktronics Lighting Study that the applicant has previously submitted to the board. The billboard cannot be erected or attached to any building and is not the case here – it's a monopole sign. The billboard does not contain banners, posters, pennants, ribbons, streamers, spinners or other moving or fluttering devices – so it satisfies that requirement. The billboard does not exceed 700 square feet total for both sign faces front and back of the sign. In fact a result of being converted to digital, the signs actually will be 10% smaller approximately 680 square feet. It complies with the sign size requirement. The billboard also complies with the height requirement – it's not in excess of 30 feet above grade and will remain the same height as previously approved by the board and satisfies that requirements. The billboard will be properly maintained and in good working condition. The ads displayed will not be indecent or obscene nature – it will be standard commercial advertisements or again, public service displays. The billboard will continue to be separated from other boards by at least 300 feet. Currently the two Lang Media boards are 389 feet apart and are not proposed to change as a result of this application. The billboard is setback at least 25 feet from all buildings. The application complies with all the zoning requirements regulated billboards. In addition to those requirements, there is also this criteria that this board has to apply and issuance of a Special Use Permits. Those criteria are contained in §138-94 of the Town Zoning Law. The delegated board (Planning Board) is limited to applying those certain criteria that are enumerated in the Town Zoning Law and again the record provides significant information for this board to find that all those criteria have been met or don't apply to this application.

The first criterion asks is the use in harmony with the zoning district. Again as discussed earlier, since it has been designated as a permitted use and within the Billboard Overlay District, that determination has already been made. The second loosely relates to traffic safety. Again we (the applicant) believe there is no traffic safety concern here per NYSDOT's finding that this location is appropriate for a digital board – it's been reviewed by its office of Traffic Safety and Mobility and have made the determination is appropriate as long as it applies with NYSDOT's digital criteria, which it will. This is not the type of use where we are generating any new traffic patterns or vehicle trips that you would see in a typical commercial development and believe we satisfy that criteria. The third criterion has to do with the height of buildings, height of walls, fences, landscaping, which we do not think is applicable to this application. The fourth has to do with neighboring properties and we feel we have demonstrated on the lighting study and traffic and the traffic issues that were discussed, are not going to be any impacts to neighboring properties.

There were issues raised at prior public hearings regarding potential lighting impacts associated with the conversion from static to digital. The applicant submitted the lighting studies and has been addressed.

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The sign is going to comply with NYSDOT brightness criteria and that ensures the brightness of the sign isn't of a nature that will be distracting to drivers. The lighting study performed a very conservative analysis – it assumed a worst case scenario of an all-white display coming from the sign operating a nighttime levels. Actual level will be much lower approximately 25 to 35 percent of the brightness of an all-white display – consistent with typical commercial ads that will be displayed. The highest calculated light levels near any adjacent residential areas are .05 of a foot candle, which is 5 percent of the light of a single wax candle – it will be minimal or non-existent. The sign itself will be equipped with a photo sensor (state of the art technology that ensures that the brightness criterion is not exceeded).

NYSDOT is the agency for the jurisdiction in experience and expertise to regulate both static and digital billboards along the state highways. NYSDOT Traffic and Safety Division reviews each billboard carefully for traffic safety issues to ensure consistency with the Federal Highway Beautification Act, NYS Law is implementing regulations. They also ensure that the new criteria for regulation of the digital signs are going to be met. That digital criterion was adopted by NYSDOT after several years of study of digital boards do not pose a safety risk to drivers and governs a minimum of message of refresh rate, which is eight seconds. The transition time between each advertisement - this is instantaneous and spacing between billboards which we meet that criteria and the digital display brightness which again will be controlled by the photo sensor on the sign itself and Lang Media proposes to comply with that criteria. Again, NYSDOT has reviewed the application and indicated there is not a traffic safety concern. The board did asked the applicant to try to get some other (instead of just relying on what we were saying) to get some confirmation (written) confirmation from NYSDOT regarding their position with respect to the sign. On September 3, 2015 NYDOT confirmed by email that the application has been specifically reviewed by its office of Traffic, Safety and Mobility and they specifically visited the site and determined the application meets NYSDOT criteria regarding digital boards. A copy of that email was provided to Mr. Reilly on September 4, 2015 to be provided to the board. During the second week of October believes that NYSDOT met with several representatives of the Planning Board and there may have been members of the public there as well to address any issues or concerns they may have. They reiterated they reviewed the application and specifically visited the site and determined the site was appropriate for a digital billboard and they would in fact approve the billboard assuming the board issues its approval. It's further my understanding that despite them offering to perform a site visit, the town decided it was satisfied based on the statements at the meeting and did not want to go out and check out the site. Typically, but regardless it sounds like NYSDOT addressed your (the board's) concerns a couple weeks back. Again, we want to emphasize that no one is interested in creating a unsafe condition or creating any sort of issue with respect to highway, but this location has been specially looked at by NYSDOT Safety and there is just simply no traffic safety concern at all expressed by NYSDOT.

The public comments that have been received to date, the public hearing has been open since March 2015; this is the fourth meeting to discuss this application. Prior to this meeting, Mr. Fogel went back and carefully reviewed all the public comments submitted to date, and obviously know that this

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application has had significant public interest and certainly appreciate and appreciate everyone coming out to the meetings and submitting their comments, but with all due respect, with all the comments submitted, we do believe that they are largely unsubstantiated and generalized objections and criticisms of the application. With that said, we do believe that we have addressed all the comments that have been made to date. They fall into three groups – traffic safety concerns, whether the billboard is permitted by zoning or consistent with current zoning laws and lighting concerns. We think the record that we developed from March sufficiently addresses all those public comments that have been submitted to date. We also believe that we have sufficiently answered all the questions and comments raised by the Planning Board.

Based on the totality of the record that has been developed we do think that we are entitled to have the Planning Board act on this application tonight and have been at it since March of this year. We fully satisfied all the zoning requirements and think the record is more than sufficient for the Planning Board consider approving the application tonight.

Ms. Serra stated that one item was not addressed from the August 21, 2015 comment letter #2. "At the July 24, 2015 Planning Board meeting both C. T. Male and the Planning Board asked the applicant to provide an estimate of the number of homes in the project area that have a view of the existing static billboard. This will assist the Planning Board in making a determination on the Special Use Permit most especially item #4 the impact on neighboring properties." Ms. Serra stated that has not been addressed and are not questing lighting levels. Again, several neighbors have commented on "that I am going to see this billboard and it will refresh every eight seconds." Ms. Serra stated the board asked you to do that and feel uncomfortable deciding on item #4 of a SUP of how does it impact the neighboring properties – we simply don't know about how many people would be impacted. I believe the board agrees this has not been presented to them. Chairman Doyle stated he agrees and one of the things we are looking at.

Chairman Doyle stated the board has also been busy as you mentioned your letter said you did not think we needed a meeting with NYSDOT – we felt we needed to so consequently arranged a meeting and did talk to two NYSDOT officials -we dot lots of information. We got the 300 foot sign distance, which used to be 5,000 and then 2,500 and that's why it was not approved before. We realize the Federal Government has done a lot of testing on this and realized the State of NY took the regulation as an item and just put it into their code. We agree with the 300 feet between signs and did check the distance between the two signs (389' – measured 390') and there is always a concern for when you come back for the next one.

There are basically four signs that have been approved and most are on major highways not a suburban highway two-lane as we have here on NYS Route 50. The Federal Standards stated they are all on limited access highways, but do not see any that duplicate our situation.

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There are people in the audience and say that they see the signs flashing so we would like to know how many people are affected. Evidently we asked and did not get that – so I guess we have to look at that ourselves to find out what that number is. Ms. Serra stated she feels the applicant should provide that information. Chairman Doyle agrees, but that does not seem to happen. Mr. Fogel stated it's largely relevant the same amount of people that see the signs today will see the signs on conversion to digital sign. We feel we don't need that information to address this. To continue to look into this, the same issues that have been raised since March is now October. Chairman Doyle stated we have to satisfy ourselves in our mind that what we are doing is correct. The State hides behind the Planning Board so when there is an accident out there the people are not going to look to you folks they are going to look to us. You have certainly sat here all night and listen to the public pick on us because we don't enforce and make sure that the planning is good – it's up-to us to make sure that the planning is good. Chairman Doyle stated that we (the board) need another month. If you can provide information relative to how many people are affected, we would gladly accept that. Mr. Fogel stated we obviously object to this continuing to go on and feel we have submitted everything and developed a sufficient record – "I don't really understand what else needs to be looked at or addressed." Ms. Matias stated that Ms. Serra just told you as you did not give us that information. Ms. Serra stated the Planning Board needs to address the four issues under the Special Use Permit the fourth pertaining to "Impact to neighboring properties." Ms. Serra stated that the residents currently see a billboard the question and objection that was brought up by the public was – if you want to refresh every eight seconds, it's distracting. The board just wants to know whether the decision was made because of that moot, the board needs to be able to understand how many people are being impacted by this through a Special Use Permit. Ms. Matias stated it's very different to have just a static billboard in your backyard versus something that is constantly changing every eight seconds. Ms. Matias asked this twice before if you (the applicant) will consider changing the eight seconds. Mr. Lang stated no. Mr. Fogel stated the application that was submitted is that we will build what is consistent with NYSDOT criteria and what they will approve – that is eight second duration and does think that it is fair for the applicant to continue to ask the same question when we have indicated that's not the proposal. Ms. Matias stated she is just trying to get to an agreement and a compromise. Mr. Fogel stated for certain projects there may be compromises, but this is the type of proposal where it's the only way to be economically feasible to go forward with the project. We think that as long as we are compliant with what NYSDOT will allow, that's why we are applying for. Mr. DiPasquale asked if you are referring to the refresh rate. Mr. Fogel stated it's the refresh rate of NYSDOT after years of study and working with Federal Highway Authorities determined is sufficient by safety standards. Mr. DiPasquale asked it has to be eight. Mr. Fogel stated that is the application that has been submitted and NYSDOT feels is sufficient. Mr. Fogel stated that we believe it has been expressed both in email and in a meeting with members of the Planning Board. Chairman Doyle said, "They did Jim was there." Mr. Fogel stated the proposal as to have a sign there that is consistent with the NYSDOT criteria. Chairman Doyle said, "It used to be six seconds and was raised to eight, but you can have it anything you want, but can't be less than eight." Mr. Fogel stated that is what NYSDOT has determined to be sufficient for traffic safety. Chairman Doyle stated we are trying to explain from a traffic safety point – we cannot find a sign and maybe you can help us here. Where is

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there a sign that changes every eight seconds and is on a suburban road. Ms. Serra stated a 2-lane road not NYS Route 9 which is a five-lane road –it's double sided – all the ones on Route 9 are single sided. Mr. Lang said there is one on Fuller Road in the Town of Colonie off of Central Avenue and another one in the Town of Ulster Route 9W (Ulster Avenue). Chairman Doyle asked the applicant to send the board an email of the locations of these billboards. Mr. Fogel stated that he appreciates the discussion, but NYSDOT has specifically looked at this location and has indicated both in an email and in a meeting with the board members that they're comfortable with that eight second duration is sufficient. Chairman Doyle stated that is only one point. We are talking about a country road that people drive 60mph on, it's only two lanes with very small shoulders and guardrails – if somebody pulls out there is no place to go. Mr. Fogel stated that NYSDOT is aware of that as they performed the site visit and had the opportunity to go out to the site with them to point these things out to them and chose not to after meeting with them. Mr. DiPasquale stated that we discussed them with them. Mr. Fogel said o.k.; they also specially visited the site and determined that they do not think there are any traffic safety issues. Mr. Fogel said, "I guess I don't see what continuing this meeting to look further into this is going to tell you more than what NYSDOT has got the jurisdiction expertise and experience to evaluate the safety issue.

Chairman Doyle stated we (the board) have some engineering things that we want to look at and have tried to share those with you. Will find the sign on Fuller Road – you could certainly give us that information, but choose not to. Mr. Lang stated that he just did. Chairman Doyle stated to send an email. Chairman Doyle stated that we need time to do this and expect you back next month and have our homework done.

Ms. Serra stated she is assuming that you are asking the applicant to do this analysis to determine the number of homes that are being impacted. Mr. Fogel asked to talk about what that analysis would look like and if we find that there are 5, 10 and 50 people that can see it, I don't see how we can make a determination how they will be negatively impacted or not. We have shown the only real issue is lighting and there will not be any excess lighting impact. Mr. Fogel is a little unclear of what this exercise is going to show. Ms. Serra stated she did not think the issue was lighting and there was not going to be any more additional illumination. The questions that came up were refresh rates – it's the scale of the impact of the neighboring community. If it affects one home or 100, the board needs to be able to say, who we are impacting. They are making a huge decision here that pretty much everyone in the public does not want so you have got to understand the reservation and level of comfort and the town looks for more "touchy feely" aspects than an engineer at NYSDOT would look for. Chairman Doyle stated that NYSDOT just apply the standard and have indicated that this is the standard and not much more to it. Chairman Doyle stated he did not think they went through the "touchy feely" part. Mr. Fogle stated that we have sufficiently addressed all these criteria. We mentioned "touchy feely" criteria and thinks there is a question here about whether these special use permit criteria are even sufficient to guide the board's decision making. We still believe that this record is sufficient as of tonight before this board to make a determination and satisfy all the criteria. Ms. Matias said, "I'm sorry if you like it or not, we are

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here making a decision for the citizens or members of the town so if we don't feel comfortable, we don't feel comfortable and we are the ones that are going to have to go through the different criteria – we want that information and we need that information that the bottom line.” Mr. Fogel asked what information.

Mr. Reilly would not advocate the use of term “touchy feely” either, but does think it's relevant as to how many homes and please clarify that, but if you think it's irrelevant, we would like to know that. Ms. Serra stated if they (the applicant) feel it's irrelevant, would assume the board would ask that C. T. Male to do that anyways – correct.

Mr. Fogel would like a little bit more of an understanding of what exactly the board is looking for. Other than me climbing onto everyone's balcony and living room how are we supposed to figure out who is going to be able to see the board? Ms. Serra stated we asked you to do it based upon a walk or street view. The townhomes on Rout 50 you can clearly see the billboard. Mr. VanVorst said and Mourninkill Drive. It's something that is rather straightforward and not asking you to trespass onto private property. Chairman Doyle said Mourning kill Estates also. Mr. Reilly stated that a view shed study is nothing unusual. Mr. Fogel asked if this is the only outstanding item for the applicant to address. Ms. Serra stated that she believes so.

A further discussion was held on existing billboard in the Town of Colonie and Town of Ulster.

Mr. Fogel stated that we do not think it is necessarily relevant, but will think about it.

Chairman Doyle said that we appreciate that. Mr. Fogel stated that we can make a decision quickly and will be in touch.

Chairman Doyle opened the public hearing at 9:33 p.m.

Mr. Fogel said he is not trying to curtail public comment and thinks it's great to hear what everyone has to say, but the public hearing has been open since March 2015 and at the last meeting, did ask that the public hearing be closed and understand from the other application this evening it is the practice to leave it open and the comments be limited to comments that already have been raised. Ms. Serra said, “New things.”

David Pierce, 110 Lake Road said the town Planning Board needs to go back and think about the Comprehensive Plan and think about what was wrote in 2006 – try to keep Ballston rural and try to keep it a Farm First community and try to keep it the way we had it back in 2003 before the billboards went up. Beacon Hill was built and now they want to change the environment all around Beacon Hill. When you approved the project at Beacon Hill, you approve it the way the conditions were and now want to change the whole environment and do not think that is fair to the people in Beacon Hill.

Michael Audino, 24 Beacon Street stated that Fuller Road is a four-lane highway with speed generally 40mph. The sign that you are looking for is located on Cherry Street and Warehouse Road across from a

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diner on the opposite side of the road. If you come in from Central Avenue, the digital board will be on the left side just beyond Cherry Street – it's a four-lane highway. There are eight homes affected on Beacon Street alone on the second floor and once again invites anyone to come to his house. It just seems awful funny that the sign at Everson Way and NYS Route 50 has been in the dark most recently the northbound sign has been in the dark every night and loves it for the past four to five months. Now the southbound side is in the dark at night – the only sign that is lit is at Sherman Way. Ms. Matias did notice that.

Al Poremba, 1 Sherman Way stated that he was here earlier in the year and appreciated the boards comment and really understand how dangerous the intersections are dangerous at the intersections at Sherman Way, Everson Way and Mourningkill Drive are. They have become more dangerous in 2012 when these billboards were erected and one thing that was not approved with the 2012 application were the LED lighting whether rejected outright or withdrawn from their application. The location and those intersections where there is a residential neighborhood and a 60mph with a two-lane with a lack of lane turn and lack of shoulder; making three dangerous intersections more dangerous. The vehicle and traffic law has moving violations and most of the moving violations are three points, unsafe lane change, going through a stop sign without stopping, those are all three points. In 2013 talking on your cell phone §1225-C of the Vehicle Traffic Law is three points, texting was three points with an additional fine (§1225-D). The State Legislature in June 2013 said that there are so many distracted drivers out there and accidents that are being caused by people looking at their cell phones or talking on their cell phones that they increased the penalties and now its five points similar to reckless driving and profiting and promoting off of a distraction. There are 14 billboards in the corridor. There are the townhouses there and two vacant undeveloped parcels to the north and application for site plans for those properties "40 more condos if approved." Who will want to buy property there if all they see are 14 billboards that are lit up and flashing every eight seconds. Mr. Poremba commends the board for making intelligent comments and would much rather spend the night here than prevent a crash from occurring than be attending a funeral down the road. Mr. Poremba thanked the board for their time and consideration. Mr. Poremba read an article online from Supervisor Quigley from the Town of Ulster "Quigley said he has received complaints about the digital billboard regarding the brightness of the LED's at night and the concerns about distracted drivers. Quigley also hinted that while this billboard received approval, town officials may act differently next time. We will observe and be more cautious next time they (meaning Lang) come in for a change for a billboard to an electronic billboard he said." In other words, Jim Quigley is warning other towns – watch out for this. What is more important than public safety each and every one of you has a thankless job and hear complaints all the time and you don't get paid for what you do – at least most of you don't get paid for what you do, but what you do is important and thank you for coming out multiple times a month and said their neighborhood is one of the best neighborhoods ever. Mr. Poremba thanked each and every one of the board members, Mr. Reilly, Ms. Serra and Mr. Johnson and do a great job and keep up the good work. Chairman Doyle said Thank you.

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Chairman Doyle closed the public hearing at 9:43 p.m.

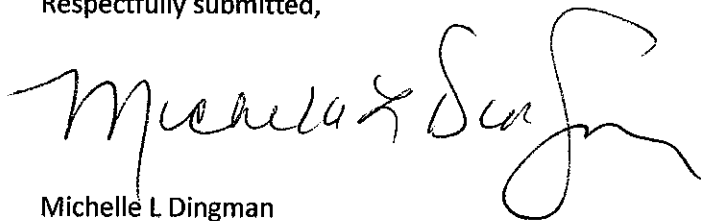
Mr. Fogel noticed that SEQRA has not been started on this application.

MOTION: Mr. Mahert motioned to name The Town of Ballston Planning Board the Lead Agency in the SEQR process. Mr. VanVorst seconded the motion and all present voted in favor. **CARRIED.**

MOTION: Mr. VanVorst made a motion to adjourn. Mr. Maher seconded the motion and All Board members voted in favor. **CARRIED.**

Meeting adjourned at 9:47 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michelle L. Dingman". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Michelle L. Dingman
Planning Board Secretary