

**Town of Washington Planning Board**  
**May 4, 2021**

A Zoom Meeting and Public Hearing of the Town of Washington Planning Board was held on May 4, 2021 hosted by Alex Barnes Schwartz to consider the applications of Bontecou One Subdivision, Derris & Kier Special Permit and Five Acre Farm Academy, Inc. Special Permit.

Members virtually present by voice roll call: Chairman, Paul Schwartz, James Cornell, Nicole Drury, Ed Jorgensen, Tara Kelly, Susan Meaney, Andrew Spence, attorney Jeff Battistoni, Howard Schuman, Conservation Advisory Commission Representative, Joe Rochfort, Town Board Liaison.

Chairman Schwartz opened the meeting at 7:30 P.M.. announced the first agenda item, Bontecou One Subdivision.

The application request is for a two lot subdivision of the northerly 248+/- acre parcel of land located on the north side of the Shunpike. The proposal is to create Lot 2A which will be 30 acres of land and would have the three (3) existing houses including the barns/garages as shown on the plan. Proposed Lot 2B would be approximately 218 acres, which is currently vacant and will remain that way. This will be a flag lot and will have access over the existing gravel driveway located on the easterly portion of the property, to be used in common with proposed Lot 2A. **Dutchess County Tax Map Grid No. 6866-00-684936**

Brian Houston, L.S. is virtually present to review the application.

Chairman Schwartz requested Brian to give a “walk through” of the application. Brian described the proposal, said he is going to reconfigure the subdivision and revise the application and map. Said, that there will be a modification of the one house shown on the westerly side of the property.

**A Public Hearing is scheduled for June 1, 2021 on the modified plan.**

The application request of Derris and Kier Special Permit (Jesse Derris and Jordana Kier) 692-696 Bangall Road, is for proposed new construction of a single family dwelling on a 45+ acre parcel. The new house shall be the primary residence and the current residence shall be the guest house. The property is zoned RS 10 Rural Residential. **Dutchess County Tax Map Grid No. 6767-00-906090**

Chairman Schwartz announced that this application is for a public hearing, called for a motion to open the Derris and Kier public hearing. **A motion to open the Derris and Kier Special Permit Public Hearing was made by board member Kelly, seconded by board member Meaney. 4 ayes**

Chairman Schwartz next called for a complete reiteration of the proposed project. Said, if there are any specific documents that they would like to be put up for public viewing, to refer to them by the document number not the description.

Jason Snyder, CPESC, Badley & Watson project engineer announced that the applicants Jesse Derris and Jordana Kier, architect Kyle O'Donnell, are virtually present, requested that document no. 2 which should reflect the most recent iteration of the site plan be shown. Said this is the site plan that reflects the changes to the driveway which were made following his discussion with the Millbrook Fire Chief with regard to the maneuverability of fire apparatus to the new residence.

Jason recapped the proposal, said, a proposed second residence on a 45+ acre parcel is to be served by a new separate portable water well and subsurface sewage treatment system. The new driveway will come off the old driveway, will extend the old driveway from the existing curb cut on Bangall Road. The new portion of the driveway is approximately 825 ft. long, Said, he left the old horizontal alignment of the driveway, you can see how the driveway was changed. They will be cutting through some of the existing stone wall and will need to rebuild the wall. Per instruction of the fire chief they added a parallel to the end of the driveway close to the residence that will accommodate their fire truck, it's a 20x50 hammerhead turnaround. This was the second thing they did, the first was to straighten out the driveway, the second was to add the hammerhead turnaround. The third was to provide a harder surface to the twelve percent driveway grade which is at the beginning of the driveway. That twelve percent grade will be tarred surface.

The changes to the driveway that the fire chief had requested were made, they also added the wetlands, (Jason requested to zoom out the document) said, you can see the Federal Wetlands, and the State Wetlands which were requested to be added to the site plan by the Conservation Advisory Commission. The hybrid soils are shown in orange which are specifically the town regulated wetlands, the Federal Wetlands are shown in green, the light blue is the State Wetland. The entire wetland is in dark blue. They are outside the wetland buffer with their development and limit their disturbance. Said, all of these wetlands now accurately reflect exactly the town wetlands map.

All of the existing development on the northwest corner of property is to remain intact. No changes are pending to the new residence central to the property east or west.

Chairman Schwartz questioned if he got the modifications that he made relative to the suggestions from the fire department in writing? Jason said the fire chief was supposed to email him and the planning board chairman, didn't see where that was done, he just had a telephone conversation with him. **Chairman Schwartz suggested that Jason get this in writing and be made part of his file in case there is any question it is documented.** Jason said he will contact the fire chief again to get his recommendation in writing. Said, when he spoke to him he was very receptive to everything, it isn't easy to reach him, maybe he doesn't have his correct contact information or up to date contact information, will try again. Said, the three things were the switchbacks, the bar ways, the hammerhead turnaround at the end, the harder surface of the twelve percent section of the proposed driveway. Said, he will get this in writing.

There were no questions, comments, from attorney Battistoni except to say that he was glad he got in touch with the fire chief, got these comments and addressed them.

Chairman Schwartz questioned if the CAC has any questions or comments. Howard Schuman, CAC representative, said the wetlands delineation has been very well done, they are satisfied.

Chairman Schwartz stated in the absence of any other comments from the board, comments, questions from the public called for a motion to close the public hearing. **A motion to close the Derris and Kier Special Permit Public Hearing was made by board member Kelly, seconded by board member Cornell. All ayes**

Attorney Battistoni explained that he did not prepare an approval resolution, he will prepare them for the next meeting. Chairman Schwartz questioned if he prefers that the board hold a vote on this next, what is his preference? Attorney Battistoni said he will prepare the resolutions, have them ready for the next meeting. Chairman Schwartz thanked Jason, applicants, for their input, said that the board will get this resolved at the next meeting.

Applicant questioned if the board can just reserve the next meeting for adoption of the resolution and close the public hearing tonight? Chairman Schwartz stated that the board has closed the public hearing. Questioned attorney Battistoni if the board can do a preliminary straw poll. Attorney Battistoni said he thinks it best if he prepares the negative declaration and approval resolution for next month. Chairman Schwartz said he will schedule the Derris and Kier Special Permit first at the next meeting.

Chairman Schwartz announced the review of the Chazen Companies Bancroft Farm modification of the driveway, this subdivision was approved many years ago.

Applicant is looking to modify the site plan as a result of the suspicion that it is in proximity to waterways, will be present tonight.

Chris Lapine, P.E., LEED AP, Chazen, A LaBella Companies virtually appeared before the board to review the application, requested that document no. 3 be displayed.

Chairman Schwartz requested Chris to recap to the previous approval since most of the board that is currently present was not on the board or a participant on the original approval. Chris stated that this was a subdivision many years ago, actually occurred July, 2010. The applicant, Ron Romeo subdivided a 137 acre parcel into four (4) individual lots. Lot 1 consisting of 11.57 acres, Lot 2 consisting of 33 acres, Lot 3 consisting of 46.7 acres, Lot 4 consisting of 46.54 acres.

Lot 1 of the subdivision was served by the original driveway access to a 237 acre parcel, to the north of the driveway that is shown. Lots 2 through 4 were served by a common driveway. The original driveway approval almost mimics what is seen for that common access driveway. During the course of construction they constructed what almost appears to be a similar type driveway that he is showing this evening, but they decided at that time that they wanted to relocate the driveway so they shifted it a little further to the north and came back, got an amended subdivision approval while this was under construction. This occurred in 2011. The planning board simply gave an amendment to the location of the new driveway.

Applicant went ahead and constructed the entire access driveway to service all four (4) lots in the rear of the property. They had all the DEC permits, constructed their bridges as well to access Lot 3 and 4. Mr. Romeo, owner, eventually took down the wood barn, the pool and garages on Lot 1 and built himself a house on Lot 1.

In December, 2020 Mr. Romeo sold his residence, and sold Lot 1 to Daniel Brenhouse. Part of the sale that was a gentlemen's agreement was that Mr. Romeo would relocate the access driveway that currently serves Lots 2,3, and 4 in the back of the property, in that it would be relocated approximately to what was originally contemplated in terms of access off of Verbank Road.

The reason behind this is that Mr. Brenhouse would like to have a little more privacy. There is proximity of the dwelling to the shared access drive, The intent is to basically relocate approximately 500 ft of the existing access drive and relocate/replace it with 500 linear feet of new access drive. The former gravel drive will be restored with four inches of top soil and seed. The point where we connect to the existing access drive are wetlands to the west, fluctuate between 110 and 140 feet away from those wetlands. There is a grading exercise that consists of approximately one acre of soil disturbance

associated with construction of this 500 linear feet driveway.

Chris said he is here tonight to solicit input from the planning board on this proposal, discuss the process going forward. Said, he met with the Town of Washington Highway Superintendent in late February to discuss the access location. He found the access location acceptable as he recalled that this was in a similar location to what was originally approved in the subdivision. He recalled that, at one point they switched it back, now they are switching it again. That was reassuring, he said the process would be to submit a formal plan to the planning board, then determine if he needs to go before them, if not, can obtain a highway work permit from him.

Chairman Schwartz questioned if these are current conditions or is this what he wants to do? Chris said this is what they want to do, said the current conditions going to the north about 400 ft. or so there is an existing gravel driveway, that's the common driveway that serves Lots 2,3 and 4 in the back of the property. That portion of the driveway would be top soiled and seeded. That driveway would be abandoned, this driveway would become the new driveway for the lots in the rear.

Chairman Schwartz remarked that he thinks is greater than one hundred feet from any waterbody. Chris said they are 110 to 140 ft away, said they provided the wetland application along with a site plan application, Short Form EAF and property deed for the parcel requested.

Chairman Schwartz questioned if someone actually went out and delineate the wetland boundary? Chris said these are the former wetlands from the original subdivision, the one wetland to the southwest is a waterbody that is existing.

Chairman Schwartz questioned if there are any questions, comments from the board, attorney Battistoni? Attorney Battistoni said he thinks that they need an amended subdivision approval or an amended plat approval. They are creating a new roadway access for what was created. Thinks we need to get the highway superintendents approval for the access point in writing. Would also send this to the fire chief, ask him to review the new proposed driveway to make sure its accessible for emergency equipment.

Chairman Schwartz next asked attorney Battistoni his thoughts about delineating the wetlands because it seems to be so close? Attorney Battistoni left that to Howard Schuman, Conservation Advisory Commission. Said it sounds like the wetland was delineated on the prior map, doesn't know how long ago that was. Chris said it was 2010, for record purposes the closest wetland to this is an existing waterbody which is a waterbody itself, the other wetlands to the north part of the drive are about 140 ft. away

In order to encroach with this wetland that wetland within the 100 ft. would have had to rise in elevation by at least ten feet in height which would close the roadway.

Chairman Schwartz questioned Howard Schuman for his input on this, remembers when it was part of the Romeo subdivision he had a lot of input on it. Howard said it was a very difficult subdivision, there was a lot of wetland contention at the time, went on for quite a while. As far as the delineation, he would like to see in the areas where are close to wetlands that field work be done that actually delineates them specifically. That wasn't done the last time as he recalls. The rest of this is just GIS software where the applicant is capable of doing that, its not a big deal. On the areas where they are close to the wetlands he would like someone to go into the field, maybe Steve Marino, or someone capable to delineate the boundaries. When the construction takes place if possible silt fencing be put up so that when the highway superintendent goes out to look at this he sees where they have done their work and the wetlands have not been disturbed or erosion, other things have taken place to enter the wetland. Silt fencing would be a good marker. To sum up, onsite delineation of those areas relatively close to the wetland that are 400 ft away you probably don't have to do that, but when getting into 150- 125 feet away you probably need to mark those boundaries and put silt fencing in, that is his recommendation.

Chris said that the wetlands that are shown on their plan were actually field delineated as part of the original amended application. Howard questioned if he has that documentation? Yes, the wetlands shown on their plan are representative of what are shown on the filed map which was included in their submission. Howard said he doesn't remember a field delineation, it was such awhile back. Chris said yes, it was field delineated because they had to get permits from both DEC and the Army Corp for the work associated with the crossing of the wetlands at the time. Howard said he doesn't remember that, said if Chris can include that documentation and about the silt fencing, he can put this on the site plan. Chris said he currently has silt fencing shown on the site plan but can show additional silt fencing on the lower areas as he requested adjacent to the wetlands. Howard said this sounds satisfactory, he needs to take a closer look at the application mapping, its probably adequate, is looking at it now.

Chairman Schwartz said the question is, if in its entirety falls outside of the buffer, that a wetlands permit is not necessary. If can ascertain from the prior delineation and the current location that you are outside that buffer. Chris said, "correct."

Chairman Schwartz questioned attorney Battistoni if he has any comments. No, he agrees with what he just said. Attorney Battistoni questioned Chris if he knows whether there was a common driveway easement and maintenance agreement as part of this plan? There was, that was amended in 2011, said he explained to both Mr. Romeo and Mr.

Brenhouse that if the town wishes to approve this they would have to amend that driveway maintenance agreement.

Chairman Schwartz questioned Chris if as part of his application is prepared to provide an amended shared driveway responsibility maintenance agreement? Yes, its going to be pretty similar to what the town originally approved, its just going to reference the new location and the length compared to what is being removed. Chairman Schwartz questioned will it be completed in advance of the meeting so it can be reviewed. “Correct.”

Howard Schuman addressed the board, said the silt fencing is important because some areas that are very close to the wetlands and construction activity is still in, agreed to already, just wants to be sure we are all on the same page. Chris said, “yes we are, for the record, our plans are for a double row of silt fence. “

Chairman Schwartz questioned if they are under an acre of disturbance. Chris said, we are at an acre of disturbance of the site. Nest questioned attorney Battistoni what his criteria is for at or over as far as the SWEPP? Attorney Battistoni asked Chris if he thinks he needs a SWEPP Attorney Battostoni said he thinks a SWEPP is required if it is a disturbance of one acre or more. Chris said in an erosion and sediment control plan it requires a disturbance of one to five acres or more as part of the stormwater prevention plan. Said, he will provide all erosion sediment control measures, will tighten up some of their grading to further limit the one acre of disturbance.

Chairman Schwartz questioned attorney Battistoni on his thoughts about scheduling a public hearing for the next meeting? Attorney Battistoni thinks the board should schedule a public hearing for June 1<sup>st</sup>. Chairman Schwartz spoke to getting everything in advance by the second Tuesday prior to the meeting, questioned Chris if this is an acceptable condition? Chris said absolutely, questioned if he has to mail out the notifications? Chairman Schwartz said the town mails out notifications to property owners five hundred feet from the property line. Said, given the relatively contentious nature of this subdivision it would be a good idea if someone notified the neighbors in advance of receiving that notification so they are made aware that this is a modification, its not a subdivision. Said, he remembers what happened the last time this was before the town. **A public hearing is scheduled for June 1, 2021.**

The application request of Five Acre Farm Academy, Inc. special permit (Marcia DeVoe and Eric Alexander), 48 Shunpike & Clinton Corners, NY is to use the existing buildings and land as a campus for their nonprofit (501c3) status pending. Five Acre Farm Academy serves gifted students from the Poughkeepie School District as an after school

academic program that provides accelerated work and expanded learning opportunities. The property is zoned RL 5. **Dutchess County Taz Map Grid No. 6666-00-289635.**

Chairman Schwartz called for a motion to open the Five Acre Farm Academy Inc. public hearing. **A motion to open the Five Acre Farm Academy Inc. Public Hearing was made by board member Meaney, seconded by board member Cornell. All ayes** Next called for a concise summary of the proposed application.

Attorney Josh Mackey, Mackey, Butts, Wise, spoke to the special permit to allow an after school program known as an enrichment program for students on the honor level for the City of Poughkeepsie School District who will be brought to Five Acre Farm for the program. Introduced the two founders and principals, Marcia DeVoe and Eric Alexander Marcia has spent a decade teaching gifted students at Dalton School In New York including many from prep school highly successful leadership development and educational program targeted for high school achieving New York City minority students. Marcia is currently an assistant director of the academic center at the Millbrook School, works with students with learning differences. Marcia's husband, Eric Alexander serves on the board of trustees for Emerson College where he sits on Finance Academic Affairs and Audit Committees ensures the Investment Committee charged with mandating the college's endowment. Said, Eric is to introduce three members of Five Acre Farm Academy's Advisory Board, Dr. Sylvia Spears, Doug Halloway and William Smith.

Eric Alexander introduced the three advisors, Sylvia Spears, Vice President for Equity and Social Justice, Emerson College, Dr. William Smith, Executive Director for National Center For the Academy, Doug Halloway is the president of resident entertainment which is managing an estate for which it is known also teachers marketing and advertizing in the City University of New York. Said, they will be available to answer any questions the board may have.

Attorney Mackey said he has a letter which he will submit after the meeting, submitted some supplementary materials including the Five Acre Farm Academy Brochure information on their client theft practices which was a subject that came up at the last meeting regarding training and oversight help in safety issues as well as a memo on after school programs.

Between the submission deadline and this meeting also received a letter of support from Drew Casertano, Millbrook School. Read the following letter into the record. "Dear Chairman Schwartz and Members of the Board, I am writing to lend my support to the Five Acre Farm Academy and in particular for Marcia DeVoe with whom I have worked at the Millbrook School for many years. Marcia is an experienced dedicated highly skilled professional who wants to use those abilities and her farm to serve middle

and high school students who might otherwise not have this opportunity to explore, learn and grow in a beautiful outdoor setting, and the commitment to using this substantial experience and skill and to share her home and farm in this worthy way.”

Said, at the last meeting the Board asked their counsel to respond to his March 19 letter addressing a number of issues that were raised at the initial meeting (this is our third meeting) including some discussion on their definition of educational institution. Said, it was an interesting discussion a little academic and certainly this is a matter of statutory construction. The Town Board adopted a code in 1987 and this was a definition that they sanctioned. They were free to amend and revise, the definition stands. The board should have a copy of that definition which is also included in the board council, attorney Battistoni letter from today which was received this afternoon.

They don't talk about educational institution but what they talk about referred to a commercial school. They define that as an establishment that provides training in specific areas of knowledge, such training may or may not include a comprehensive course of study.

Attorney Mackey looked at the town of Fishkill which separates school private and school public, school public is defined as an educational institution basically connected with a school district. School private is described as not operated by a public school district but furnishing a comprehensive curriculum of academic instruction similar to a public school.

Also looked at the town of Rhinebeck, which says, specifically excludes from its definition of educational institution. After school programs for students who are receiving their education elsewhere. It specifically considered this in the funding, the Town of Washington didn't. The board is confined with the definition as its written and can't legislate and create their own definition. That's the town board's job.

Attorney Battistoni could know these definitions because his firm has represented the Town of Poughkeepsie and the Town of Fishkill. When he crafted his letter this afternoon he knew there are other definitions out there. His concluding letter determining that Five Acre Farm Academy does not meet the definition of educational institution under the town code is simply unfounded. If the town wanted to say more in the code it would have. Five Acre Farm Academy's purpose is entirely educational in nature. Is prepared to talk about that again tonight to satisfy the concerns the board may have over definition and threshold issues you might call standing, which by the way thinks was well kept on that point in the process and in the stage of this application. Thought it was important to address at this time what he read this afternoon in attorney Battistoni's letter.

The board should consider in granting this special permit that the neighborhood does not appear to be opposed to this application, at least in a meaningful way as far as we know our plaintiff has had conversation with their neighbors, reached out to their neighbors. The use does not involve any changes to the site plan. A planning board which often faces these challenges as we saw in the last Romeo application and the one before where revisions upon revisions and meetings upon meetings and ending in expense and time requiring all of the board to be novice engineers, novice wetlands experts and scientists. Said, he is not asking to do any of that. This is simply about a use, a benevolent use, a use that will contribute to the community, not just to the Town of Washington but our regional community which we are all invested in, like it or not. We cant live in the bubble of Millbrook, we are part of a larger group of people in our county, in our region, in our country.

Board member Cornell spoke to being very skeptical of this application. Questioned attorney Mackey, under his definition of educational institution, if someone in the Town of Washington is pre-schooling their child does that household property qualify as an educational institution? Attorney Mackey said the town has a separate provision in the code which addresses that very specifically. Board member Cornell said he is asking that under his definition? Attorney Mackey said he is asking something different. The town code has already provided for that occurrence. We discussed that internally whether we should make that approach to you for private tutoring. You could be transparent and try to find the most accurate category, that's what you do with a code. Doesn't think anyone on this board was here is 1987, it's the best we can do, it's a matter of interpretation, trying to be transparent and not look for technicalities to deny an application that clearly should go through.

Board member Cornell said, they are applying for a 501c3 status, would that property become exempt under this application? Mr. Alexander said they do not currently have a 501c3 status, they are not a for profit corporation in the State of New York. We may file for a 501c3 statue. Board member Cornell questioned, if you do, the property itself would become tax exempt? Mr. Alexander said he doesn't know. Board member Cornell said that is a big question because that property is in our community, would establish similar type educational institutions that could be doing physical training, all sorts of different areas and file as a 501c3 then take your property exemption. This could establish a very dangerous precedent in our community of people applying under their very loose definition of education institution that would draw their properties from the tax roll.

Attorney Mackey responded that he can understand the concern, certainly the town's financial wealth is a concern these days. It has come up in other applications that the boards are considering. When a board is interested in sighting that as an example for making a decision they will and they are not in this case want to use that, in other cases

they don't. It's a slippery slope that the board is making, doesn't think that it has real practical value, there is not a real risk in parking in of other school programs opening up across the town, there are other not for profits in our town, doesn't think we have an enormous amount of not for profits, maybe we do in the village where there is a number of churches, Cardinal Hayes, those are all issues but the community has dealt with that and has he thinks a benevolent spirit and community mindness that allow for charities and not for profits to exist in harmony for profits or interest.

Attorney Mackey spoke relative to the advisory board, would like them to have the opportunity to have them answer some questions. Last time some questions were posed regarding the students themselves, who are they, whether they have a proclivity towards violence. Questioned if there is any further discussion on that or anything to be heard by Five Acre Farm Academy board regarding that question?

Chairman Schwartz questioned board members if there are any questions, issue, or concerns they would like to approach. Board member Spence referred to letters from neighbors opposing the application. Attorney Mackey said he is not aware of receiving any letters if board member Spence wishes to sight those letters will be happy to consider them. Board member Spence said they are from the Rugars, Philip Rugar & Susan Rugar,, Raymond Rugar, 25 Shunpike, Clinton Corners, NY. These were reported to the planning board by secretary Caul. Board member Cornell mentioned there were no letters of endorsement.

Attorney Mackey said he read into the record the letter from Drew Casertano, who is a current figure in the Town of Washington and Millbrook School which is a part of the Town of Washington. Knows that Marcia and Eric have talked with other neighbors, they can talk about some of those conversations. Whether they want to quote specifics on what people said in their driveway or not he doesn't know. Said, it is real easy to show up at a Zoom Meeting, people have these meetings on in their kitchen while they are making dinner, there are a lot of very interested people with Zoom. Its one of the benefits. Thinks we will hear from any of those opponents that board member Spence mentioned since it is so easy for them to log on and tell us what they think. Questioned Marcia and Eric if they have anything they want to add to that about conversations with their neighbors.

Eric Alexander said they have received positive feedback, actually a gentleman they have never met before pulled into their driveway last Friday, said that he had received a letter, he wasn't sure how anyone else felt about it, but he thinks it's a wonderful thing that they are doing. Said he is an educator, a substitute teacher, works in admissions capacity for the US Naval Academy. Said, he doesn't think any of his neighbors would never know this was happening, other than receiving notification.

Marcia spoke to the Rugars, said she has no idea what their letter said, they reached out to them a couple of times, they are neighbors who did not respond, could have, they live over a ridge and through the woods, they can't even see their property. Has no idea what their purpose might be but it won't affect their lives in anyway at all, won't even know that its there.

William Smith, known to most people as "Smitty" referred to board member Cornell question that perhaps in some way in the future it affects the tax roll. That is really a legitimate concern. Questioned if he has other concerns? The reason he asks that is usually when there is a discrepancy of this nature, if we understand specifically what concerns people we can effectively address those through a spirit of transparency, in relationship building we can usually move forward. His question is does he have other concerns other than the property question, if he could share them with Marcia, Eric, and the faculty board so that we can have some idea of what he is concerned about? Are there other concerns other than that one?

Board member Cornell answered that, initially the question is of bussing these students all the way from Poughkeepsie out to Clinton Corners, is about thirty minutes on a good day, its after school, the student gets on a bus for an hour after school, these students have been sitting in the classroom all day. It's a very small piece of property, they have a few animals, not what you consider a farm. They have no contract with the Poughkeepsie school district, were not able to document any type of relationship. Transporting fifteen kids in traffic, half hour each way, after school, doesn't make any sense. We are looking at something that wasn't formulated.

Smitty said, one of the most highly counted programs in this nation is a program called Metco. Those students are transferred every day through a voluntary exchange from the inner City of Boston to the elite suburbs in Boston including one which he lives, is Sudbury. This program has been in the national news, several books, movies have been made on the enrichment experience of inner city students to have an experience in the suburbs. His son-in-law happens to know the principal in the City of Boston, Brighton High School. These kids ride the bus in Metro, thirty-three thousand of them, for an hour in the morning, an hour in the evening going back. Their parents say they would not change that experience, they are graduates, many of whom are very successful in Boston and nationally. Said, he assures, appreciates his concern about a kid who is eleven years old, riding a bus for thirty minutes. Assures that Metco has carefully demonstrated that kids are really wonderful opportunities and not detrimental. Said, he wanted to share the impact of these programs with regard to what board member Cornell central concern seems to be which is legitimate. Asked board member Spence to share the Rugar letter so Marcia and Eric can see specifically what the concerns are.

Board member Jorgensen questioned if the Five Acre Farm Academy lot is a residential lot? Attorney Mackey said it is in the RL 5 district. Next referred to not doubting that Dutchess Day School would be able to find a lot in an RL 5 zone and propose to set up an educational facility. This residential property becomes an educational facility. It seems to him that our code was addressing could there be an educational institution in an RL 5. Thinks our code said yes, it was probably remembering that the Bontecous took a farm area and set up Dutchess Day School many years ago. To him it's a president to say you can take a residential lot and make it an educational use. Feels that a residential lot, if its going to be in our code an educational use the lot itself should be owned by an educational not for profit. Questioned if attorney Battistoni reads our code to say that in a residential barrier a residential land owner can set up a school in his residential building? Is that what our code was intended to permit or was it contemplating that the lot itself would transfer to an educational institution that could then set up a school of some sort?

Attorney Battistoni said he thinks we are getting off base, the applicants are proposing to operate a program out of their home. They are proposing to classify as an educational institution. The first thing we need to do is to go to the definition of educational institution in the town zoning code, read, " educational institution, a private school, college, university or research institute getting general academic instruction including adult education or providing research facilities to scholars or scientists with structured administration, classrooms, student housing, faculty housing, dining, laboratories, faculty and staff offices, libraries, field study purposes, social athletic activities as well' as accessory meetings." Said, that is the definition in the town's code of an educational institution. Doesn't think this program falls within that, thinks we have applicants who want to run an after school program out of their home, doesn't think that falls within this definition.

Board member Jorgensen said this is how he read the code, which means that he thinks worthy cause would be achieved by transferring title to an educational institution and setting up a full fledged school. Doesn't believe our code contemplates a quasi school run out of a residential lining room, doesn't think that's what the code is about.

Attorney Mackey said earlier he recited some examples or other municipalities definitions of educational institution, to say again, if the town had contemplated anything but this type of application they would have specifically so provided, there was no mention that the program had to be certified by a commissioner of education, for example as it says in the labor law when you are dealing with unemployment benefits. It doesn't specifically exclude after school program like the town of Rhinebeck says in their code. As a planning Board, (he doesn't want to be preaching to the board) but their role is not

legislating, their role is simply enforcing the code that you are given. This is how the definition reads. Its clearly an educational purpose. Thinks he reviewed many if not all of the points that are described in the town's definition of educational institution.

Douglas Halloway said he doesn't know how many of you have kids or grandchildren that are involved in after school programs, he raised his children in Scarsdale New York where they played multiple sports. In two of the sports they took private instruction and traveled more than a half hour in the evening all year around. His children, growing up in the town of Scarsdale were not disadvantaged in any way but they voluntarily, and he voluntarily, had been participating in a program where they had to commute. In addition, in 1964 he was part of the first class of black children around the country that was bussed, was bussed over an hour each way, played sports and after school activities. Many times he had activities outside of the school or the neighborhood in which he lived. He voluntarily, and his parents voluntarily, committed to that. Coming home at dark, its only dark for several months out of the school year, if that program were in affect now those children would not be in the dark. Needles to say whether they are commuting in the dark in December or January or February, it is common practice all over the country for kids to participate in after school programs which require them to commute. In addition to the program Smitty talked about in Boston, the Metco Program, he is with a program in lower Westchester with the Westchester Club Member Foundation runs an after school program in White Plains and in New Rochelle. Those kids, although they are not bussed into a country setting, they are bussed in an after school program, four days a week, for the entire school year. Most of those children commute anywhere from fifteen minutes to forty five minutes from the after school program to and from into their home. It is not a problem. The parents volunteer and the children volunteer and participate.

Chairman Schwartz called upon adjoining neighbor Cornell of the property, who said, doesn't share the academic character of DeVoe and Alexander. However, she does have the experience of teaching an after school program in Millbrook High. Twenty years ago she taught the Japanese language in an after school program, the children that were interested in the program where gifted students, they also played sports, they had extra circular activities, and valued them in their time. Two of the five students that she taught, one went on to MIT, one went to Harvard, studied Japanese, went to Japan and was able to use their language skills which made her feel fulfilled. She is questioning the sincerity of Marcia DeVoe and Eric Alexander if they are truly concerned about the students that they pledge to care about. They should be the ones traveling to the school to spend their time on the road. (The remainder of her comments were unable to be distinguished)

Marcia DeVoe said she is shocked to hear of her insincerity, they are converting their property into a program institute, spent thousands of dollars to do this. Said, they are going to Poughkeepsie, they do go to the Poughkeepsie school. In addition to the time

we will be here, we will also be in Poughkeepsie, at the school, with the kids, on Saturday. That is part of their program.

Smitty spoke to knowing Marcia and Eric for years, know their sincerity. Their program will give the kids an experience that they just don't get every day. Its not just the face to face with the teacher, its allowing a young person to expand their experience. Said, he has seen how kids expand and develop from their experiences.

Sylvia Spears said as Eric Alexander mentioned, they call her doctor. She is not a medical doctor, she is a teen teacher in education. She has spent her entire career in education, higher education and little people. She studied educational environment and what makes those environments rich. Yes, indeed, relationship with a teacher, understanding their community is important, being in Poughkeepsie is very important. What she hears is that this program includes that. Also wants to echo what smitty just said, that is the power of bringing young people into an environment that they are not used to being, the doors that open, being in connection and in relationship with the land, with animals, having an opportunity to explore. Her greatest hope is that despite the challenges around the ordinances in the community that the board finds a way together with the folks from Five Acre Farm Academy to actually make this possible for young people. Understands the challenges that have been lifted up but there are few times in life you have an opportunity to do the right thing for people, maybe not of your community, but the larger community that we all are connected to. Hopes that the board will find their way through this to find some positive outcome that might just save change in the lives of a young person. She has known Marcia and Eric for about nine years, can say these are people with integrity and have deep compassion for young people.. The board may not like their proposal, you may have questions about their proposal, but she really, honestly, asks that noone question their motive, they are honorable people or she wouldn't be here in support of their plan.

Board member Drury spoke to this application, thinks the idea is very honorable, the idea of helping any kind of child is honorable, she has a little background in education, a former chairman of a private pre-school, now sits on the board of another private school here in the State of New York. Doesn't think this is a question of whether or not if you are honorable people, thinks that anyone that likes children there is no question in that. Thinks this is an issue that comes down to the code, the code says, there can be a special permit given for an educational institution. An educational institution is one of four things, must be a private school, a college, a university or a research institute. Thinks what they are applying for is that they are a private school. You have to be one of those four things to meet the definition of an educational institution applying in the zoning code for the Town of Washington. You are not a college, university, or research institute, you are applying under the private school category. If you are a private school you have to be part of the New York State Association of Independent Schools. Doesn't think Five Acre Farm

Academy fits one of those four categories as defined by the definition in the zoning code.

Attorney Mackey thanked board member Drury for getting back on track for the fact that its zoning district special permit for educational use which is defined as we discussed several times when there is a definition of educational institution that attorney Battistoni recited earlier, it's a special permitted use. The planning board can allow this in this residential zone even if it's a small farm. Big farm, small farm, the code allows the board to give permission for this use. We come back to what we have been stuck on, this definition. The only thing he disagrees with what board member Drury said with respect to her background is her objective view of this. It does not define what a private school is. Yes, this would fit of all of those four different categories at the beginning of that definition if this is under private school unless it says in the definition they have to be a certified program or a licenced program or a 501c3 program like the other towns do.

Board member Drury spoke to what contention is, what the definition of a private school is. If you don't have to have certification or accreditation, or charter, then anyone can say they have a school. Those are the things that make a private school an entity, an institution. Without the need to dream those things for example, why is our community serving a private school in education, they are accredited by the New York Association of Independent Schools which manages private schools. Said, the institution in our community has a charter for New York state. There are things that give to them a mandate on a school. If The Five Acre Farm Academy is not required to have any of those things then anyone can say, I have a private school. Those are the things that make up an institution, school. Said, she can't make Five Acre Farm Academy fit the definition of a private school as defined as others that are already in our community.

Attorney Mackey said he completely understands board member Drury, the only thing he will add is that as a planning board you are required to impose conditions in an approval, if you grant a special permit could require certain safety precautions, certain policies, certain hours, certain protocols that might mirror what as a board should say what a private school should have, the board is allowed to do that. His position is very academic in a lot of ways, this definition obviously with a broader interpretation of it, than you have, concurs with the board, doesn't think anybody is trying to be personal, thinks how to getting our hands around how this code is drafted and honoring in his case as the attorney for the applicant, and a truly worthy endeavor with very low impact. Special Permits are usually about the impact on the neighborhood, not the business plan or the motivation or definitions. In his experience usually could favor the applicant not against the applicant.

Attorney Mackey spoke to the board addressing other concerns they may have after they have heard from the public. Said, he would like to hear the board's vote tonight.

Chairman Schwartz said he appreciates his advice as the prior chairperson, thinks this is not only a generous but extremely honorable application. Thinks the issue the board is having is one of definition as attorney Mackey has said, he is curious as to what the State definition of a private school is. (he has not looked into it.) Thinks it's a question of interpretation. Whether the planning board is the appropriate place for an interpretation, whether it's the ZBA whose charter is do just that.

Board member Kelly said the board has been focusing on the definition of educational institution, there is a certain lack of knowledge on her part, questioned if there is a reason why the zoning code doesn't include public school where is says a private or public school? Public school is not listed, understands the town may hold itself apart from that but is there a reason why it doesn't say public or private?

Attorney Battistoni said he doesn't know the answer to that, but thinks that in the old days public education institution would be exempt from zoning, they could locate a school in an area where zoning would allow it so they probably didn't need to address that in the definition.. Said its just a guess.

Attorney Mackey said the town of Rhinebeck speaks to that in after school programs. The town of Fishkill has two definitions, school, private and school, public. There are ways to do this, until the Town of Washington does, this is the board definition. Doesn't think can say, we have this antiquated code so we are just going to say no. Board member Kelly said what she sees in this definition of educational institution is that it is not all that comprehensive.

Smitty posed a question, said, if he were to come to chairman Schwartz and say he wants to operate an enrichment center, where would you put that? Chairman Schwartz deferred to attorney Battistoni since he doesn't see it in the code. Attorney Battistoni said he doesn't know the anser to that. Chairman Schwartz said a referral to the ZBA is warranted, but he is looking for his legal opinion as far as process. Attorney Battistoni said his advice to the board is that this application does not fall within the definition of educational institution under the code, Thinks the board should deny the application if its going to vote on it. Instead if the board wants to refer it to the Zoning Board of Appeals for interpretation has to act on possibility.

Chairman Schwartz questioned, from a procedural prospective is it a reasonable act at this point to refer to the ZBA? Attorney Battistoni said, procedurally he doesn't see a problem with it, he would ask the applicant if she is interested?

Attorney Mackey said he knows this is a challenging issue for the board but we are three meetings in, four months, a lot of time and expense, thinks they are entitled to a vote.

They can still go to the ZBA to appeal, their right to appeal to them exists regardless of the board's process. The finality of the planning board would be appreciated, thinks they have a reasonable expectation for that tonight.

Chairman Schwartz said he was under the impression that procedurally his appeal would be under an Article 78, not with the ZBA. He was trying to facilitate a more rapid resolution especially from a prospective of cost. Attorney Battistoni said he has no comment on this. He doesn't know if an appeal is made to the ZBA or whether they have to go to court with an Article 78.

Attorney Mackey spoke in terms of the process and serving the public, he would not want the planning board to string along an applicant for four months, then just refer them to another board. Thinks his era is dropping when you do that. You are entitled to a vote. Doesn't think the good intentions of making assumptions about which process are going to be faster and quicker because he is not sure that there is a need on any part of the board to expedite applications that are coming in private these days.

Chairman Schwartz said he disagrees with attorney Mackey on that, thinks that you can serve documentation upon representation based by action that even just tonight we expedited. Thinks attorney Mackey saw tonight that they procedurally expedited multiple applications, that we always look to get things done quickly. Attorney Mackey interjected, when there are familiar faces, is sure that they do. Chairman Schwartz said, first of all before the public hearing you are not going to get a vote tonight, you know that, that is number one, number two, he is actually trying to facilitate the situation, not be an obstructionist. Attorney Mackey said his clients cannot afford any more legal fees, meetings, are entitled to a final determination, is asking for that out of respect.

Chairman Schwartz questioned attorney Battistoni what the response is to require the response time following closing of a public hearing? Forty five days? Attorney Battistoni said he doesn't know if its sixty two or forty five, it can go to the next meeting before you have to make a decision.

Chairman Schwartz questioned if there are any comments from the board? Comments were to take a procedural vote: board member Cornell said he thinks the board should proceed to a vote as attorney Mackey is requesting, board member Jorgensen said attorney Mackey has requested a vote, thinks he is entitled to a vote, board member Kelly said Eric Alexander has had his hand up to speak , she would like to hear from him before she says anything more. Eric Alexander said he is following attorney Mackey's lead in a vote, would like to ask to vote in the affirmative, approve this. Said, you have proposals in front of you about putting forth trucks on the road every single day, you have people that are asking to redefine the town code, we are asking for approval of a simple plan that will

not spill beyond the four walls of our property to help people in our community, this board can approve this or you can kill it or put us through a different path, hopes that the board will find a way to be generous with our neighbors and approve this , so yes, we would like there to be a vote to approve this application.

Chairman Schwartz said specifically the reason for his thought process is to expedite and keep costs to a minimum, As to a vote, its his understanding that we don't have the charter to interpret the code that is a function of the ZBA and is the point of this becoming hold on second this becoming a precedent. If a zba grants a variance that's not a precedent, if this board grants an approval it is a precedent, said he understands their frustration. Said, he doesn't think there is anybody in the town that understands it more then he, as he went five years with an application so he understands what its like, understands that three, four months is a long time but it is not five years. Said, he looks to be as efficient as possible with people's time and money. Said, he has tried to expedite everyone in spite of what attorney Mackey said, looks to expedite everyone's application, if a vote is what they are looking for then the board is clearly in favor of it, he is not going to stand in the way, doesn't think it's the most prudent course but we will move to a vote.

Chairman Schwartz questioned if there is a motion to vote on the Five Acre Farm Academy application for an educational institution at the address associated with this application, was made by board member Jorgensen, seconded by board member Kelly. All ayes,.

Chairman Schwartz said he thinks the board needs to go to an individual count, board members Spence, Drury, Cornell, Jorgensen, Meaney are nays. Chairman Schwartz stated he is going to vote against this, board member Kelly is a nay.

Chairman Schwartz said he doesn't question the intent or the potential benefit of this application, thinks it's a wonderful idea. Thinks procedurally it needs to be done in a manner that is appropriate, thinks this is the manner that is. Said, if attorney Mackey can find a mechanism to go directly to the ZBA, then fine, this is the proper place for this to be determined.

Attorney Mackey said he wished we knew that four months ago, but understands, on behalf of his clients, self, appreciates everyone's time on the board who has given a lot of careful thought to considering the application.

Board member Jorgensen said he thinks this would be possible to structure this in a way that it could be approved in a residential district, doesn't think this is a formal program on a residential property being used as a residence is something we can permit under the code. It's a worthy program, perhaps the applicants can consider relocating and taking another

step with this program, will restructure this application down the road to something that this board could approve. Although he likes the program still thinks he would not vote for it in a currently residential occupied residential district.

Chairman Schwartz remarked that reflects the feeling of the board as a whole it's a matter of support. Said the goal that they are looking to reach is a matter of how to get there, said, he would hate to see this being an article 78, would much rather see it going in front of the ZBA for an interpretation, either that or a modification to better fit the code.

Attorney Mackey questioned if that is something that the board could give feedback on, would appreciate those comments, thinks he knows but is not sure to what they are referring, but if through your counsel or in some other way, we could have a little more information about what you are talking. Chairman Schwartz said he thinks attorney Battistoni will followup with this offline. Attorney Mackey said okay, thank you.

Chairman Schwartz spoke to bidding farewell to Tara Kelly, thanked her for all of her attentiveness and assistance through the period of time that she has served with the planning board. Tara is stepping down from the planning board, is going to be local but no longer a part of our board. We would welcome her with open arms and she is welcomed back at a later date if it suites her.

The following comments are from the National Center Race Amity, "just thank you for letting me be a part or this. I have to say that I am touched with the sincerity of many of you. Many of you are in this conversation and I would be less than honest and transparent if I could say that everyone sincerely was investigating this but they're just based on comments from a couple of people here. It ain't going to happen, your minds will never be changed because you've come in with a predisposed view of this and I would be less than honest if I didn't say that you know exactly who you are. Most of you are earnest people, have legitimate questions but I cannot for my moral code ignore the fact that some of you are hard hearted and there's nothing that we could say, that Eric or Marcia could say that would change your mind because you have predetermined against this, is hoping the majority who do have good hearts are sincere. You know who you are, that you will change your mind as time passes. I may be throwing a bomb and fire but I gotta see. Thank you.

There being no other comments, discussion, business, A motion to close the meeting was made by board member Kelly, seconded by board member Meaner. The meeting was closed at 9:30 P.M.

Respectfully submitted,

Nikki Caul, secretary

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