

# ZONING BOARD OF APPEALS

238 Main Street, Cold Spring, New York 10516

June 11, 2012

7:30 p.m.

## PUBLIC HEARING

- 1) **LYONS REALTY COMPANY: Appeal #840** for a Special Use Permit. The applicant proposes a Soil Mine on properties located on the east side of US Route 9 between Mill Road and East Mountain Road North in the Town of Philipstown. The project site is currently a wooded area. Applicant owns a 136.9 acre parcel of which 32.6 acres will be disturbed for the mine and a proposed road. The mining operations will be confined to an 18.8 acres area. Continuation of Public Hearing held on May 14, 2012. (Located 3175 Route 9, Cold Spring) in an Industrial and R-40 District. TM #17.-1-76.11

## REGULAR MEETING

- 2) **REVIEW OF MINUTES:** May 14, 2012
- 3) **ANDREW and SUSAN HOMOLA: Appeal #878** for a Variance. Applicants would like to increase the height of a deer fence around the back of their property from 6' to 8', without setback. (Location 24 Woodland Drive, Garrison) in an R-8- District. TM #49.-3-63 **DISCUSSION** (to be heard with Edelstein Appeal)
- 4) **DRAKE PETROLEUM Co./GARRISON FOREIGN & DOMESTIC STATION: Appeal #879** for a Variance. Applicant would like to re-image the current Getty Gas Station to a Gulf Gas Station. The Zoning District requires a front yard setback of 30 feet from the centerline of a State Road. The survey indicates a new two pole sign to be placed on the footing of the existing single pole sign which is 23' from the centerline of Route 9D. (Location 1122 Route 9D, Garrison) in an HM District. TM #60.18-1-46 **RESOLUTION**
- 5) **JERRY EDELSTEIN: Appeal #880** for a Variance. Applicant would like to increase the height of a deer fence from 6' to 8' without setback. (Location 14 Woodland Drive, Garrison) in an R-80 District. TM #49.-3-64 **DISCUSSION** (to be heard with Homola Appeal)
- 6) **OLD BUSINESS/NEW BUSINESS**

Vincent Cestone  
Chairman

**NOTE: Items may not be called in order shown. Not all items may be called.**

So far...

### **ZBA Active Appeals**

- |  |   |                            |
|--|---|----------------------------|
| <b>#840 Lyons Realty Company</b>         | - | con't Public Hearing 6/11  |
| <b>#877 Lausca, LLC</b>                  | - | sent to the Planning Board |
| <b>#878 Homola</b>                       | - | Discussion 6/11            |
| <b>#879 Drake Petroleum Co./Garrison</b> |   |                            |
| <b>Foreign &amp; Domestic Station</b>    | - | Resolution 6/11            |
| <b>#880 Edelstein</b>                    | - | Discussion 6/11            |

DRAFT

## ZONING BOARD OF APPEALS

May 14, 2012

### MINUTES



The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, May 14, 2012, at the Philipstown Town Hall, 238 Main Street, Cold Spring, New York. The work session was opened by Vincent Cestone, Chairman, at 7:30 p.m.

<b>PRESENT:</b>	Vincent Cestone	-	Chairman
	Lenny Lim	-	Member
	Bill Flaherty	-	Member
	Robert Dee	-	Member
	Paula Clair	-	Member
		-	Counsel

#### **ABSENT:**

**Vincent Cestone** – Alrighty. Let's get started with Andrew and Susan Homola. Will the applicants please come up.

**Andrew Homola** - This is Jerry Edelstein, also #2.

**Vincent Cestone** – Okay so

**Andrew Homola** - We have some things for you.

**Kim Shewmaker** - I need a copy for the town file. Thank you.

**Vincent Cestone** – So, I know what this is about, but just for the record state exactly what you're proposing

**Andrew Homola** - We would like to put a fence on our property line

**Vincent Cestone** – Yeah. Over the height

**Andrew Homola** - Over the height to 8 feet

**Vincent Cestone** – And why would that be. Why do you, I know why, I am asking for the record

**Susan Homola** - Okay. There is research that we found that indicates that at 6 feet 95% penetration through 6 foot by deer and at 7 feet there is some

penetration and there was no penetration in the 8 feet. And because we have a property that we have invested a lot of plantings etc we would like to protect it. And if we were to set it back according to the Town's requirements, it would dissect our lawn, our main lawn and whereas we have a natural property line between Jerry Edelstein's property and ours, we were hoping to make that

**Lenny Lim** - Town what

**Susan Homola** - The town requirement to, if you want it to be 8 feet it has to be setback

**Lenny Lim** - Correct

**Susan Homola** - And so, if we were to set it back, in the original submission I showed photographs. Not in this packet but in the original one it showed pictures of what it would look like to dissect

**Andrew Homola** - It would be right down the center of the property

**Susan Homola** - Whereas we have a natural

**Lenny Lim** – (cannot hear dialogue) \_\_\_\_\_

**Andrew Homola** - It is just one location on the field going up the property

**Susan Homola** - I'll show you. I think I do have that picture here.

**Robert Dee** - Why not 6 foot

**Andrew Homola** - Well actually we are applying for an 8 foot

**Robert Dee** - Right okay. But you are saying if you put it someplace else you can put the 8 foot in?

**Susan Homola** - I thought if you put it 25 feet back or so you can increase the height of it, but it then would be defined as a structure or some other definition. But either way

**Robert Dee** - If I understand, no matter how far you go back it is 6 foot. I am not sure

**Lenny Lim** - how do you explain that it is a structure

**Susan Homola** - Okay. Let's take a step back. What we would really like to do if to put a fence around our property and instead of a 6 foot fence, we would like to put up an 8 foot fence because of the information that I attached based on

anything that we've seen, deer will penetrate anything less than an 8 foot fence.

**Lenny Lim** - This is to keep the deer from eating your plants

**Susan Homola** - Yes. And to keep them away from the house because we've had lyme's disease and it is just

**Paula Clair** - And this is proposed to put the fence on the property line between you and Mr. Edelstein

**Susan Homola** - Yes it is. Just one side and then it goes up the backside of our property onto another piece of Jerry's property. Which is why he is here because we would like the fence to extend on to his property and then down, with gates.

**Paula Clair** - And is he in agreement with this

**Jerry Edelstein** - Yes

**Vincent Cestone** – What defines a deer fence from say a regular barrier fence?

**Susan Homola** - Okay. One is obviously the purpose and function of it

**Vincent Cestone** – Right

**Susan Homola** - The other is that it would be, a lot of times fences are solid. And ours would just be a see through cedar, bark on cedar so they would look like trees so the posts are bark on cedar and then you have a wire fencing that is see through. So you really can't see it, it is supposed to blend into the wood line that is all around. Just to show you the picture of what this 70 acres that is adjoining our property which brings a fair amount of deer, but this is what we want it to blend into so that you can't see it from

**Vincent Cestone** – So you put in cedar posts every 8 feet and then stretch a mesh across it? Is that what it is? Because there is no definition in the Building Code, I mean the Zoning Code what a deer fence is.

**Susan Homola** - So should I say fence

**Vincent Cestone** – The reason being, the reason why I am asking is maybe the Town needs to amend the Code and add that definition of what a deer fence is. So that in the future people like yourself will not have to go through a variance process

**Susan Homola** - That would be terrific. This is really long, expensive and yeah, it is really hard. It has been a trip just to get this far. But I think it is a great idea.

**Vincent Cestone** – Yeah because

**Susan Homola** - And it wastes your time and

**Vincent Cestone** – Because the reason for that is is that it would stop instances like yourself to have to be before the zoning board. So, any questions from the board?

**Bill Flaherty** - I want to say that in your application you say that the property was used for soccer games?

**Susan Homola** - We have what they call a great lawn. It is a nice big lawn

**Bill Flaherty** - Yeah

**Susan Homola** - That is next to our house and Jerry's is on the other side of a very nice great lawn. And so there are some trees between our properties on that lawn but yes we play ride on it, we play soccer on it, we have an ice rink we put up in the wintertime

**Bill Flaherty** - And how do you gain access to the property?

**Susan Homola** - Our house is on it. It crosses

**Andrew Homola** - It is all part and parcel

**Susan Homola** - It is all the same lot. I have a big survey. Ignore all the different colors. But this is, I am going to put it upside down, this is Indian Brook Road over here, Woodland Drive wraps up around here, our house is here, our lawn is here, Jerry's house is here. So this is a big wide open lawn right here. And so what we just like to do is bring this around the backside, the front side we are just going to leave open. But the backside just to contain

**Andrew Homola** - We are talking 10 – 12 feet of it.

**Bill Flaherty** - For something 8 foot high fence, you are going to discourage the deer obviously from entering your property. I mean deer control in this Town is a big problem. Everybody has a problem with deer. And a good way of protecting your property is by building an 8 foot high fence. I don't think there is any other way that I am aware of that you can discourage deer from entering your property unless it is properly fenced. Do you have any ideas or any other method you would like to use?

**Susan Homola** - Well I've done some research on that and

**Bill Flaherty** - I am not aware of any. I know that recently Vassar College had

shot about 110 deer on their property to help the problem. And I think they left around 65 wild on the property. But it is a big problem there is no question about it and I don't know what other remedies are at our disposal that we can control the deer.

**Susan Homola** - It is not just the cost of plantings on your property but also the disease

**Andrew Homola** - She's had lyme's, her mother has had lyme's

**Susan Homola** - It is just I want

**Lenny Lim** - It is not just the deer that carry the disease.

**Robert Dee** - You're not the only one, you are not unusual.

**Susan Homola** - Oh no

**Robert Dee** - I have one question I have, you said in your research you show a fence charger. An electric fence. You are not going to electrify the fence are you

**Susan Homola** - Oh no. No no.

**Robert Dee** - You are not going to electrocute the deer are you

**Susan Homola** - No no no.

**Robert Dee** - I was just reading it in the article

**Susan Homola** - It is all the different research

**Lenny Lim** - I saw it too,

**Andrew Homola** - It is nothing like that

**Susan Homola** - I think a lot of the article is trying to talk about alternatives

**Robert Dee** - So you are asking to make a fence 2 foot higher than allowed

**Andrew Homola** - Correct

**Vincent Cestone** -- Any more questions from the board? Do you have anything to add?

**Susan Homola** - Just that it is a great idea that if you can, I know a lot of people out there apparently looking for the same

**Vincent Cestone** – Anyone in the audience wish to speak on this? Please stand up and introduce yourself please.

**Barbara Hogan** - Yes. My name is Barbara Hogan, I am here on another agenda item but I happen to be white-tail deer Stewart, which is an expert on the quality deer management association. And I would be glad to give you some free advice. Because that is not going to do it.

**Lenny Lim** - 8 foot height is not going to do it?

**Barbara Hogan** - For this area I recommend 10 feet at least. They will just walk right up to it, people think deer do a running jump and go whoop you know. They don't. They just stand there and go right over. So in this area I would suggest a cedar metal would be better because it will last you forever, but if you just put a little bit of white cloth okay. Because that is the white tail. That to a deer means warning warning. That is why you see their white tails running. So the white cloth will replicate that. And you have to have something solid on the top. Otherwise they will think they can get over. And they will. They will have no problem. I will be glad to give you some free advice after the meeting. Because that is not going to do it.

**Lenny Lim** - So you are saying the alternative is to put the fence higher

**Barbara Hogan** - Yes. It needs to be a little higher and there is the mesh you can put up and just a little bit of a solid lead, literally this big in wood, that will let them know they cannot get across. They can get over it but they don't think they will be able to get back out. And a little bit of white cloth every 20 feet. And a lot of cat mint. They hate that.

**Vincent Cestone** – Anyone else wish to speak on this? I make a motion to close the public hearing.

**Lenny Lim** - I would like the time to read the material.

**Vincent Cestone** – Do you want to continue the public hearing?

**Lenny Lim** - I can read it. You can close it.

**Vincent Cestone** – I made a motion to close the public hearing. I have a second. All those in favor?

**All Board Members** - Aye

**Vincent Cestone** – Opposed?



**(no response)**

**Vincent Cestone** – We are not going to vote on this tonight because several of the board members want to read the material, but in the mean time I am going to write a letter to the Town Board and ask them to define the code and address this directly in the Code so that we have no questions. So I am going to write that letter and ask them to re-visit the Code.

**Andrew Homola** - Do we all need to come out again for the vote? My neighbor was nice enough to come out tonight

**Vincent Cestone** – No.

**Susan Homola** - And when would we be able to expect the decision

**Vincent Cestone** – It would be at our next monthly meeting which would be June 11<sup>th</sup>.

**Susan Homola** - Thank you very much

**Andrew Homola** - Thank you for your time

**Kim Shewmaker** - Vinny are we going to give the attorney any direction to do a resolution?

**Vincent Cestone** – No

**Kim Shewmaker** - So we are not doing a resolution next meeting at all

**Vincent Cestone** – No

**Kim Shewmaker** - Okay. So I am just putting it on for discussion.

**ZBA Counsel** - Yes

**Kim Shewmaker** - Thank you

**Vincent Cestone** – The next meeting is June 11<sup>th</sup> and that is when we will revisit this. But we closed the public hearing and at the next meeting we will discuss this among ourselves publicly and then we vote

**Susan Homola** - So we will have our decision on June 11<sup>th</sup>?

**Lenny Lim** - We will have the vote

**Susan Homola** - Okay thank you

**Vincent Cestone** – And once we vote, we have 62 days to get the resolution to the building department but in instances like this we normally let the building department know that we voted either for or against and they can issue the permits with the anticipation of the resolution. Does that make sense to you? So we vote and then we let the Building Department know that we are voting for and these are the conditions, and they can issue a building permit in anticipation of receiving the resolution. So you don't have to wait the 62 days.

**Susan Homola** - Oh okay. Thank you very much

**Andrew Homola** - Thanks again

**Kim Shewmaker** - So for the minutes do you want to say that Edelstein was discussed and the public hearing closed as well?

**ZBA Counsel** - Yes

**Kim Shewmaker** - Okay

**ZBA Counsel** - Thank you

**Vincent Cestone** – Next item on the agenda is Drake Petroleum Company. Is someone here to speak for the applicant?

**Tyler Brafford** - Hi. How is everyone doing this evening? My name is Tyler Brafford and I work with NW Signs. We are the sign contractor for the applicant.

**Vincent Cestone** – Anything, I drove up 9D. Your not the Getty Station you are the other station?

**Tyler Brafford** - No. It is the Getty Station. Well it is half Getty now and half Gulf branded since the pumps are all brand new and of course the sign

**Robert Dee** - You have a cover over the sign now

**Tyler Brafford** - Yes yes. Currently the sign is covered so it is not a true

**Vincent Cestone** – The last time you were here you said you are keeping the sign at the same height and the same size but with dual poles coming down. Is that right?

**Tyler Brafford** - Ideally we want to reuse one of the footings that is already there. So essentially where that pole is currently there, that pole will stay. The footing will stay with a new pole. The secondary footing will be dug 6 ½ foot

**Lenny Lim** - Closer to the road?

**Tyler Brafford** - Further away from the road, back into the parking lot

**Robert Dee** - Further away

**Tyler Brafford** - So it will be no closer than it is currently. The actual sign face itself as you look at it you have a pole, then the sign face is about 4 foot, the sign is actually going back towards the parking lot, not towards the street. Right now the sign code states that it has to be 30 foot back from center line. That pole sits 23 feet so we are looking for relief of 7 foot. That's pretty much the long and short of it.

**Vincent Cestone** – Is the sign going to be the same total dimension?

**Tyler Brafford** - As far, I forgot the exact measurement of what is currently there versus what we are proposing, it was within Code. As far as overall square foot based on the 30 foot setback for

**Vincent Cestone** – If we issued a requirement that it could be no bigger, would that pose a problem

**Tyler Brafford** - I don't know simply based on square footage because unfortunately you are dealing with a shaped sign on the top and on the sides where this is all one square. So obviously the measurements can be made but right now I can't visualize saying okay what we are doing and what it was if that is going to be even close in the same wheelhouse. It could very well be, but I don't want to sell the customer short.

**Vincent Cestone** – If we issued a requirement that it would be no higher than the current sign

**Tyler Brafford** - As far as overall height?

**Vincent Cestone** – Total height.

**Tyler Brafford** - I don't believe that is an issue. We are looking at 10 foot right now overall height. Proposed. I don't think any of that, as far as overall height that can be worked with because you are just changing the size of the steel. It doesn't change anything else structurally.

**Vincent Cestone** – So what is the actual dimensions of the sign?

**Tyler Brafford** - We are looking at 6' 1 3/8" across, 10 foot even high and an 8 inch depth

**Vincent Cestone** – Say again

**Tyler Brafford** - I'll do height first. 10 foot high. 6 foot 1 3/8 inches

**Robert Dee** - The sign that is there now is much higher

**Tyler Brafford** - Again, it's been awhile since I've been there, I apologize

**Robert Dee** - I drove by and took a look at it, the sign is much higher. The width?

**Tyler Brafford** - The width is 6 foot 1

**Vincent Cestone** – Any more questions from the board?

**Bill Flaherty** - I have a concern, in your application you give us an alternative to the proposal that you have given to us originally asking for a variance. That is under question number 2. We could put a monument sign 4 feet high by 6 feet wide which would require a new foundation and we could have a sign that is proposed. Now why don't you consider this approach as opposed to coming for a variance for another sign? What's wrong with this? Is this more expensive?

**Tyler Brafford** - Well the footing can be. Now generally with monument signs you want to do something a little bit more ornate. So we would be using stone and brick and that is obviously a lot more expensive than putting steel up. In the event, when we were talking the overall height, 4 foot high is when you are talking about twice your sign and logo. Because that is what we are doing here and that is very minimal. So we are only giving 2 foot for a logo and 2 foot for the actual prices. In this case, they are asking for the regular price and the premium price as well as the logo. As proposed, the actual height of the two faces, one is 3 foot 7 and one is 2 foot 11. Just trying to put it in perspective of if we went to the 4 foot, that is very minimal signage. It would be more advantageous in that event to go for a reface of what is currently there. At least the height gives it the visibility.

**Bill Flaherty** - Well wouldn't this sign serve the same purpose as the sign that you are proposing to have with the \_\_\_\_\_. I mean it is a display sign.

**Tyler Brafford** - It is just the height. The overall dimensions.

**Bill Flaherty** - All the necessary messages are going to be on this sign as opposed to what you are proposing for the alternative sign.

**Tyler Brafford** - That's correct. And I guess an argument can be made for any size sign. If the sign code allowed 4 foot by 5, you could say well why don't you just have a 2 by 2. What's the difference. So I think in any argument there it is

fair to say why don't we just go with something smaller because you are going to see it and notice it anyway. I guess in adversity it is a sign, it is supposed to be visible and while that area warrants a 45 mile an hour drive

**Vincent Cestone** – Because it is also a scenic driveway

**Tyler Brafford** - I understand. I think a monument, as far as the customer is concerned, the monument style is what the City or Town would like, then if we can a little bit more square footage overall, that's something that would work. Basically what we would do is use the same type of parameters and cut the legs off. If that would work, we can come to terms with that. I think we can work around that as far as making the base and everything. If the overall height is the issue, then that can obviously be worked on. But the overall sign display, the more the merrier obviously when it comes to signs. And we don't want to be obtrusive either.

**Bill Flaherty** - In my opinion and my thought of mind is that this would suffice for the other sign giving you, displaying the same message here on this particular sign as opposed to the one you are asking a variance for. I just can't get this out of my mind, what would be your objection to going forward with this monument sign? Unless you say it is cost prohibitive. Which I don't think it is. If it is electrical or somewhat.

**Tyler Brafford** - Again, monuments are generally more expensive. When you put something on poles you alleviate the brick and stone surroundings. We could put a metal monument sign or essentially what's there just lower to the ground but it never really looks like it's properly landscaped. It is cost. Generally this is what Gulf typically likes to go with. We can try to work other things out if that is an issue but at this point for the variance the only thing that we were not in compliance with is the setback. As far as overall height and everything else, we are in compliance. The only thing we are going for the variance is the 7 foot setback not anything else for that matter.

**Vincent Cestone** – Can I propose for the monument sign, what about a sign that is not multi-colored just black and white? I am concerned about the scenic highway as well

**Tyler Brafford** - I have been doing work for Gulf for awhile and I have never seen a black and white Gulf sign. Or we do work for Shell and I have never seen anything outside of their corporate logo.

**Vincent Cestone** – You've never been to \_\_\_\_\_, Connecticut.

**Tyler Brafford** - I know there are places, there's gotta be, I think there's been some place in New York that I understand that you don't want necessarily all the vibrant colors. That is a corporate decision just like any other business.

**Vincent Cestone** – So this is 10 feet tall.

**Tyler Brafford** - Correct.

**Vincent Cestone** – Can it come down 2 or 3 feet

**Tyler Brafford** - We can do 8 foot over all

**Vincent Cestone** – I can't speak for the other members, but I prefer the 8 feet

**Robert Dee** - I don't have a problem with 8 foot because the sign is lower to begin with and further back

**Lenny Lim** - I have no problem either as long as the sign is further back and not closer to the road

**Robert Dee** - It is going to be smaller than the sign that is currently there now.

**Vincent Cestone** – Anyone wish to speak on this? I make a motion to close the public hearing. Do I have a second?

**Bill Flaherty** - Second

**Vincent Cestone** – All those in favor

**All Board Members** - Aye

**Vincent Cestone** – Opposed

(no response)

**Tyler Brafford** - For the record we will change the brand book

**Vincent Cestone** – Excuse me

**Tyler Brafford** - For the record we will change the brand book from the one submitted to an 8 foot overall height

**Vincent Cestone** – And you would, well we have to vote and find out. I make a motion to accept what's proposed with an 8 foot total height.

**Robert Dee** - I would vote in favor

**ZBA Counsel** - If I may, would that be at the 23 foot or is that the 30 foot

**Robert Dee - 23**

**Vincent Cestone – 23 feet from the road, total width of 6 feet**

**Tyler Brafford - 6 foot 1**

**Vincent Cestone – Total height of 8 feet**

**Tyler Brafford - 6 foot 1 3/8 inch. Most people don't care about the 3/8**

**Vincent Cestone – If we miss it, you will be back here**

**Tyler Brafford - If we are doing it on record, we might as well get all the measurements in there**

**Vincent Cestone – We don't want to miss it**

**Robert Dee - I seconded your motion.**

**Vincent Cestone – Okay. Roll call vote. I vote in favor**

**Lenny Lim - I vote in favor**

**Robert Dee - I vote in favor as well**

**Paula Clair - I vote in favor**

**Bill Flaherty - I vote to deny**

**Vincent Cestone – Okay. So the motion carries 4 to 1**

**ZBA Counsel - I will prepare a resolution for next month's meeting**

**Tyler Brafford - I couldn't fully understand when you were speaking with the previous applicants, how long does it usually take?**

**Vincent Cestone – Usually by next meeting we will have a resolution**

**Tyler Brafford - Okay**

**Vincent Cestone – And you are welcome to be here but it is not a requirement.**

**Tyler Brafford - Okay**

**Vincent Cestone – You can't get a building permit until the resolution is final**

**Tyler Brafford** - Okay

**Vincent Cestone** – It will be within a day or two

**Tyler Brafford** - Okay so say 1 month 2 days just to be safe

**ZBA Counsel** - Correct. But you can start working on your building application. Your building permit application.

**Tyler Brafford** - Okay. I think we already submitted for everything. We did it all at once. But either way they won't be able to approve anything until the resolution comes through which is roughly 1 month and 2 days

**Vincent Cestone** – And usually the building department likes the zoning board to approve your plans that you submit. So my suggestion is to get the plans to us so I can sign them when we do the resolution.

**Tyler Brafford** - Thank you. Have a good night. I appreciate it.

**Vincent Cestone** – Other business. Minutes of March 12<sup>th</sup>. Any changes?

**Kim Shewmaker** - Paula just gave them to me.

**Vincent Cestone** – I make a motion to accept the minutes as submitted. Do I have a second?

**Paula Clair** - Second

**Vincent Cestone** – All those in favor

**All Board Members** - Aye

**Vincent Cestone** – Opposed

(no response)

**Vincent Cestone** – Do we have April 9<sup>th</sup> minutes

**Kim Shewmaker** – yes

**Vincent Cestone** – Any up-dates or corrections to the April 9<sup>th</sup> minutes. I make a motion to accept them as submitted? Do I have a second?

**Lenny Lim** - Second

**Vincent Cestone** – All those in favor



**All Board Members - Aye**

**Vincent Cestone – Opposed**

**(no response)**

**Vincent Cestone –** Next item on the agenda is a continuation of a public hearing of Lyons Realty Company. Someone for the applicant wish to speak?

**Glennon Watson –** Good evening I am Glennon Watson from Badey & Watson Surveying and Engineering. We are the engineers and surveyors for the applicant Lyons Realty Company which is the partnership of Ernest and Nat Lyons who are sitting in the second row. As you correctly stated and it was published, this is a continuation of a public hearing which was adjourned sometime ago, I forget the exact date, pending the outcome of the review by the State of New York. There has been very little change in the overall plan in terms of the general plan in phasing of the project and I will take a few minutes to go over it and then I will touch on some of the things that the State looked at that were of particular concern to the State. What I did pass out to the members of the Board are copies of the several display pages which are just to make it a little bit easier for you to read. Lyons Realty owns 137 acres of property that starts on Route 9 and it is about 1200 feet north of the intersection of Mill Road and it is about 2500 feet south of the County line on the easterly side of Route 9 in a commercially developed area. The rear of the property is undeveloped and the undeveloped land continues to the southeast until it gets to East Mountain Road North where it has an expansive amount of frontage. The application is to mine 1,356,000 cubic yards of material over a 30 year period in roughly in 7 stages. Roughly equal 5. The total mine involves 22.7 acres of property. What you are seeing here is an over view of the existing conditions in the general area of the mine. This map does not show the entire 136 acres. It shows probably 40 acres of the property and some of the surrounding property. The first phase of the project is to develop a road into the property. This road is to be northeast of Clove Creek to the southeast Pars (?) office building, and it is southeast of Jaymark Jewelers. The road will come in off of Route 9 where there is a significant sight distance in both directions and it will come in and then to the east and come up to the mine's entrance. The road is designed to meet the grade for a commercial road. And what you see in brown here is the first area of disturbance. This is clearly the area where there will be the most visual impact and during the development of the mine. When that is complete and before the next Phase starts that will have to be reclaimed. The State guidelines require that no more than 5 acres of land be disturbed at any one time. So there will never be a time when the full 22.7 acres will be disturbed. There will be a time when there will be freshly reclaimed land and a second area being worked on. So what you are seeing here is the reclaimed portion of the road, and the first phase of the mine. What's happening here is a little bit hard to see is that the

mine is going up and the entrance is going to go behind the existing grade. The existing grade is going to continue above the road to form a berm or a blocked view of the mine itself. You will also see on this plan is the water treatment facility, storm water treatment facility that will capture the storm water and then there is actually another section here which is not as evident and it will capture and treat the storm water before it is released into Clove Creek. The next, as the mine progresses, the next phase will see further reclamation and replanting of the first two disturbed areas and now the mining begins, really begins in earnest at this point where you can see the berm is forming a wall that will protect and visually interrupt the view of the actual operation. The mine will progress from north to south and eventually as you will see in the next two pages it will continue to move to the south. Again, this lighter green area is planted with a planting scheme that is intended to encourage the revegetation in a natural, native species and the forest the way it exists today.

**Vincent Cestone** – Glen, how far are you decreasing the height of the land?

**Glennon Watson** – I believe from the highest point in the back there is a total depth to the floor of the mine of 80 feet.

**Vincent Cestone** – And so is there going to be an 80 foot depression or is it going to be filled with something or graded in such a way that it is not a depression?

**Glennon Watson** – It is going to be, if you were to be in the middle of it when it is done, may I return to that when I get through the project? So you see the mine progressing again further to the south, reclamation progressing to the south. Getting near the end of the mine, I think there may be one more phase. Again, the reclamation progressing, the mine progressing to the south. Mine progressing further to the south, reclamation progressing to the south. This is over approximately 4 year increments. They are not precise. The final, the final section of mining is in the extreme south of the 22 acres and most, all but 5 acres of the mine as been reclaimed at this point. Another water treatment plant to capture the water going through the mine and eventually delivered to Clove Creek in a treated form. And finally the completed mine, fully reclaimed, no more mining going on. This is 30 years out. Permanent storm water projection, permanent storm water treatment, permanent storm water treatment, permanent storm water treatment up by the entrance which is not very evident on the display board. To answer your question, if you were to drive in here you would be looking across a rather gently sloped, probably to the eye appear fairly level expanse. Most of these trees, this concentration of trees are on a slope. So it would look sort of like a bowl. It would, I think that's the best way to describe it. You would see land rising to your left, land rising to your right, land rising across here. It would peak and then it would fall off to back to the natural grade and down to Clove Creek. A couple of points about this project, we do stay with the exception of the final outfall of the storm water which has to get to Clove Creek,

we've maintained a minimum of 100 foot distance from the edge of Clove Creek and from its associated wetlands. The, as I briefly mentioned, the planting plan and the planting selections have been selected to use native species and using species that are designed to encourage a return to the forested state that was there. It is fairly flat up there now. It will be lower and it will be in a depressed area to answer and be specific to your question. What's going on since we last talked about this. We've made some changes in the plan. All of those changes have been relatively minor. Significant but in terms of it did not affect, as I started to say at the beginning of my presentation, it doesn't affect the overall plan or the overall phasing but such things as fences designed to keep animals out of the mine during the operation and keep them safe have been added to the plan and have been increased in places and much more specificity has been added. The storm water treatment plant has been entirely, treatment plan has been entirely redone. We spent a lot of this time with the Environmental Assessment Form including several studies. We did a visual impact study. In fact we did 2 visual impact studies because the first one frankly was found to be lacking. So we re-did it and we spent a great deal of time on that. We did an archeological survey. That was in direct response to questions that were raised with regard to the Fishkill Depot which is an historic site to the north, up by the Hess Mart and where the old Dutchess Mall was, they were concerned that the Revolutionary encampment, Revolutionary station up there would have drifted down this far for there would have been outlining conditions and outlining settlements that would have been affected by that and would have had an archeological significance. So we did a cultural resources survey. We didn't do it, we had someone do it. They did a shovel test and they prepared a report and submitted it to Office of Parks and Recreation of Historic Places and one of the other issues was the proximity to the Old Albany Post Road. But this is not the Old Albany Post Road. The Old Albany Post Road is on the other side of the wetlands and several hundred feet away, it is a big bulge around here. So that ended up not being such an important issue but regardless the report determined that there would be no impact on archeology or cultural resources and recommended that no further work be done in the State Department of Parks and Recreation and Historical Places has signed off on that. We did a traffic study. The traffic study was submitted some time ago. That was one of the earlier things we did. Essentially the impact on traffic is zero. What is called the level of service, in other words the functionality of an intersection is really the measures and based on the projections done by our traffic consultant, with or without this project the level of service remains the same. Not a great level of service. It's 15 which is passing but just passing. There was a Phase 1 Biodiversity Environmental Assessment and essentially that is that the property and the surrounding property was walked through in search of endangered species and the bottom line was none were found. That was again, that was accepted. I wouldn't characterized that as inadequate as I did our first visual impact statement but they wanted more because to the south, to the east I am going to say there is an area called palace slope which is considered rattlesnake habitat. So we waited a year to, I believe it was May June of last year, when we

commissioned a timber rattlesnake habitat assessment by a professional team.  
\_\_\_\_\_ in the field to survey the entire...

**(Turning tape over...may have lost some dialogue)**

**Glennon Watson** - ...during all the phases of their emergence and reproductive birth phases which is what the protocol indicates should be done. Again, they found no evidence and we resubmitted a report as part of the Environmental Assessment Form. And last but not least, and I think you had this before, we've also commissioned a noise study of the entire property and we took the readings for ambient noise, the key points around the property and concluded that it would be less than a 5 decibel increase in noise that would be projected at the property line in all instances. Provided as specified in here that the equipment is kept in sound condition, muffled and operated properly. So that was all submitted as part of the EAF. It was reviewed by the State. It was published and a negative declaration was issued that has been submitted to you and I believe the negative declaration or actually that action by the State is what you wanted in your hands before you would agree to continue the public hearing. So all of that has been done. The State has given us a small punch list. Literally a two item punch list of things to do with the Plan and asked us to respond to some written comment which we have done. We have not sent that in. I will correct myself. We have done. It has to be edited and finished up. I expect that will go back to the State within the next week. With that, we will be happy to answer any questions.

**Vincent Cestone** – Did the State make any comment about how \_\_\_\_\_ or is that not addressed?

**Glennon Watson** – I don't believe that has been addressed.

**Vincent Cestone** – Any questions from the board?

**Lenny Lim** - Where will the rock crushers be placed

**Glennon Watson** – It will not be kept on site. It would be brought in on an occasional date and essentially, did you see those brown areas move across the site? The middle of those brown areas are the work areas. So it will be down in the bowl. In the bottom of the bowl.

**Lenny Lim** - So there is going to be no permanent placement in other words. You are bringing them in as needed

**Nat Lyons** - They will be mobile, be on a track

**ZBA Counsel** - Mr. Chairman?

**Vincent Cestone** – When the soil mine is complete, are there plans to develop

that into something?

**Glennon Watson** – There are no plans to develop it. In fact, we had in our original land reclamation plan which is basically the narrative that you have to submit to the State, we identified that it would be suitable for a commercial development. It might be suitable for residential development, a condominium type basis. Though I personally don't think so. But, it might be. And in fact, they didn't want us to speculate. They asked that we merely identify it as, that it would return to a meadow or forested state.

**ZBA Counsel** - Mr. Chairman? If I could. On that particular point, and of course it would depend on the zoning that exists at the time that the property is reclaimed. So it will depend on what laws in fact are in place at that time. On the issue regarding the hours of operation the DEC actually did set hours of operation in their negative declaration and if you would like, I could read for you.

**Vincent Cestone** – Read it please

**ZBA Counsel** - Sure. Operation of the mine will be limited to the following hours and days: Monday through Friday 7 am to 5 pm and Saturday 8 am to 3 pm. With no processing on Saturday. No processing means no operation of machines that

**Glennon Watson** – Crushers

**ZBA Counsel** - Correct. Operation of the mine will be prohibited on Sundays and the following legal holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas Day. For the reasons noted above no significant adverse noise impacts are expected to result from this project.

**Lenny Lim** - Was the 4<sup>th</sup> of July part of the holidays?

**ZBA Counsel** - Yes. Independence Day.

**Paula Clair** - I have a question. You indicated that you are going to be discharging waste water

**Glennon Watson** – Storm water

**Paula Clair** - Storm water

**Glennon Watson** – Not waste water

**Paula Clair** - Into Clove Creek. I wanted to know, well first of all I wanted to know what kind of chemicals are going to be used in mining and what kind of

chemicals are going to be leaked into Clove Creek.

**Glennon Watson** – I don't believe there are any chemicals. There are no chemicals involved in the process. The stated 1,356,000 yards of material is an optimistic statement assuming we reach the bottom of the mine floor as predicted. There is some rock at the edge of the mine which is why it didn't go further. And our borings indicate that we can reach that, but we might not. So there might be less mine. But to get to your point about that, we don't go in and blast away the rock or rip away the rock. We don't expect we are going to take the rock away and find another gravel there. So it is really just a process of removing gravel. Dust is controlled with water. So it is not sprayed with salt or anything like that, that would be leaching into the ground.

**Paula Clair** - So there are no chemicals being used for the whole process?

**Glennon Watson** – Well there is gasoline, you know there is fuels to operate the machinery but in the processing of the material, there is no chemicals being used.

**Paula Clair** - And also I wanted to know how close is the nearest residence to the mining operation?

**Glennon Watson** – Well this Grandma's and there is a house here, and a house here, and I believe they may be the closest

**Paula Clair** - What is the distance?

**Glennon Watson** – I didn't bring a scale. This is a 60 scale map and I will estimate that to be about 6 inches so maybe 360-400 feet

**Vincent Cestone** – How far is the street that you said that was

**Glennon Watson** – This is Route 9

**Vincent Cestone** – No the street with the residences on it

**Glennon Watson** – Route 9. I didn't say what street it was on, but it is Route 9. This building here is a mixed use. It is residential commercial and it is owned by Mr. Lyon's sister and it will give us a temporary access which is shown on the plan. Again, that is 6 inches so about 360 feet except for the access road. I believe it is several thousand feet to residences, not several, at least a couple thousand feet to the southeast. This is the residences off of Mill Road. And that is probably about the same 400 feet or so. Again, the mine will be, there will be a time when there will be activity that will be seen but most of the mining will take place below the horizon, or below the crest formed by the natural slope.

**Bill Flaherty** - I think this will be the largest destruction of property that we've ever experienced I think in the Town of Philipstown that I am aware of. I can't think of any other project over the years that disrupted this many acres at one time.

**Glennon Watson** – There are several projects that have disrupted more than 5 acres at any one time. So, we are talking about an angle in time that you just say, we are talking about 5 acres. So there are probably lots of projects. I can, I am certain that over a period of time the Lemax sand and gravel which is now the home of Glassbury Court was a much larger soil mine. Much larger. I would suspect, and I am not sure that the Mary Finger's farm which was a soil mine was much larger when it was mined. And I was going to make a comment about Lady Blue Devil Lane because that was also a soil mine, but I sense that was small. So there is no denying that 1,356,000 cubic yards is a lot of material. That's why it is going to take as long as it is to bring it over here. On the other hand, I think it is necessary to weigh in the fact that we have a substantial portion of the population that demands dirt roads, that demands they maintain with this kind of material and I think it is fair to say that the dirt driveways and gravel driveways too that have to be maintained on an annual basis. And right now the Lyons' trucks are going to 82 and the Taconic to get the material. They've gone as far as Hudson, New York when less is available. And they go to Fishkill which is closer. But all of those things contribute here. I mean we have a source in Town, we have a demand in Town, and I think the net affect is that there will be less fuel, substantially less fuel consumed with this. I think that is an important thing to realize.

**Vincent Cestone** – Are you saying that this is going to be used for in Town projects exclusively or not

**Glennon Watson** – I am not saying exclusively but substantially.

**Bill Flaherty** - Well the whole of the 136 acres

**Glennon Watson** – There is 136 acres of property. The total mine is 22.7.

**Bill Flaherty** - 22.7 will be used for mining purposes only. The rest will remain as is. It will not be disturbed at all

**Glennon Watson** – Well I am not representing to you that there won't come a time where parts of that property might be developed residentially because that is what it is zoned for. It is certainly, under the current zoning, it certainly will not qualify for any significant number of lots.

**Robert Dee** - So the closest house in any direction is

**Glennon Watson** – I don't have a scale with me

**Robert Dee** - Roughly

**Glennon Watson** – Roughly 360 to 400 feet

**Lenny Lim** – You already indicated that you're not going to use that back road at all

**Glennon Watson** – This road that goes back to Horton

**Lenny Lim** – Yes

**Glennon Watson** – Yeah, that was part of our original plan and it was strenuously objected to by this Board and by other people, and the Planning Board did not like it either. We took it out of the Plan and that's why there was a reduction, that's the main reason there was a reduction in the volume from 1,500,000 down to a 1,356,000.

**Vincent Cestone** – (cannot make out entire question but it had something to do with sound abatement) ...sound abatement when you are near the property at some point the sound abatement can be built on the undisturbed land to keep the noise from traveling \_\_\_\_\_. I am sure that there is a way that that can be done. I am no engineer but I am sure that there is a way that that can be done.

**Glennon Watson** – Well the engineers had said that there will not be any significant increase of noise beyond the property line and we have submitted a report to that effect. If your approval were to require an annual monitoring of that or a monitoring of that during the specific operation, we would have no objection to that and we would be happy to come back and revisit that issue. But with a report that indicates that the impact is there, we would be reluctant to spend the money while we don't believe there is not going to be an impact.

**Vincent Cestone** – I am not sure what the Board feels about this. You will get your chance as soon as we are finished and we'll open it up for the public. Any more questions from the board?

**Paula Clair** - People had raised the issue that \_\_\_\_\_. Can you talk to that?

**Glennon Watson** – Well there will be, the Lyons have another site here where they have to have water trucks. There will be a water truck available within a quarter mile, half a mile at the most of this site and dust will be treated with water. It is the standard treatment. To keep the surface moist and the dust down. When the material is actually mined, when it is actually shoveled out and put into a truck it is actually moist. That doesn't create the dust. The dust happens by the trucks tracking over the floor of the mine and it getting dry and



then getting turned up by the wheels of the truck or something like that. So a periodic watering is the standard solution and that has been specified.

**Vincent Cestone** – Who is the enforcing agent for this? You know you have these requirements, but who enforces that?

**Glennon Watson** – The DEC, the watchful citizens

**Vincent Cestone** – Do they come and inspect weekly, monthly, yearly

**Nate Lyons** - I don't know, they drive by

**Glennon Watson** – I don't think they come by

**Vincent Cestone** – Because it is great to have these rules if nobody enforces them, how good are they? You know what I am saying?

**Glennon Watson** – Well

**Vincent Cestone** – I am not saying that they are going to intentionally break the rules, but it is always nice to have somebody looking over your shoulder.

**Glennon Watson** – I am sure we have people looking and, the Lyons have had situations where there have been, right over here across Route 9 where there was mud that ran during a particularly heavy storm that ran out to Route 9 and you saw them out there shoveling it out and picking that stuff up and cleaning the road and getting it off Route 9 right away. Their behavior in that regard has been exemplary. I think that the first line of complaint, I won't say attack, but complaint from somebody who notices that or bothered by that would be for them to just approach the Lyons and say hey this is what I am experiencing can you do something about it? In my experience something gets done and I have been dealing the family for almost 40 years now. The second thing is to call the Code Enforcement Office or call the State DEC. The State DEC I know responds. The Code Enforcement Officer, we have a new Code Enforcement Officer and I know he responds too. So, those avenues are open.

**Vincent Cestone** – I am just trying to protect the people

**Glennon Watson** – I am one of them. I don't want to see a badly operated mine either.

**Robert Dee** - I've read all the reports. The traffic report, they said that there was going to be a several second delay. Is that because there is not going to be a lot of trucks coming out at one time?

**Glennon Watson** – Right. A truck goes in and gets loaded and takes some time

and comes out and it leaves. It is not going to be a line up of trucks.

**Robert Dee** - That's good.

**Vincent Cestone** – Any more questions from the board?

**ZBA Counsel** - In connection with dust, Ms. Clair you had a question regarding dust. The DEC did weigh in on that and they provided a paragraph in their negative declaration. It does have some dust control measures. If you would like I can read that

**Paula Clair** - Yes

**ZBA Counsel** - Sure. To mitigate the transmission of dust from the site all whole roads, stockpiles, mine floors or other operational areas of the mine will be controlled by watering or other department approved. The department meaning the DEC, approved dust palliatives when needed. All processing equipment will be outfitted with water spray apparatus to control any fugitive dust. Only that area needed for one season's operation will be stripped to any one time. And any areas where topsoil, subsoil, over burden or other erode-able materials are exposed to wind erosion will be seeded and mulched within 15 days of exposure. Since the capacity of the portable power screen is above the NYS registration and air state facility permit threshold of 150 tons per hour an air registration permit will be required. Therefore, no significant adverse impacts to air quality are expected to result.

**Vincent Cestone** – Thank you. Any more questions from the board? You're on. Stand up and introduce yourself.

**Rod Sedalter** - My name is Rod Sedalter and I am one of several people here who live in Glassbury Court. And I would like to ask the gentleman how far the mine is from the northern border of Glassbury Court.

**Glennon Watson** – Little over 3,000 feet.

**Rod Sedalter** - 3,000 feet.

**Glennon Watson** – Yes

**Rod Sedalter** - Are you planning to do any blasting at all?

**Glennon Watson** – We don't anticipate that there will be any blasting. I cannot say that during the course of construction that we hit a little bit of ledge or something that there wouldn't have to be. But we don't anticipate it

**Rod Sedalter** - However there will be extensive rock crushing correct?

**Glennon Watson** – Not extensive. There will be some rock crushing.

**Rod Sedalter** - And you will have the ability to do this from 7 am five days a week and 8 am on Saturday correct

**Glennon Watson** – Saturday there will be no processing, I believe that's what the requirement said

**Rod Sedalter** - As far as the water being dumped into Clove Creek, who monitors that besides the DEC driving by once in a while?

**Glennon Watson** – The applicant is responsible for maintaining the storm water pollution prevention plan and it has to be kept on site and it has to be available for inspection. During the entire course of this thing, professional engineer or storm water professional has to be engaged and make a weekly inspection of the storm water pollution prevention system both the permanent and temporary road measures that have to be done on a weekly basis and it has to be reported I believe monthly on the recording department.

**Rod Sedalter** - And this system available to the public

**Glennon Watson** – Yes

**Rod Sedalter** - May I have a copy

**Glennon Watson** – It is in Town Hall

**Rod Sedalter** - What is the expected noise affect on an area say as far as Glassbury Court from the site of the mine

**Glennon Watson** – I would be speculating, but I think, I looked at that today because one of the comment letters was from a person, actually all of the comment letters were from persons from Glassbury Court, and I looked at the topography and changes from the mine to the Court and I looked at what is in between and the distance and the emission of sound, I don't think there is going to be very much noise problem at all

**Rod Sedalter** - Thank you

**Vincent Cestone** – Sir? Stand up and introduce yourself

**Mark Tebashnik** - Yes. Mark Tebashnik, 464 East Mountain Road South. Resident of Philipstown. I am not an expert on land use and planning but being a resident of this Town in Putnam County I do have some real world experience. So I don't have any questions I just have some comments and I will try to make it

short. First of all, I've known the Lyons family. For many years I've known the father before he passed away. These are good people. These are people who built this Town. And so nothing personal here but I think that they are inheritors of the land. They did not come in and buy property somewhere and say we are going to develop it. This was something that was passed down to them. And they want to use it in that kind of method. So no other company has come here and proposed to do this. So this is something very personal to them. I think that Mr. Watson is exaggerating the demand, you know when he came up here and he said that there is going to be a mine here. First thought comes to your mind, what kind of mine is it? Is it a gold mine? Silver mine?

**Vincent Cestone – Make your point please**

**Mark Tebashnik -** Okay. So, it is a gravel mine. A rock mine. Okay. The demand for that type of material is exaggerated. Not to employ that many people in this Town. Secondly, about noise. I am up in the mountaintop. I've got one of the highest elevations up on East Mountain Road. I can hear the train station. I can hear the trains going by. I can hear all kinds of things going by. Why? It is not the distance to my property it is the echo in the valley. So you hear that. Everything. You hear it all and you ask yourself gee is this what Philipstown has become. Is this what we are going to become folks? A mining town? For gravel and rock. Not employing that many people. So my point here is that it is an exaggerated demand. This is not gold. This is not coal like Philipstown had in the Civil War. This is rock and gravel. You can get it anywhere. Secondly, I would just say that the noise problem for me personally will impact my way of life because I do come up here quite a bit on the weekends. I have other places that I go, I am a successful man. And I have to tell you that when I come up here, I want peace of mind. I want the kind of lifestyle that has been going through the political process with this rezoning. And I think that you folks can recognize the sense that I am trying to say here that this is a personal project. These are good developers. But it is not needed for this County. It is not needed for this Town. And I think that common sense will show us that we can talk to these folks and say hey look you've got all this land, lets figure out a way to really employ people. Lets figure out a way to build this Town up. This is just a small project that is going to impact the whole Town and bring a small profit to this family. And I think the Commissioners should consider the total impact over a long period of time and I appreciate your comments. This is a disruptive project. Thank you.

**Vincent Cestone – Ma'am? Stand up and introduce yourself.**

**Lynn Rogoff -** Hi I am Lynn Rogoff and I live on East Mountain Road South. Maybe it is safe to say it is adjacent to East Mountain Road North. And I have lived here for 31 years. Before the Lyons owned that property, when the Myers owned the property. And you know I have been going through this document here called the Philipstown Natural Resources and Open Space Protection Plan that was adopted on March 9, 2006. There may have been mining here before

that time but in 2006 this Town agreed and ratified this document. And this document says that we are not to change the zoning and land use \_\_\_\_\_ to better promote education outreach and better protect natural resources. I am just reading from the document that you fellows wrote. And then of course we all went through this issue of ridge line. Especially on East Mountain Road South. It even describes here that the development, that the community character is at risk and that is why this plan was written. That one of the risks was to the view to East Mountain Road South. And I fought the ridge line because I have 8 acres up there and nobody can see my house. They said you can't tear down any trees because we have to drive down to at least Route 9 and we have to see a beautiful mountain. And we don't want to see your house. And so that's what I have to live with. You know. I can't tear down any more trees. Not that I ever did but the trees up there are very plentiful. And so there was some concern about the ridge line and the view line, that was also in the plan. And of course to protect the natural resources up there. It is like living in a forest up there. And we only live with the deer, squirrels, turkeys

**Vincent Cestone** – Don't tell me you want a 10 foot fence

**Lynn Rogoff** - No I don't want fences, they are the only people I see. The only creatures I see up there. They live there. That's where they live. And they live on this ridge. This is a very steep ridge. It goes here all the way, it is very steep and so it is on a very steep incline and very hard to develop

**Vincent Cestone** – Right

**Lynn Rogoff** - And I know that the Lyons had tried to develop next to it and they couldn't find enough area for septic fields because of the heavy ridge line. But that also makes it an echo chamber. And we have blasting, we are on the border East Mountain Road. East Mountain is on the border between Philipstown and Dutchess County. And there a number of mines in Dutchess County on Route 9 two miles up, a mile up and you can see what they did to that mountain

**Vincent Cestone** – They destroyed that mountain

**Lynn Rogoff** - They destroyed that mountain and you know Polhemus brings us gravel, and they bring us gravel and everybody is in the gravel business up here. You know. It's not like we are, and then I see that there was an issue called run-off from excavated disturbed steep slopes. When slopes are excavated for roads and buildings, water will rapidly flow downhill not soaking into the ground and increasing ground water recharge rates. Run-off will erode the hillside and carry sediment, contaminants and pollutants to the streams, ponds and lakes degrading the quality of the surface and ground water. This is from your own document. Now there was this issue of water. And that was another reason why this plan was written that we were concerned about the water. That everybody believed they were reaching their watershed and therefore, there was plenty of

water and we didn't have to worry about water. But according to what this says here, it says that this is not true. That the water is in the space between the rocks. It says here more often as in the case throughout Philipstown the porous space in the rocks in the subsurface are super saturated with water which can be pumped out and reused. And that is where a source of our ground water comes from, in between the rocks, according to your report. The next document here is 175-17.1 criteria for approval of site plan subject to local mining permits. And it says here, now this is, Mr. Lyons is applying for a special permit.

**Vincent Cestone – Special Use permit**

**Lynn Rogoff - Special Use.** So it says here that the mining activity when in process and when completed will not result in creation of sharp declivities, pits or depressions, soil erosion, sedimentation, or fertility problems or drainage, sewerage or groundwater problems which would impair the reasonable reuse and development of the tract in accordance with this chapter. And it also states #H that it is supposed to be completed in a period of five years. That the proposed mining activity, including site restoration, not 30 years, would qualify for a local mining permit under 175-17.2 and must be completed within a period of five years. It has to be compatible with the surrounding area and this is a bold, very bold proposal. And I give them credit for their boldness.

**Audience Member - Well said**

**Lynn Rogoff -** There is another word for it but I am a lady. And I won't say it.

**Vincent Cestone – Please make your point**

**Lynn Rogoff -** Okay. Yes. So it says here that the standard state zoning enabling act allows special use permits based upon the findings of compatibility with surrounding area. And with developments already permitted under the general provision of the ordinance. So I don't see how you can actually have all of that in your own documents, in your own words, give any approval to this special permit. That's all I have to say.

**Vincent Cestone – Introduce yourself sir**

**Richard \_\_\_\_\_ -** My name is Richard \_\_\_\_\_ and I live on Mountain Road North. I have two questions for Mr. Watson. Could he estimate the average altitude of finished plane after it has been reclaimed. Just rough figure to average out. You have an idea of how much it is being cut down you said about 80 feet so I would like to know what the finished plane would be at.

**Glennon Watson –** It goes from 311 to about 316

**Richard \_\_\_\_\_ -** So that is approximately the level of Route 9 at the

intersection of

**Glennon Watson** – No actually no. That is not correct. Route 9 is about elevation 216

**Richard \_\_\_\_\_** - Alright. The map shows almost no residents being affected by this except maybe Glassbury Court and she said was about 3,000 feet from the operation site. To the right of the map going north, there are two roads, East Mountain Road North and Esselborne Road containing about 20 homes or so and I think there might be one or two inches if you had extended the presentation one or two inches to the right you might have picked them all up to give the Town Board, the Zoning Board, the opportunity to see the impact and the number of homes that could reasonably be impacted by this operation. Could you describe just about how far East Mountain Road North and Esselborne Road are to the right of this proposal?

**Glennon Watson** – Yes this is the Kerr's office building, this is Moore Cement, Jaymark Jewelers, from this point there is another 200 foot rectangle there that surrounds the restaurant

**Vincent Cestone** – Sir, sit down

**Glennon Watson** – And there is the pool place which I think has about 600 feet of frontage. So I would say from here it's about, I am simply guessing about 800 feet to East Mountain Road North.

**Richard \_\_\_\_\_** - Which is less than a third of the distance to Glassbury Court which

**Glennon Watson** – I never said Glassbury Court was nearby.

**Richard \_\_\_\_\_** - The representation just fails to demonstrate the actual number of residences that are much closer in proximity than anything you have on that map and I think the Zoning Board should take that into account. The noise factor that other people are talking about is really a very substantial factor. I too hear the train at night. From our side of the river and depending on the winds, I hear the trains on the other side of the River. This is, people will laugh and say could that possibly be true, but it is a 100 car train and you hear for five, ten minutes going by. So it is true. The transmission of sound from this area is my principle concern about this and when I think about 7 am wake ups for the next 25 years, I have reservations about it and I hope you take that into account. A 7 am license for 25 years is an awful thing to have to live next to.

**Audience Member** – Amen

**Vincent Cestone** – Anyone else wish to speak? Ma'am. Introduce yourself.

**Barbara Hogan** - Hi. My name is Barbara Hogan and I am a homeowner at Glassbury Court. It is an adult 55 year old community for people who move there, quiet, rest, and quiet. It is a great community over there. I am also here as a resident of Philipstown. The only time I have ever been before this Board, the zoning board, any board, is for things like \_\_\_\_\_. And we revisited that. We can't revisit a pit from here to the river. We are talking about acreage from where we are sitting now to the Hudson River is going to be gutted forever. Okay. Just talking 22.7 acres. And I bought item 4 from Mr. Lyons also. I didn't buy it every year because I moved it myself. I am a practical person. We are not talking about the mudslide from Hurricane Irene, we are not talking mudslide, we are talking about an area from here to the Hudson River. I can go on google earth too and see what it is going to look like from the top down but can we really see what this is going to look like from Route 9? As we drive by from Route 9 back and forth everyday. No this is not what we are going to see. We are going to see a cut into the north highlands. The Hudson Highlands. It's beautiful and that's why we are here. How many trucks a day? I haven't heard about how many trucks a day but I know when that cement truck is coming over the Dutchess County line, you are going 45 miles per hour then it goes to 55 and then you slam down to 2 miles an hour and then you are going 20 miles an hour up to Fishkill. Okay. Route 9 is a main artery. It has been a main artery since 1700's. Okay so we are not talking about you know, it can go slow and fast. We are talking major major trucks activity back and forth zero to 45 miles per hour. So. Vibration. I don't know who else felt that earthquake but we vibrate and we really vibrate up there. So you feel any kind of movement in those mountains. Trucks on Route 9, I can feel that. There are fault lines there people and you can feel it. Now the cultural resource survey I understand shovel testing and I like the president of the Friends of the Fishkill Supply Depot and I kind of to beg to differ with what can be found in those hills. I am not talking about the patriots who died and are buried in unmarked graves all along those mountains, but what I am talking about are the \_\_\_\_\_ over there. And shovel testing, I know what shovel testing is. It is shovel testing. It is not radar. I would like to know the name of that company sir. What company did the shovel testing?

**Glennon Watson** – Tracker Archeology Services

**Barbara Hogan** - Okay.

**Vincent Cestone** – All this information is available downstairs

**Barbara Hogan** - Thank you. The Parks signed off on it but I am saying there is shovel ready and there is true archeology exploration. Now I know the snakes were mentioned, but redheaded woodpeckers have a major nesting site up there just so you know. The other thing is we are talking about the train noise. I too hear the train. You can hear it on the other side even though we are in the valley. Now I admit that sound of the chisel on rock is something like gunfire.



Some neighbors I can tell you right now, I got a chisel for Christmas to make a little bird thing. That chisel noise you hear you can hear all over the valley. That's my chisel. I apologize. I stopped chiseling. And hunters. You hear one 45 go off, a cop had to put a rabid raccoon out of his misery the other day. You heard that 45 reverberate back and forth on that mountain. And everybody was talking about it. It is not just the sound of the chisel, it is not just vibrations, it is not just particulates in the air, that park, those people that you are talking about a few hundred feet north of there, there are children in that park. There is another trailer park right down the road on the south. There are children in there. Who are getting particulates in their lungs. Who is getting respiratory disease? The water is going to abate it. You tell the kids with asthma the water abated you. For 25, 30 years. I am sorry. I am asking you to please deny this. Please. From here to the river we are going to have to live with that. Thank you very much.

**Lenny Lim** - I would like to mention did you know that Glassbury Court LeMax was a soil mine?

**Barbara Hogan** - Oh absolutely. And before that it was a dairy farm sir.

**Lenny Lim** - Yes. But a lot of us have lived up there with that soil mine. I live on Horton Road. Which is closer to this than Glassbury Court

**Barbara Hogan** - Glassbury Court in Cold Spring. I live a few feet from Horton Road

**Lenny Lim** - Yeah. I live on Horton. But your whole development was a soil mine that we fought. Twenty years ago we fought it tooth and nail

**Barbara Hogan** - And you know what, it is funny you said that, when I lived in Garrison I heard about it too.

**Lenny Lim** - Yes

**Barbara Hogan** - And then I looked into it and then, I even fought Wes right here. You want to fight Wes you've got to fight an adversary. But I looked into it too and you know what, they did it and they did it right. And look what's there now.

**Lenny Lim** - Who did it right?

**Barbara Hogan** - Glassbury

**Lenny Lim** - Not when it was being done, it wasn't done right. I lived there

**Barbara Hogan** - And how many years ago.

**Lenny Lim** - I still live there. I have been living there for 25 years

**Barbara Hogan** - I know, but what is there now. What would be there now? What would be there in 20 years?

**Lenny Lim** - What is going to be there at the end of theirs? Their project? I mean you are seeing the end result. We don't know what the end result is.

**Barbara Hogan** - That was also soil removal

**Lenny Lim** - It was soil mining, soil removal and there were a lot of other things going on in there.

**Barbara Hogan** - I know we are living with it

**Lenny Lim** - Yes you are

**Barbara Hogan** - But that is not what we are talking about digging out an entire area from here to the Hudson River.

**Vincent Cestone** – How are you getting the Hudson River

**Lenny Lim** - I don't know. She keeps saying the Hudson River

**Barbara Hogan** - 22.7 acres, join them together, from here to the Hudson

**Robert Dee** - How big is Glassbury Court area

**Barbara Hogan** - 80 acres

**Robert Dee** - What could prevent this project 30 years from now looking like Glassbury Court?

**Vincent Cestone** – Wait your turn

**Robert Dee** - Excuse me. Excuse me. Wait your turn. Don't be rude. When we're finished you can talk. What's to say 30 years from now this is not another Glassbury Court? I am just curious.

**Barbara Hogan** - Well let's put it this way. We are there right now. What is there now is forest. What was there now was a dairy farm there.

**(Inserting New Tape...may have lost some dialogue)**

**Barbara Hogan** - ...there are high ridge lines, there is storm water, there is

wildlife. They took that reclamation from literally an exposed aquifers and look what is there now. 40 acres is a park. Half of it is where people live. Nice people. People who don't want to hear, everyone else in the area as I said, the noise area alone, the noise issue alone never mine particulates, trucks, it is raping the land. I am sorry. I agree with this woman, I just want to applaud her. She did her homework. She really did her homework. That's all I am asking you to do, really look at each point of this. It is not just hearing the trains, it is not peace and quiet, it is really destroying our lands.

**Robert Dee** - Well we have been looking at this for almost 2 years now. This is not, we have all the reports from the State, we argued to get a ton of different things, so we are not looking at this lightly. That's what I am trying to explain to you. We have been working on this over a year that I know of, probably longer than that. Year and a half. And we required them to get extra reports, they've had to hire extra companies, you heard some of the questions about Horton Road, we couldn't use that road. So we have stopped a lot of different things and we have been looking at this.

**Barbara Hogan** - I didn't say you haven't been looking at this, I am just saying please just

**Vincent Cestone** – I am just going to stop it there because this is not a debate. You've made your point and I want to give other people a chance to talk.

**Barbara Hogan** - Thank you

**Vincent Cestone** – This gentleman raised his hand. Introduce yourself please

**John Link** - My name is John Link and I live in Glassbury Court. I just want to address the gentleman who lives on Horton Court

**Lenny Lim** - Horton Road

**John Link** - Horton Road, excuse me, I forgot the street. Why if you saw what you were upset when this happened when they did the thing at Glassbury Court, why are you now being very positive to this situation? When you lived through that before?

**Vincent Cestone** – You are making an assumption and I don't see that

**John Link** - That's what he said. Did he not say that?

**Vincent Cestone** – He was making a point

**John Link** - I understand that and I am arguing the point to why would you want to have another mess created that you weren't satisfied in the first place? Why?

**Vincent Cestone** – We are not going to do that.

**John Link** – okay.

**Vincent Cestone** – If you have a question, ask the question

**John Link** - Okay. I live at Glassbury Court because I wanted to be in the Hudson Valley. I wanted to be up by Cold Spring. I wanted to be up by Fishkill. It is a beautiful beautiful place to live. I looked at a wonderful place down in Haverstraw, built right on the River. Unfortunately, there was a tile complex next to it and you could hear the rocks breaking and the smoke coming up all the time. I didn't want to live there because I have COBD. I see these trucks going along Route 9 every single day. They are making, if they are coming back to pick up stuff, they've got the old stuff in there and that stuff is coming out of that truck that you can't believe. In front of that place where they destroyed the mountain. Just a couple a hundred yards from where they want to build that. I watch those trucks every day come out of there and all of that white dust that is coming out of there and you say you are going to put more trucks on that road? I can't understand it. I wasted my money in buying at Glassbury Court.

**Vincent Cestone** – Someone else wish to speak? Sir?

**John Clark** - John Clark. I'm sorry I came a little late. Perhaps you addressed this issue. How, it is sort of similar to what this gentleman is talking about. I am on Horton Road. And the map doesn't really show Horton Road at all that I can see. And I was wondering how far this is from us?

**Vincent Cestone** – Glen, he has a legitimate point

**John Clark** - East side of the river of Clove Creek. I am just across the bridge

**Vincent Cestone** – The next time we meet, there are two things I personally want to see. I want to see the entire, I want to see 1,000 feet around the mine. At least. And then I want to see a cross-sectional of the land from Route 9 to the end of the property and I want to see a cross-section through the mine. I want to be able to visualize what the depression will look like.

**Glennon Watson** – Can I, this is the display criteria. There are at least 10 sections through the mine in the full plan set. There is a vicinity map that shows everything in 1,000 feet in the plans. There is a detailed map that shows everything

**Vincent Cestone** – But it is not being showed here

**Glennon Watson** – It is in the plan set that was submitted to you two years ago.

**Vincent Cestone** – But these people are not seeing it. I want them to see

**Glennon Watson** – The file is down in the Town Hall office

**Vincent Cestone** – Please bring it next time

**John Clark** - I am sorry, I just wanted to know from Mr. Watson how far it is from us on Horton Road. I live basically near the pond. So what are we talking about?

**Glennon Watson** – Here is the pond. The island of the pond,

**John Clark** - I am a little bit further towards Mill Road

**Glennon Watson** – Mill Road is here. So what are we talking 20 inches...I am just guessing at this point. But 20 inches on a 60 scale map that would be 1,200 feet roughly

**John Clark** - Is that a quarter mile?

**Glennon Watson** – Yeah about a quarter mile, a little less

**John Clark** - Can I ask one more question. Supposing people who want to buy my house someday don't want to buy my house because of the proximity to a mine. Maybe see it, maybe can't. Maybe you can hear it, maybe you can't. I am just wondering where do I go for satisfaction? I can imagine people on East Mountain North particularly have that problem. I am wondering who do we go to?

**Vincent Cestone** – I can't answer that question.

**John Clark** - Is that something that you have to take into consideration or no?

**Vincent Cestone** – We take everything into consideration and that is a very legitimate point. So

**John Clark** - I mean it is not in the numbers it is more

**Vincent Cestone** – But you see, what you need to prove so that there is something actual.

**John Clark** - Right

**Vincent Cestone** – The actual depreciation in the value of your house because you can't go on here-say and innuendo. Because if you do something that you

don't have to do in the documentation you are opening the Town for a lawsuit. So, I hear what you are saying about the value of your house, I don't know if it is going to affect the value of your house. But there has to be documentation and if you feel strongly about it, provided documentation.

**John Clark** - Beforehand

**Paula Clair** - Get an appraisal

**John Clark** - And then you say, supposing there is a gravel pit?

**ZBA Counsel** - It would have to be a hypothetical.

**John Clark** - Suppose the impact would be based on the numbers that are provided by these people?

**ZBA Counsel** - If it were an legitimate appraisal, how it would work would be first it would establish the current value of the house as is

**John Clark** - Right

**ZBA Counsel** - And then it would have to look at other properties similarly situated to a mining operation of this size and scale and say those homes are less in value then your house is right now because the mine site is there. It is a difficult proposition to

**John Clark** - Sure is

**ZBA Counsel** - Absolutely. But that is the only kind of evidence you could provide because just to say that there maybe an issue in the future is not a

**John Clark** - I won't know until it happens

**ZBA Counsel** - Correct. If I may, it is not a legitimate basis however for the board to make a decision yes or no

**John Clark** - But it is something to take into consideration

**Vincent Cestone** – This gentleman keeps raising his hand. Introduce yourself please

**Russ Cusiak** - Yes my name is Russ Cusiak. I live at the very top of East Mountain Road North.

**Vincent Cestone** – Address the board please

**Russ Cusiak** - Okay. Just to reiterate the fact that noise pollution is a major factor with any construction. There has been in the last several years a lot of construction up on East Mountain Road North and East Mountain Road South. I hear everything. As does everyone who lives up there. The other question I have for Mr. Watson is when he was giving his presentation he was asked about chemical use in this process as well as blasting. He said emphatically that neither blasting or any chemicals would be used. I find that hard to believe given the topography of Philipstown that you are going to take what caterpillars and backhoes and go up to the top of the mountain without doing any blasting. Is that possible? No blasting?

**Glennon Watson** – You mischaracterized what I said

**Russ Cusiak** - No I didn't. That's exactly what you said. You said no blasting, no chemicals

**Glennon Watson** – No I did not say no blasting.

**Russ Cusiak** - Limited blasting?

**Glennon Watson** – I said within the mine we do not anticipate any blasting and the plan will stop if we hit ledge.

**Russ Cusiak** - Okay

**Glennon Watson** – Okay. I said there is the possibility that we would hit a bit of rock coming up on the road which would require a minor amount of blasting. That is not saying there would be no blasting

**Russ Cusiak** - Okay very good. Thank you so much. So if any neighbors hear any blasting beyond what he is saying, call the DEC. I will give you all the numbers

**Vincent Cestone** – Sir in the back. Introduce yourself

**Stan Lebenworth** - Stan Lebenworth. I live off Esselborne. And I have several questions for Mr. Watson. What is the plan for cutting down trees? Are they all going to go at once? Because as you know when you cut down the trees the noise amplifies.

**Glennon Watson** – In fact, when I flipped through all of these in the very beginning, it shows that the most we can disturb at any one time is 5 acres. That is the most that can be disturbed. So it would be in violation of the storm water pollution plan to clear cut more than the 5 acres. Okay?

**Stan Lebenworth** - In the beginning only 5 acres

**Glennon Watson** – Right. And before you can move on to the next 5 acres or expand to 8 acres, you have to take away 3 acres and reclaim it. Which means trees have to be put back and land has to be planted. To a large degree they will not be the mature trees that exist up here. So the 22 acres will not be clear cut

**Stan Lebenworth** - 5 acres include the road

**Glennon Watson** – Yes

**Stan Lebenworth** - The road plus whatever much is left

**Glennon Watson** – No. I'm sorry did you say does the 5 acres include the road? So it is not the 5 acres plus the road, 5 acres including the road is the question you asked

**Stan Lebenworth** - No

**Glennon Watson** – So it is not plus the road, it includes the road

**Stan Lebenworth** - And there is only one road at a given time

**Glennon Watson** – Well this road is permanent and once you get into the mine, there will be a road that is moveable. It will move from time to time

**Stan Lebenworth** - Single access

**Glennon Watson** – The road is wide enough to accommodate incoming and outgoing traffic

**Stan Lebenworth** - Okay but it is just one road

**Glennon Watson** – Yes. One road.

**Stan Lebenworth** - And one final point. The implication of what he said about this being used for local purposes. Does that also mean it is more expensive or more economical or just the fact that less gas is used? What's the advantage from that point?

**Glennon Watson** – It has to do with the amount of gas and diesel fuel that must be used to transport material into Philipstown. And someone said that I exaggerated the need for gravel and that kind of product in Philipstown. Ask Mr. Chirico that question and I am sure he will agree with me that I did not exaggerate that. So it is a matter, to me personally it is a matter of social responsibility. I always hear when people didn't want to have a sewer \_\_\_\_\_ and people got up very rudely, people here have been very polite tonight, but



people very rudely said take it to Beacon. Take it to Beacon. Take my excrement to Beacon. Because I don't want to see it. To me it is a matter of social responsibility that if you demand the use of gravel in the Town and if there is a high demand, I mean people have sit down in the middle of roads to prevent it from being paved in this Town. You have the responsibility to utilize, to fulfill that requirement. So I think it is a social requirement.

**Vincent Cestone** – It has actually happened

**Glennon Watson** – All I am saying is that

**Stan Lebenworth** - It is not the same thing. You are talking about saving fumes up Route 9 somewhere in exchange for noise up and down East Mountain Road North. It just isn't an equal bargain. We don't get any benefit from that.

**Glennon Watson** – I would disagree

**Stan Lebenworth** - We don't get any benefit from that. Only sacrifice.

**Vincent Cestone** – One last question. Is there anyone that hasn't spoken yet? This gentleman here. Introduce yourself.

**Richard Butensky** - Hi. I'm Richard Butensky I live on East Mountain Road South. First of all as far as the engineering goes it has been said he who pays the piper, names the tune. I almost forgot what they say. He who pays the piper names the tune. And I am sure as you aware the engineering reports that you have, the sound testing that has been done, all of that has been paid for by the applicant. And it should be. But it has also been directed by the applicant.

**Vincent Cestone** – Actually it has been directed by the DEC but go ahead

**Richard Butensky** - Well the DEC directs them to do it. And the DEC they review them. They take a look at it and reviews it. But they don't check it, they don't go out in the field, they don't do the report, they don't administer the report, if they go to a sound company. And first of all, these sound companies are in business to service clients like mines. That's who their clients are. If they start giving back negative reports about that the companies that are paying them don't want to hear, no one will hire them anymore. That's their only clients. So, I mean I know that if you go around, anyway so, what I am saying is that the Town has a, this is a huge project that will have a very bad impact on this Town and as far as, the town should be able to see this and they should be able to have the applicant pay for the town to hire its own engineer to look at these plans and check on

**Vincent Cestone** – We have done that

**Richard Butensky** - Who did that

**Vincent Cestone** – We have an engineer who works for the town who has reviewed the data

**Richard Butensky** - And, the town engineer that is on staff, that is on retainer. That's, you know that's not really an independent engineer. I mean that's, I am just saying that if you look, there is only one zone in this Town. One piece of property owned by one family that is zoned for mining. That is called spot zoning. And the only way that that ever takes place is if the Town, the people who are setting up the zoning in the town, have an individual that they are looking to please. And well, there are plenty of other people who would like to mine their land in this town. The Lyons are not the only ones. And they are the only ones that were given a zone, a zone was created right on their property. Right on their property. It was created for them. There is no argument there. There is no argument to be had. It was done for them

**Vincent Cestone** – I am not going to argue with you

**Richard Butensky** - Well it wasn't done ages ago, it was done within the recent rezoning. So, all I am saying is, there needs to be someone who looks out for us. This mine is worth millions of dollars to them and they will spend whatever they have to spend to make sure it goes through. But who looks out for the rest of the Town? I mean, you do I suppose. I mean we are looking to you to look out for us. And this argument that this is some benefit and we have a responsibility, sort of like the local argument that you should eat only locally grown vegetables. Well, this is ridiculous and it would be like saying because we use gas we should have an oil refinery here too. And that would be socially responsible. I mean the fact is now they have to travel whatever distance they have to do to get gravel. And a few people in this town need gravel and the Town certainly needs gravel for their roads. But where do people go for gravel after that mine is there? Now every town in the area north, south, east, west. Where do they come for their gravel? Well now they descend on us. So it doesn't save any gas. People are going to travel from where ever they travel to get this thing. Gravel here or gravel there, it is not like there is gravel in everybody's backyard to be had. This has no benefit in terms of environmental benefit. It might benefit the Lyons family. I don't begrudge them trying to get it in. But the fact is to use the argument that this is somehow environmentally friendly is total nonsense. It is complete nonsense. We will have heavy equipment coming down our roads doing the damage that heavy equipment does on roads. Right now, and by the way the won't just come down Route 9, they'll come over East Mountain Road because these dump trucks like to use back roads because they get stopped a lot. Whether they are in violation or not they are a good target to be stopped because they often do have minor violations. So they like to stay off major roads and highways. So they travel on all these roads and if they get stopped they just say I am just going up the road to do this. But

the fact is even the Lyons believe use East Mountain Road to go over rather than go up Route 9 and 84 to get to East Fishkill or where ever they get their gravel. They have fleets of trucks that go back and forth. Well now there will be everybody else coming to us. I mean I don't see, the idea that this is an environmental benefit is totally false.

**Vincent Cestone** - We never said that

**Richard Butensky** - I know you didn't. I am not arguing with you. I am just stating the case. I mean I never heard anything more ridiculous in my life. But, I realize that you are concerned, that the Town is concerned about lawsuits and that they

**Vincent Cestone** - Let me tell you this. I don't care if the Town gets sued if this Board thinks it is right. Because we made decisions knowing we were going to get sued but we did it because it was the right thing.

**Richard Butensky** - Okay I like to hear that.

**Vincent Cestone** - And what we will do will be what this board thinks is the correct thing to do. We are not, if it ends up on a lawsuit, that's doesn't concern me as much as doing the right thing.

**Richard Butensky** - Well I am very glad to hear that. The, I am sorry, I have one final point, but it left me while you said that.

**Vincent Cestone** - We are going to hold over the meeting. I am not closing the public hearing.

**Richard Butensky** - Okay

**Vincent Cestone** - And everyone is more than welcome to come in and state your case the next time we meet.

**Richard Butensky** - Okay

**Vincent Cestone** - It is going to be an ongoing process. This is not a one night deal.

**Robert Dee** – Its been going on for a couple of years, we've been working on this for two years already.

**Richard Butensky** - I understand. Oh here's the point. I remember. Thank you. A lot of people, and Mr. Watson even said this thing about he has known the Lyons family and that they are good people and will do the right thing, and I am not one to argue with that, I have never had anything but good experiences with

the Lyons family. But that is almost irrelevant.

**Vincent Cestone** - It is irrelevant

**Richard Butensky** - Because, it is irrelevant. I mean, it is relevant for the time that they operate it that might mean something. It is good to have a good operator. But the day after they get this permit, and I am not saying they will, they could sell that mine to Adolf Hitler's cousin. So I am just saying we don't know who is going to be operating this mine for the next 30 years. It is great that a good guy would be operating it for the immediate future but I don't know what the future brings. So I just think, I am glad you think it is irrelevant because I agree with you.

**Vincent Cestone** - The only thing that I want to say is, if knowing the law, if they submit, if they do the analyses and submit fraudulent documents to the State, there are all sorts of penalties that would be involved. And I am sure there has got to be felonies. At the least.

**Richard Butensky** - We have lots of great laws in this State and in this County and in this Town and in this Country, and we have great laws and too many laws, but what we really have is no enforcement. I called the DEC about something on East Mountain Road about some problem with the Carlson, I don't mean to use his name because I know he used to run this Board, but his, there is a big mess there. There is some dumping going on there. And this was long after he was gone, and do you know they called me back 18 months later. I forgot that I even made the call. They called me back and I said who is this? Why are you calling and I said oh, yeah that's right I called about 18 months ago. I mean I am just saying if we are going to rely on the DEC and especially the mining division of the DEC, which the mining division, I have spoken to the Parks Department which has to deal with the DEC about a lot of things because they bring their concerns up to them too, if they are upset about anything. And they said generally dealing with the DEC if they have a concern the DEC works with them. They said mining is a different story. Their mandate basically is to promote mining. And unless, so the applicant spends a lot of money to show, to put everything in a positive light and that generally nobody else has the money or is going, it's a lot of money to do the things that they have been doing. And there is nobody else to give push back to that and the DEC will not accept anything but the equivalent of what they are doing. So if you are talking to the DEC and say this report is, I can give you 10 reasons why there is something wrong with this report on its face, and they say that's great. But you know you really need to hire the equivalent of who they hired to tell us that and you know, we are talking about

**Vincent Cestone** - Thousands of dollars

**Richard Butensky** - Hundreds. You're what we have. We don't have hundreds

of thousands of dollars. We have you. So, I guess we will wait for the next hearing.

**Vincent Cestone** - With that I am going to continue this on to the next meeting

**Glennon Watson** - I would just like to answer a couple of points. With regard to the review, it is not just the mining people that look at this. It is sent to the Fish and Wildlife, it sent to Stream, it is sent to Habitat, all of them weigh in on it. With regard to the comment that the DEC just pays a cursory review of these reports is absolutely not true. One of my first examples of the reports that I gave you was the visuals. The visual report was rejected. It was, we thought we had done the right job. It was rejected. And we had to do it over before it got passed them and I can show you the rejection letter. Now with regard to the habitat. The habitat was done under the standard procedures and the standard protocol. It went to the people that review that. They said sorry this is not enough, you'll do a rattlesnake. So think that they just rubber stamp what consultants put in as a matter, and to put forth that notion, is absolutely not true. I mean, why work for an applicant, do I advocate this? Absolutely. Do I find it insulting the implication that I will change my opinion and give them false, give them something that is less than my best to present before you. Lots of people walk out of my office and lots of people walk out of professional offices because they can't get that. Not that there aren't people that take a little bit extra and give a little bit they shouldn't, but that's \_\_\_\_\_.

**Richard Butensky** - Can I make one more request? You had specified earlier that the next visual that you get go 1,000 feet to each side. Could I request that it extend a little further to Glassbury Court, the northern border of Glassbury Court in that visual aid.

**Vincent Cestone** - Glen do you have that?

**Glennon Watson** - Yes

**Vincent Cestone** - Could you bring that please

**Richard Butensky** - Thanks okay.

**Vincent Cestone** - So this is continued on to our next meeting which will be June 11<sup>th</sup>. And we will address any other concerns then.

**Audience Member** – excuse me. And East Mountain Road North and Esselborne Road on the north.

**Vincent Cestone** - Excuse me

**Audience Member** – Include East Mountain Road North and Esselborne Road

on the north side of that.

**Paula Clair** - I just wanted to add to what our attorney had said about showing what your property is worth now and what it would be worth in the event that the mine will open. One thing that you can do is you can go to the assessors office in Fishkill and can you look at houses that are close to the mine and have the same kind of dimensions and attributes that your house have. See what the assessment is and you will have to apply the equalization rate to determine what the real value of the property is and then compare that to your assessment.

**Audience Member** – My one thought is the only real analogy is to take the assessment of the house similar to mine for the years before the mine

**Paula Clair** - That's what I am saying

**Audience Member** – And then once the mine goes in, see what happens to the property

**Paula Clair** - You can go to the assessors office in Fishkill and look

**Audience Member** – What the earlier assessments were

**Paula Clair** - Look at the value of that property which is similar to yours and see if it has a soil mine near it and then you can get an idea

**ZBA Counsel** - To make a comparable

**Vincent Cestone** - I make a motion to adjourn

**Lenny Lim** - Second

**Vincent Cestone** - All those in favor

**All Board Members** - Aye

**Vincent Cestone** - Opposed?

**(No comment)**

**NOTE:** These Minutes were prepared for the Zoning Board of Appeals and are subject to review, comment, emendation and approval thereupon.

**DATE APPROVED:** \_\_\_\_\_

Respectfully submitted,  
Kim Shewmaker, secretary