

TOWN OF WESTPORT
PLANNING BOARD
SPECIAL MEETING
NOVEMBER 5, 2012 - 9:00 A. M.

Chairman Johnston called the Special Meeting to Order at 9:07 A. M. with the following members present: Mr. Alan Hipps, Mrs. Evelyn Brant, Ms. MaryLou Fitzgerald, Mr. Dwight Anson. Excused, Mr. Ken White. Alternate in attendance, Ms. Cynthia Fairbanks. Also in attendance, Mr. Gary Wilson, Attorney for the Town, Mr. George Hainer, Building Codes/Zoning Officer and Secretary, Barbara Breyette. Guests in attendance, Mr. Guy George Lever, Mrs. Kathleen Giles, Mr. Keith Giles and Ms. Wendy Abdel-Meguid.

Chairman Johnston read the Notice of Special Meeting, (attached, Page 1A).

Chairman Johnston continued. The purpose of the Meeting is primarily is to meet with our Town Attorney and to request him to address us, to give us some thoughts, from his perspective on this project we're contemplating, and what we're contemplating is action to revise and approve subdivision plat. We approved the plat a number of years ago (February 2004) and Mr. and Mrs. Lever have requested that we revise the plat as it pertains to their particular piece of property. Before we take action, I thought it would be prudent if we met with the Town Attorney, so, without saying anything more, I'm going to ask the Town Attorney, Gary Wilson, to my left, if he would please address us.

Mr. Wilson - Good Morning. I've reviewed the papers, I've submitted, and as you know this matter is pending on the request of Mr. Lever for "reconsideration" of his filed map which is a subdivision. Basically, what he is requesting is to enlarge the building envelope and to change its location. The basis for this is, apparently some issues with the bank as it goes down towards the Lake, be unstable. The authority of a Town to revisit the issue of a subdivision and to revise that map, there's not statutory authority within the law to allow us to do that. But there have been cases that have come up and the courts have brought out this doctrine of "reconsideration". In "reconsideration" the courts have said, it's appropriate where there is a substantial change in circumstances, or there's new evidence, because essentially this is something

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PLANNING BOARD
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TOWN OF WESTPORT
PLANNING BOARD
NOTICE OF SPECIAL MEETING

Please be advised, the Town of Westport Planning Board will hold a Special Meeting, Monday, November 5, 2012, 9:00 A. M., at the Town Hall, 22 Champlain Avenue, Westport, New York, to consider the following:

- A Special Meeting to meet with the Attorney For the Town, regarding the Lever Project.

William Johnston
Chairman
Town of Westport
Planning Board
Dated: October 25, 2012

William Johnston, Chairman - Alan Hipps, Vice Chairman
Barbara Breyette, Secretary
Dwight Anson-Evelyn Brant-MaryLou Fitzgerald-Chris Maron-Donald K. White
Alternates - Courtney Fair & Cynthia Fairbanks

1A

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you can consider, based upon, as I said, "a material change of circumstance, or some new evidence". Mr. Lever has come before us, his application notes that he wishes for us to take a look at the issue of "reconsideration" and that's what we're doing and that's what you as a Planning Board are being asked to look at. There has been evidence presented by Mr. Lever's expert, but there has been issues with the bank (slope). His application again, requests that we enlarge the building envelope and that it be moved. In considering this, I think the Board needs to look at, was the extent of the bank failure, should be, needs to be analyzed by you folks and that will be part of your decision. Also, there should be some relation between the bank failure and the request by Mr. Lever for his change. That I think, is the issue, core of the issue that's brought before you folks. **I think you have three (3) options:** The first is to review all the facts that you would accept Mr. Lever's plan as proposed. The other option is to reject it and say that the filed map stands as designed and as filed. And the third, you could accept the plan subject to certain conditions. Those are conditions that you're hearing evidence from various experts as to what, again the extent of the failure and whether the, what is being requested, relates to that failure. I noted on the application of the revised map, that was prepared by Kevin Hall, which shows the new proposed building envelope. It also includes an area that is archeologically sensitive. This matter was also addressed, I think with the original filed map and it was deemed at that time that the archeologically sensitive area would be outside of the building envelope. Mr. Lever's revised map proposes to include that archeologically sensitive area within his proposed revised building envelope. Another issue, I think that was brought up was the issue of the site plan. Kevin Hall, when he prepared the map, he called it a site plan, and I think it would probably, more suitable to call it a proposal revised subdivision map as to this lot. Site plan, I think on this particular map, perhaps if you were to approve it -

Ms. Fitzgerald - Excuse me, a proposal to review site map?

Chairman Johnston - Site plan.

Mr. Wilson - that was one of the issues that was raised -

Chairman Johnston showed the map, "site plan".

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Mr. Wilson - I think that you would get into the site plan issues more if you were to decide that the map was acceptable as it was and then if you were to obviously to send it back with conditions then you would have to address the site plan issues. I'm not here to impose a decision, you are the fact finders, and it's your decision to decide, but it is a balancing act, again, you're looking at what's being proposed versus what is the material change in circumstance or whether there was some other new evidence that has been presented to you, do you think that weighs in favor of revising the subdivision map. Again, I think I need to emphasize, it's kind of an extraordinary measure that's being asked for. It's not something that the legislature has said, "we're going to put it in the Town Law, but we're relying on case law as to what standards we need to use. If you have questions.

Chairman Johnston -- Do any Planning Board members have any questions for the Town Attorney.

Mr. Maron - Are we making a decision today?

Chairman Johnston - My thought was that we would simply meet with the Attorney, today and take up this as a decision item at our regular meeting in November.

Mr. Anson - I forgot again, the square feet the advantage between the two? The first one and the second one, the distance between the line on this one.

Chairman Johnston referred to the map of September 17, 2010, (page, 3A).

Ms. Fitzgerald - What line?

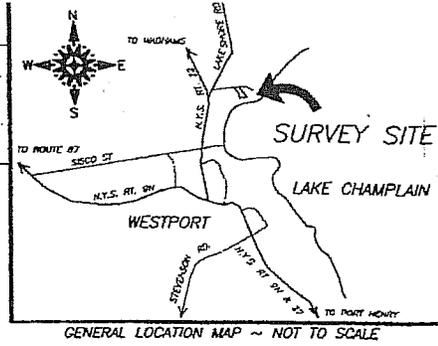
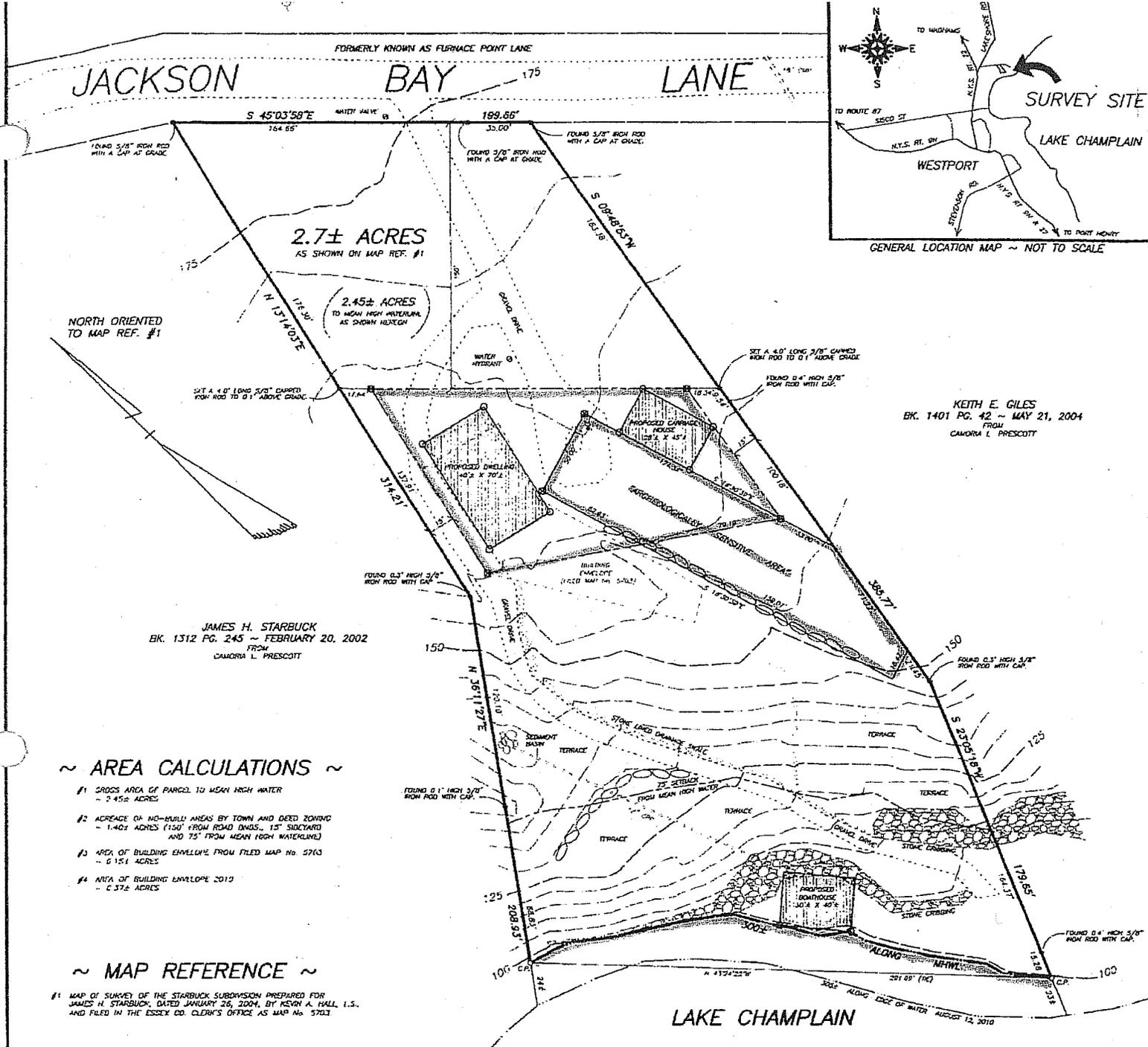
Mr. Anson - Giles line.

Chairman Johnston - Ok, do you have this map?

Mr. Anson - Yes, I do.

Chairman Johnston - It's my understanding that the original building envelope is 0.15 acres, George, jump in if I make mistake, or 6,534 square feet.

Mr. Hainer - That's a note on Kevin's map.



KEITH E. GILES
 BK. 1401 PG. 42 ~ MAY 21, 2004
 FROM
 CAMORIA L. PRESCOTT

JAMES H. STARBUCK
 BK. 1312 PG. 243 ~ FEBRUARY 20, 2002
 CAMORIA L. PRESCOTT

~ AREA CALCULATIONS ~

- #1 GROSS AREA OF PARCEL TO MEAN HIGH WATER - 2.45± ACRES
- #2 ADRENCE ON NO-HURDL AREAS BY TOWN AND DEED ZONING - 1.40± ACRES (150' FROM ROAD BOUNDS, 15' SIDELYARD AND 75' FROM MEAN HIGH WATERLINE)
- #3 AREA OF BUILDING ENVELOPE FROM FILED MAP NO. 5703 - 0.15± ACRES
- #4 AREA OF BUILDING ENVELOPE 2010 - 0.37± ACRES

~ MAP REFERENCE ~

- #1 MAP OF SURVEY OF THE STARBUCK SUBDIVISION PREPARED FOR JAMES H. STARBUCK, DATED JANUARY 26, 2004, BY KEVIN A. HALL I.S. AND FILED IN THE ESSEX CO. CLERK'S OFFICE AS MAP NO. 5703.

~ NOTES ~

- #1 UNAUTHORIZED ALTERATION OR ADDITION TO A SURVEY MAP BEARING A LICENSED LAND SURVEYOR'S SEAL IS A VIOLATION OF SECTION 7209, SUBDIVISION 2, OF THE NEW YORK STATE LEGALIZATION LAW.
- #2 ONLY COPIES FROM THE ORIGINAL OF THIS SURVEY, SIGNED AND DATED IN RED INK AND MARKED WITH THE LAND SURVEYOR'S EMBOSSED SEAL SHALL BE CONSIDERED TO BE VALID TRUE COPIES.
- #3 ROAD BOUNDS TAKEN FROM FILED MAP NO. 5703.
- #4 UNDERGROUND UTILITY LOCATIONS NOT SHOWN HEREOF.
- #5 THIS PLAN PREPARED TO SHOW TOPOGRAPHY AND PLANNED IMPROVEMENTS AS PART OF A BUILDING PERMIT APPLICATION.
- #6 ELEVATION DATUM IS THE PUBLISHED LAKE ELEVATION FOR LAKE CHAMPLAIN ON AUGUST 12, 2010.

~ LEGEND ~

- C.P. ———— PROPERTY LINE AND CORNER MARKED AS DESCRIBED ON C.P. - COMPUTED POINT
- PROPERTY LINE ALONG MEAN HIGH WATERLINE OF LAKE CHAMPLAIN - ELEV. ~ 90.8'
- CLAYMORT TITLE LINE
- LEGAL 0' MARGIN
- 125' 25' CONTOUR INTERVAL
- 5' CONTOUR INTERVAL
- BUILDING ENVELOPE FROM MAP REF. #1
- PROPOSED BUILDING ENVELOPE
- PROPOSED BUILDING
- EDGE OF WOLLASTONITE ROAD OR DRIVE
- UTILITY POLE & GUY ANCHOR - ENVIROLOG MARKS
- STONEWALL
- ⊙ SET SPINE NAIL AND LATH
- SET LATH
- STONE CROCKING
- STONE LINED DRAINAGE SHAFT

~ PLANNING BOARD ~

THIS SITE PLAN WAS APPROVED BY THE TOWN OF WESTPORT PLANNING BOARD AT A MEETING HELD ON:

CHAIRMAN ~ WILLIAM B. JOHNSTON

SITE PLAN
 PREPARED FOR
GUY GEORGE LEVER
 AND
DIANE LYNN DIORIO

SHOWING THE PROPERTY DESCRIBED IN A DEED DATED APRIL 8, 2005 FROM JAMES H. STARBUCK TO GUY GEORGE LEVER AND DIANE LYNN DIORIO BEING RECORDED IN THE ESSEX CO. CLERK'S OFFICE IN DEED BK. 1438 PG. 219.

TOWN OF WESTPORT ~ COUNTY OF ESSEX ~ STATE OF NEW YORK
 SCALE 1" = 40' XXXXXXXXXXXX

PRELIMINARY
 SEPTEMBER 17, 2010

KEVIN A. HALL
 LAND SURVEYOR
 ELIZABETHTOWN, N.Y.
 LS #40787

ONLY COPIES FROM THE ORIGINAL OF THIS SURVEY, SIGNED AND DATED IN RED INK AND MARKED WITH THE LAND SURVEYOR'S EMBOSSED SEAL SHALL BE CONSIDERED TO BE VALID TRUE COPIES.



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Chairman Johnston - Ok, that's a note -- 6,534 square feet, that's the original building envelope. The proposed orange building envelope, which is kind of a trapezoidal figure, is .37 acres, or 16,117.2 square feet. Now, if you deduct from that orange area, the portion of the archeologically sensitive area, you would deduct 0.11 acres, and that's 4,791.6 square feet. So, the orange that remains, if I'm going too fast, tell me to slow down, the orange that remains is 0.26 acres or 11,325.6 square feet. The remaining orange represents not quite a doubling in size of the original building envelope. Remember, the original building envelope was 6,534, the remaining orange is about 11,325.6, so, it represents about approximately a doubling of the size of the building envelope, not quite a doubling.

Mr. Anson - The red is the archeologically sensitive area, right?

Chairman Johnston - Yes.

Mr. Anson - That line through the middle is where the identifications of the concrete things -

Chairman Johnston - I think the line you're referring to, is just a label, it says, "archeologically sensitive" area, and it's been highlighted in pink, it's not a location. The entire area within the pink is the archeologically sensitive area.

Mr. Anson - Yes, ok.

Mr. Hainer - The rocks designate one line.

Ms. Fitzgerald - Question number one, is the distance required from the property line on the east side, is that 35 feet or is that or 50 feet, from that proposed drive corner.

Chairman Johnston - Ok, the side setback is 15 feet, George?

Mr. Hainer - Fifteen feet.

Mr. Hipps - And that's what shown there, 15 feet?

Mr. Hainer - Yes.

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Mr. Anson - George, do you have the old map --

Mr. Hainer - The old subdivision map (in file), which he brought out for everyone to view. The original subdivision map is a file that they reference, it shows the building envelope on this.

Ms. Fairbanks - A question for the Attorney.

Mr. Wilson - Yes.

Ms. Fairbanks - Since this is a real exceptional thing, but it is recognized by the State -

Mr. Wilson - The court's have recognized, especially our appellate division, in this department, it really has the leading case on this and again the standards that they use is a material change in circumstances that you must consider or new evidence and I think Mr. Lever is attempting to show that there has been a material change, again it's up to you as a Planning Board to take a look at that and say, "relate that to what he is, that change and relate it to what he's asking for". That's the factual, that's the one thing, it's a difficult thing.

Ms. Fitzgerald - The ground cover, bush, trees removed for subdivision before sale? Do we have any verification of that, at this point?

Chairman Johnston - George, can give you kind of a rough idea.

Ms. Fitzgerald - On the subdivision, itself?

Chairman Johnston - George was looking at some of the aerial photographs over time, so he can give you a fairly good idea of what happened over time to that site, in terms of removal -

Ms. Fitzgerald - And, we'll have those at the next meeting?

Mr. Hainer - I could, I will request copies from the County, there are fly-overs -

Ms. Fitzgerald - Along with that, the disturbance of ground cover of bush, trees by the east neighbor, when he developed his property? Trees, run-off that may have added

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to soil erosion and loosening of bank to any degree? Do we have any verification of that?

Chairman Johnston - The same photographs would show that.

Ms. Fitzgerald - Alright.

Chairman Johnston - George was looking the other day, I happened to be in the office, at aerial photographs that were taken in different years and they showed over time the area where vegetation had been removed, so George is saying that it would be possible to print these out, George?

Mr. Hainer - Yes, I could request them from the County -

Ms. Fitzgerald - You could just print out one big one.

Chairman Johnston - It would have to be a series, MaryLou, each labeled, but, I think it would be possible have a chronology, ok, it's a good point.

Ms. Fitzgerald - My other items I think are more, to cover at the meeting itself, I'd like to bring them up, if I may.

Chairman Johnston - Before, you do that, George, if it's possible to get this chronology of photographs, assembled before the meeting, could you mount them on a board or something, so that you could look, one, two, three, etc., and let the Planning Board know, so they can come in and look at this chronology before the meeting.

Mr. Hainer - It would depend on how fast the County could print them, and I'm sure that shouldn't be a problem. I could have them done digitally and hard copy and send them and then have them hard copied here.

Chairman Johnston - Go ahead MaryLou, --

Ms. Fitzgerald - Unusual storms, after purchase.

Chairman Johnston - Are you saying, were they any storms?

Ms. Fitzgerald - No, I'm stating that as a comment to all this mess,

Chairman Johnston - That there were unusual storms.

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Ms. Fitzgerald - Yes, the number of them and another item, I'll give you a list of this, Bill so you can have it -- owner's due diligence and investigating all possible options in building in the difficult terrain, especially after the bank erosion, I think should be considered. All of the accumulated, proven and unproven, factors that contributed to this property, should be considered. We have lots of hearsay, we need facts.

Chairman Johnston - Barbara, did you get those points that MaryLou made?

Secretary - Yes, and I have a copy.

Chairman Johnston - Ok, I think that's important. Does anyone else have any questions?

Mr. Maron - The question I have is whether if all this is necessary, because we're being asked, in my opinion, the site has changed, caused by whatever factors might be. Actually, I thought the building envelope is too close to the area to begin with but in any case, now that bank is unstable. So, we're being asked to recognize that fact and move the building envelope. The fact we change the envelope might be moved. The second question is, whether we can enlarge the envelope and in that situation, I'd say the building envelope was approximately .15 acres size and we're being asked to move and enlarge it and I think that our jurisdiction is we can move it, but, as far as enlarging it, I don't really know if that's something we can do and as I look at the map, the logical thing to do is to just move the envelope back here and exclude the archeological site and cut it off right here, you've got approximately the same size as what it was previously. We don't impact the neighbors and we don't give the person who wants everything who is proposing this everything that he wants but he does get a building envelope to build on that's approximately the same size. So, I think really those are what the questions are, whether we move the envelope and whether we enlarge the envelope and I say we just move the envelope but we don't enlarge the thing.

Mr. Hipps - If we take what Gary was saying about the court case, the way I was hearing of his interpretation of that is or his description of that is that if the circumstances were significant, to cause a change, then it sounds like we could enlarge it. I'm not advocating one way or the other,

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but just in terms of what the current court case that stands, for the past example, it sounds like you could.

Mr. Wilson - There's not a lot of case law that says, "with respect to building envelopes". This is more of a general situation with respect to subdivisions, and so the burden, unfortunately, with people like you who have to make this determination based upon evidence that's been presented to you.

Mr. Hipps - Right.

Mr. Wilson - Ok, and I think it's important to realize that when a, the reason why the courts are reluctant to, and I think the reason why the statute hasn't really addressed this issue, is because, when you have a filed subdivision map, and you buy that property, you're taken subject to what that map says. It's a public record, it's something that your lawyer looks at. In answer to what you were saying, it's kind of, it's not unprecedented, it's not done everyday, either.

Mr. Hipps - Ok.

Mr. Wilson - If the fact is Mr. Lever brings to you and says, "this is the changes that have happened to my property, and this is why I need this", then you need to look at that, and say, in determining your wisdom, in fact there is a reason to enlarge that envelope. Is there something presented to you in the minutes. As an attorney, I'm not an expert in this either, in terms of the geology and things like that, but recognize again the remedy that's being asked for, is unusual. Not unusual, but not done everyday, it's not addressed in the statute, the statutes haven't given us a list, a, b, c, and d, this is where you people have to consider, so it's a difficult situation to be in and you need to look at the evidence as presented to you and say, "has that, in this case", in answer to your question, enlargement, is there a basis for that based upon the bank failure.

Mr. Hipps -- I guess it's also difficult to take a set of facts and circumstances that led to the prior case and ignore that and try to apply the courts findings to this.

Ms. Fitzgerald - I think, back to my point, I think we do have quite a few extraordinary circumstances here, that we

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do need to consider, in lieu of your comments, so I think we have lots of reasons to contemplate.

Mr. Anson - I was wondering on the new map, now that it's, the building envelope has changed, what the owner plans to do in the archeological sensitive area, that's shown here, is he planning to use that as a lawn, etc.

Chairman Johnston - We could read and maybe I will what the Deed says, and after I read it you can ask Mr. Lever what his intentions are. Are consistent with what the Deed says. (Attached, page 9A, Deed Book 1438 Page 223). So that is the restriction. The approved plat, the archeologically sensitive area was not in the building envelope, it was outside of the building envelope, in the approved plat.

Mr. Anson - Right.

Chairman Johnston - I'll ask Mr. Lever, could you tell us, do you have any plans for this archeologically sensitive area?

Mr. Lever - Nope, I have no specific plans for the, I think the idea of enlarging the building envelope was to allow the position of the building, spread out over the top half of that slope, as our engineering report indicated, the more load there is, the more detriment that could be to stability. When we looked at positioning the building as there are examples on the revised site plan, we have a home 40 x 70 which was 2,800 square feet. We have a minimum of square feet that we can build a house on. Then positioning the garage on the other side of the archeologically sensitive area, would allow us to spread that load. Is that a good enough response?

Chairman Johnston - Yes. I believe you said, Barbara picked this up on the tape, I believe it said, "that you have no plans for the archeologically sensitive" area.

Mr. Lever - That's right.

Chairman Johnston - Any other questions or comments that anyone would like to make, at this time?

Mr. Anson - Does the sewer, proposed septic system, is that have to be inside the building envelope?

rod with cap set to 0.3' above grade on a ridge and continuing on the same course of N 36°-11'-27" E an additional distance of 120.10 feet for total distance of approximately 240 feet to a 4' long 5/8" iron rod with cap set to 0.3' above grade, near the top of a steep bank;

6. N 13°-14'-03" E 314.21 feet to the point of beginning containing 2.7± acres, more or less, within the above described bounds.

The area shown as "Archeologically Sensitive Area" on the herein after described map is subject to the following:

(No ground disturbance activities are to be conducted within the "Archeologically Sensitive Area", including grading or excavation, below a depth of one foot below existing natural grade, without an appropriate mitigation plan. This mitigation plan must be developed with the aid of a qualified archeologist [meeting requirements as detailed in the Department of the Interior National Park Service Regulations (365 CFR61)] and approved by the Town of Westport Planning Board.)

An archeological investigation of *LOT 2 of the Starbuck Subdivision* determined that the "Archeologically Sensitive Area" contains: a stone retaining wall, the subsurface ruins of two brick charcoal kilns, and it is inferred that it may contain additional charcoal kiln ruins.

Together with the appurtenances, and all the estate and rights of the parties of the first part in and to said premises.

Subject to all easements and restrictions of record.

The above description taken from and being *LOT 2 on The Map of Survey of the Starbuck Subdivision* prepared for James H. Starbuck by Kevin A. Hall, Land Surveyor, Elizabethtown, N.Y. and filed in the Essex County Clerk's Office as Map No. 5703.

EXCEPTING AND RESERVING, to the grantor, its heirs, successors, assigns and designees all development rights, including but not limited to single family dwelling building rights with respect to all but one single family dwelling, with respect to 0.7 acres of the 2.7 acres of land conveyed herein, which reservation is made pursuant to a Subdivision Permit made by the Town of Westport Planning Board at a meeting thereof on February 25, 2004 which rights and 0.7 acres of density are reserved and transferred hereby from the premises conveyed herein to a receiving parcel of land known on the Town of Westport Tax Map as 66.202-22.110, which receiving parcel was conveyed in two deeds, one deed dated December 26, 2001 from Camoria L. Prescott (f/k/a) Camoria L. Starbuck to James H. Starbuck and Camoria L. Prescott (f/k/a) Camoria L. Starbuck recorded in deed book 1306 at page 327, and the other deed dated February 20, 2002 from Camoria L. Prescott (f/k/a) Camoria L. Starbuck to James H. Starbuck recorded in deed book 1312 at page 245, said parcel being part of *LOT 1* as shown on a Map of Limited Survey of the Prescott Subdivision prepared for Camoria Prescott by Kevin A. Hall, Land Surveyor, Elizabethtown, N.Y. and filed in the Essex County Clerk's Office as Map No. 5397.

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Mr. Hainer - No.

Ms. Fitzgerald - On an offshoot point, what's the repercussions of whatever we do, from the lawyer's point of view?

Mr. Wilson - In terms of?

Ms. Fitzgerald - Legal ramifications or -

Chairman Johnston - Remains to be seen.

Mr. Wilson - I think that there is certainly the applicant has to look at this and say, "has the Board acted reasonably", and if he believes that isn't the case, there's a potential for litigation. I wish I could give you an answer that said, "that resolves it", but -

Mr. Anson - Give a little bit of an example that a lot of people can see, the amount on our highway where it's clay on a bank, how it's eroded away and they have to keep fixing it over and over every year because, this is what clay does and to me the farther you can stay away from the edge, the better off you are. Look right here in the village, right now, they're fixing things right in the village, that's all clay and the banks are giving away. It's been like that all over where they've had to shore up the banks with shot rock, etc.

Chairman Johnston - I agree totally with you, Dwight. In retrospect, you wonder if 150 feet setback was really a good idea, because -

Mr. Anson - In my estimation, it wasn't.

Chairman Johnston - because, it precludes the better part of the site from development.

Mr. Anson - And, another spot, Ray Hathaway's property, that bank is clay, and every year that has fallen.

Ms. Fitzgerald - Without a load.

Mr. Anson - Yes, without a load.

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Mr. Maron - Regarding the consequences, is it right to assume that if you just move the envelope and don't change the size, so it's moved and wouldn't upset anyone. If you enlarge it, then all the sudden someone could say, "you enlarged it" and if someone doesn't like the way it's enlarged, are you putting yourself more at risk of having someone taking legal action against you. On a third note, if the building envelope didn't include the archeologically sensitive area, and then you say you're going to have the archeologically sensitive area within the building envelope, would that be another reason someone take legal action?

Mr. Wilson - I think there's a flip side to what I said, the people who also have bought properties out of this subdivision, relied on that as well, on that subdivision map. You not only have that secondary potential litigation, for people who feel that the change will impact them negatively.

Mr. Anson - From what you read from the deed now, this is for my information, the archeological area, seems to me it would be suitable for a flowerbed or something or small shrubs that help shore the situation for lawn, so he could use it that way.

Mrs. Brant - Is it ok for a driveway to be included?

Mr. Wilson - It speaks of grading, doesn't it, to the extent that the driveway -

Chairman Johnston - It says "No ground disturbance activities are to be conducted within the archeologically sensitive area"--- refer to Page 9A. It sounds like you can do some grading provided that you don't go deeper than one foot, is that right.

Mrs. Brant - So, a driveway would be ok.

Chairman Johnston - Seems like it, what do you think, George?

Mr. Hainer - I think so, it's not a building.

Mr. Maron - I hate to keep belaboring the legal point. Is that, there's a flip side where you might say, "the site isn't suitable" so the Planning Board might be liable for

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having the site not being suitable. Is that really a liability for the Planning Board or is it more a liability of the seller and owner due diligence, saying, "in this area is where one can build", is that up to us to say whether the site that the soil is strong enough so it can support a building?

Mr. Wilson - I think that's why the doctrine of "reconsideration" is evolving, that kind of a situation. People do rely on subdivision maps when they make purchases, ok, and so that is a factor that needs to be considered. You're asking is there a potential for litigation, there is a potential for litigation other than just the - there are certain things in deed restrictions, for instance, that are basically private covenants running just to the people who are involved in the subdivision. When we're to the level of changing a subdivision map, that's a fairly substantial effort.

Mr. Maron -- Another question. Is the Planning Board required to abide by a deed restriction? Can the Planning Board say, "that what the deed states, but we're not going to follow that".

Mr. Wilson - Very often, that's the case. Very often depending what the covenant is and what has been incorporated into the subdivision approval, there are as they say, private covenants, and I'm trying to think of one like putting, I might have a bad example here, but putting an uncovered boat or something on there, that could be a private covenant, that somebody else could enforce but not necessarily -

Chairman Johnston - I think the question you asked Chris and maybe Gary doesn't have the answer off the top of his head, but could the Planning Board override a 150 foot setback? I think that's an interesting question, very interesting question.

Mr. Wilson - I think there is some cases, yes they could, I would have to do a little more research on that, but I think in some cases they could override that, because what is the setback, George?

Mr. Hainer - One-hundred feet of prevailing with the road.

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Mr. Wilson - Yes, I would think that could be looked at as of the nature of the project, it's possible, alright.

Chairman Johnston - I think it's maybe time, unless there's any final questions to wrap this up.

Mr. Hipps - I do have one, Bill. I was thinking about the archeologically sensitive area. Does that archeologically sensitive area need to even be considered as part of the building envelope? If they're not going to build on it anyway, why include it?

Chairman Johnston - That's a good question? Alright I think, we've had a really excellent discussion this morning and when Barbara has the minutes out, get your highlighters out and read it very carefully and highlight the significant remarks that have been made and I'd like you all to think about this, ponder this, between now and our meeting in November and if one of you or two of you would like to propose an action to vote upon, think it through, be prepared to defend it. We'll listen to the discussion the arguments of either side amongst ourselves and then we'll take a vote and see what happens.

Ms. Fitzgerald - I'd like to ask the audience if they have anything more to comment on this meeting or ask the lawyers anything.

Mr. Lever - I'd like to say something if I can. We did prepare an engineering report to substantiate -

Ms. Fitzgerald - Excuse me, before you say anything, will you be at our November meeting.

Mr. Lever - When will that meeting be held.

Chairman Johnston - The 28th.

Mr. Lever -- I'll be there.

Ms. Fitzgerald - I don't know if there's anything new to hear that we haven't heard.

Chairman Johnston - We had the Public Hearing and both points of view were addressed, multiple times at the Public Hearing.

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Ms. Fitzgerald - There's not much new.

Chairman Johnston - We do have 49 pages of Public Hearing. I think there's plenty of opinion.

Mr. Maron -- You asked if anyone had more to say, and then you say, never mind.

Ms. Fitzgerald - I apologize for that.

Mr. Lever - I may be repeating myself, but in the end I think the trapezoidal shape was done in simplicity and then having the building, the residence on one side and the carriage house on the other, again to redistribute the weight of the top slope, I think we just about what we're requesting here today, that's all I have to say.

Mr. Giles - A question to the attorney. In "reconsideration", of the subdivision map, is it appropriate or do we need to go through SEQOR regarding new issues.

Mr. Wilson - I think that, Bill might correct me, if you change it, you would still have the site plan issue then and those items would come up there.

Chairman Johnston - I think, probably, my assumption is probably look and see what this action was in the first place. Would it have been Type II, George.

Mr. Hainer - Actually, this is a Class B, create a lot on the Lake.

Chairman Johnston - So, if we "reconsider" are you suggesting that we need to go through the Class B procedure.

Mr. Hainer - I believe so.

Chairman Johnston - That's an interesting -

Mr. Hainer - That's something we should check on, initially it was, because you're creating under, I think it's 320,000 square feet, lot on the lake front, which kicks in Class B.

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Mr. Hipps - I'm wondering George, if SEQR gets triggered when we have an action, but this is called a "reconsideration", I wonder if it is another action.

Chairman Johnston - Well, our vote would be an action. But I think the question is what, if it is under SEQR, what type of action is it, Type I, II, or Unlisted?

Mr. Hipps - Ok, so we'll look into this.

Mr. Hainer - If it's a Class B, then it would be a Type II under SEQR.

Chairman Johnston - One of the complicating factors is that when this subdivision was originally before the Planning Board, as I recall, there was some confusion as to whether or not it was a Class B project, or not. Is that true, George?

Mr. Hainer - That's right.

Chairman Johnston - There was some confusion, and we actually never wrote a Class B Permit for this. Gary, could you think about this, give us some advice, since we never wrote a Class B Permit for this, should we consider writing a Class B Permit now on whatever action we take.

Mr. Wilson - Ok.

Ms. Fitzgerald - I find the setback issue interesting, changing setback, that would solve a lot, coming down from the road.

Chairman Johnston - What it would do, it would allow the building envelope to be even further back, safer -

Ms. Fitzgerald - Safer.

Chairman Johnston - but, that doesn't really get to the question of whether or not we should enlarge the building envelope.

Ms. Fitzgerald - Getting more complicated.

Mr. Lever - The further back you go, the more view you lose. I think that was part of it, Mr. Chairman, either

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enlarge the building envelope by removing our view we were allowing our building, but lost view.

Chairman Johnston - Ok.

Mr. Maron - What is the square foot of the building, house?

Mr. Lever - Two-thousand, no maximum.

Chairman Johnston - Ok, before the meeting Barbara's going to get out the minutes, George is going to get these pictures showing the history of vegetation removal, Gary, you're going to look into this question as to whether or not we should go through the Class B Permit process and whatever action we take. George, who do you suggest that Gary confer with at the Agency (APA), Brian Grisi, maybe?

Mr. Hainer - Yes, that would be a start.

Chairman Johnston to Mr. Wilson - Do you know Brian.

Mr. Wilson - I think I know of him.

Chairman Johnston - Anything else? Ok, Have a Happy Thanksgiving, see you on the 28th.

Mrs. Brant - I move we adjourn.

Ms. Fitzgerald - I'll second.

Chairman Johnston - All in favor, carried.

Meeting adjourned 9:57 A. M.

Respectfully submitted,

Barbara Breyette, Secretary