

- - - - - X

CITY OF MOUNT VERNON

CITY PLANNING BOARD

- - - - - X

HELD AT: One Roosevelt Square
Mount Vernon, New York
April 3, 2013
6:30 p.m.

BEFORE: William Holmes, Chairman
Marcus Griffith
Michael Justino
Darryl Selsey
Sophia Trott
Janet Snyder

ALSO PRESENT:

Hina Sherwani,
Assistant Corporation
Counsel

William Long,
Planning Administrator

Kay Hart, Secretary

J & L REPORTING SERVICE
of Westchester, Inc.
200 East Post Road
White Plains, New York 10601
(914) 682-1888
Joseph S. Jacoby, Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CHAIRMAN HOLMES: Good evening.
Welcome to Wednesday, April 3rd
meeting of the Mount Vernon City
Planning Board.

Item 1, Approval of minutes,
1.1, approval of minutes for the
regular meeting held on Wednesday,
February 6th. I'll accept a motion
for that.

MR. GRIFFITH: So moved.

MR. SELSEY: Second the motion.

CHAIRMAN HOLMES: All those in
favor?

MR. JUSTINO: I'm going to
abstain. I did not get a chance to
review them.

CHAIRMAN HOLMES: 2 abstentions
and 4 ayes. Ayes have it.

MR. LONG: Who are the 2
abstentions?

MR. JUSTINO: I am.

CHAIRMAN HOLMES: I am.

Item 3.2, Continued.

Public Hearing 2.1, Case Number

1
2 Case No. 02-2013: 66 Fleetwood
3 Avenue, Section 165.30, Block 1030,
4 Lot 2. Jack Adesso on behalf of
5 Fleetwood Garage Corporation, seeking
6 a Certificate of Occupancy for
7 existing garage for its use as a
8 principle use and not an accessory
9 use. SEQRA Determination: This
10 action is uncoordinated review,
11 classified as unlisted action,
12 wherein the Planning Board must
13 render a SEQRA assessment prior to
14 deliberating on this matter.

15 MR. ADESSO: Good evening.
16 Jack Adesso, 153 Stevens Avenue,
17 Mount Vernon, New York, for the
18 applicant. I'm ready to proceed
19 anyway the Board chooses.

20 CHAIRMAN HOLMES: We're in
21 public hearing.

22 MR. ADESSO: Yes, we are.

23 CHAIRMAN HOLMES: Continued
24 public hearing. Are there any
25 further notifications or

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

correspondence?

MS. HART: No.

CHAIRMAN HOLMES: Any members of the public wish to speak in favor or opposition to the public hearing? I have one person. We can allow the public to speak. Please, come up. Name and address.

MR. ALIFANTI: Ralph Alifanti 141 Hillside Place, Eastchester, New York. I represent the Fleetwood Chateau Owners Corp, the co-op building at 651 North Terrace Avenue, Mount Vernon, the building that directly abuts back-to-back the subject garage.

I'm here to express the concern of the co-op shareholders and other residents in that building, that this matter proceed without a Judicial Finding, whether or not the building was, the garage was properly sold to the applicant and secondly, even if it was properly subdivided, whether

1
2 the use that's being sought here can
3 be considered by this Planning Board,
4 given the language of the covenant
5 that we spoke about last month and I
6 think you're all aware of and given
7 the language in the CO, which labels
8 the garage as accessory use to our
9 building. That's about all.

10 CHAIRMAN HOLMES: Thank you.

11 MR. ALIFANTI: One other point.
12 If the board feels that the court,
13 absent the court injunction, they
14 have the thought to proceed, I would
15 respectfully request there not be a
16 rush to judgment and my client be
17 given an opportunity to see if the
18 court would give them an injunction
19 to prevent this from proceeding. I'm
20 trying to keep the cost down to my
21 client. I didn't proceed to get the
22 injunction. We would, if we have to.

23 CHAIRMAN HOLMES: Thank you.

24 MR. ADESSO: Thank you.

25 CHAIRMAN HOLMES: No other

1
2 members of the public have come
3 forward to speak for or against the
4 application at this time.

5 MR. ADESSO: First off, I'd
6 like to address the last point raised
7 by Mr. Alifanti. With respect to the
8 Board proceeding forward on this.
9 Notwithstanding the fact that a
10 lawsuit has been brought to enforce a
11 restrictive covenant, the courts have
12 long held, I have a series of cases,
13 which I'll give to you, that
14 restrictive covenants that run with
15 the land and zoning and planning
16 matters are separate and apart from
17 one another. The Planning Board can
18 act on issues regarding the planning
19 laws of the City of Mount Vernon, as
20 well as the other land use laws of
21 the City of Mount Vernon,
22 notwithstanding whether a restrictive
23 covenant is in place or removed.
24 It's very clear, that's the law. The
25 issue whether or not the restrictive

1
2 covenant can even be successful in
3 the lawsuit is being vehemently
4 opposed by my client. We believe the
5 end of the day this restrictive
6 covenant is going to be history, as
7 it applies to this particular parcel
8 and the parcel behind us, which is
9 the co-op building. Just to
10 reiterate a few things. If you'd
11 like I can give you the cite or
12 submit them to Counsel in a letter
13 after this evening. I will cite the
14 cases. Forenzo Shawangunk versus
15 Nolden, court of appeals case, says a
16 zoning approval constitutes a
17 conclusion that the proposed project
18 purports with applicable zoning
19 regulations, it should neither effect
20 nor be affected by the existence of
21 private restrictive covenants.
22 That's one of the top cases in the
23 State of New York having addressed
24 this issue. There are a bunch of
25 other cases. The cite on that, 64 NY

1
2 2nd 387/487 New York sub 2nd 583/476
3 Northeast Reporter 978.

4 MS. TROTT: What year was the
5 case?

6 MR. ADESSO: Early to mid
7 2000's. Friends of Shawangunk versus
8 Nolden. The cases that follow I'm
9 citing basically stand for the same
10 position. And there's a 1984 case, I
11 have the case name, Crane Neck
12 Association versus New York City Long
13 Island Services Group, 64 NY 2nd
14 154-472 NY Northeast Reporter 2nd.
15 There's a 2004 case Chambers versus
16 Old Stone Hill Road Associates, 1 NY
17 3rd 424 774 NY sub 2nd 866 806, North
18 Eastern Report sub 2nd 979. There's
19 a website which is run by the
20 Secretary of State and Attorney
21 General for the State of New York,
22 which basically comports to the same
23 position that these cases do. Let's
24 see if I have the cite here how to
25 get to the website. I'm sorry. I

1
2 don't have that. I will get it to
3 you. I have that in my office. Then
4 there's one other quote I'd like to
5 give, on this issue, says unless aq
6 statute expressly provides otherwise,
7 land use approvals and the
8 enforcement of private restrictive
9 covenants are administrated
10 independently of each other. Then
11 there's a series of cases, 1/2/2012
12 case, that was reported in New York
13 Law Journal Don Batista Food d/b/a
14 C-Town Supermarket versus King Jerome
15 Reality, case reported in the New
16 York Law Journal September 24, 2012.
17 There are other cases, but they all
18 basically follow the same thing. I
19 won't give you all of them. There's
20 quite a few cases that hold that
21 position. It's the applicant's
22 position that this board can proceed
23 notwithstanding a restrictive
24 covenant in the deed; B, I don't
25 believe a court will issue an

1
2 injunction, even if an application
3 was made, in light of this law, that
4 one has nothing to do with the other.
5 In other words, the injunction
6 wouldn't prevent the board from doing
7 it's business, because the law
8 clearly states, they're separate from
9 one another and should not be
10 confused or commingled, so to speak,
11 to prevent one or the other from
12 acting. The same argument would be
13 made if somebody was trying to
14 enforce a restrictive covenant
15 against a town, where the law said
16 the restrictive covenant had no
17 water, since the law in the town
18 makes it legal. Again, these are all
19 issues that actually go to the
20 reality of whether that restrictive
21 covenant would be valid or not moving
22 forward. This is a very old
23 restrictive covenant, probably
24 predates the turn of the century,
25 over a large parcel of land in this

1
2 area that at one time was all vacant.
3 As pieces were sold off, restrictive
4 covenants going forward, whether or
5 not it was necessary any longer to
6 protect any property rights. That's
7 the second point I want to make. The
8 person or persons trying to prevent
9 us from doing this are the same
10 people that sold us the garage. I
11 find it amusing that Mr. Alifanti
12 said the lawsuit is going to
13 determine whether or not the sale was
14 a legitimate sale or legal sale, when
15 he was one of the people involved in
16 the transaction. One of his partners
17 was involved in the transaction at
18 the time. Besides that, they sold
19 the building and the land to my
20 client, paid \$200,000 for it back in
21 1991. At the time there were
22 forty-three spaces in the garage,
23 most of which were not legal spaces.
24 Since that time, the owner has
25 brought this building up to code,

1
2 spent considerable amount of money,
3 spent \$400,000 on fixing the building
4 up and reduced the parking spaces
5 from forty-three to twenty-three.
6 Because they are now legal spaces,
7 with legal turning radius and all the
8 other things required in garages. As
9 I said before, the co-op, even before
10 this property was sold, when it was
11 asking for an approval from the
12 Attorney General of the State of New
13 York, in it's offering plan, made it
14 very clear no parking was provided to
15 the owners of the building or to the
16 shareholders who purchased the co-op
17 units. It's very clear, it's right
18 in the offering plan. It was clear
19 even before they sold to my client.
20 The offering plan contained language,
21 said they weren't going to provide
22 parking. Now again, this garage has
23 always been a garage. The use is not
24 changing. It's a garage. What's
25 changing is the allegation that it's

1
2 accessory, when we say it's no longer
3 accessory and hasn't been accessory
4 at least since 1991. Probably even
5 notwithstanding the C/O, couldn't be
6 accessory, because they're on
7 separate parcels of land, two
8 separate tax lots. The law is clear,
9 for accessory use to be an accessory
10 use to the main use on the existing
11 property, it has to exist on the
12 property that the main use exists on.
13 There's a lot of issues here very
14 easily resolved. All we're asking is
15 that it go from what it was years
16 back, an accessory use to what it is
17 and has been, a private or public
18 garage owned by a private individual,
19 selling spaces or leasing spaces.
20 You should remember, not even when
21 the building did use the garage for
22 whatever purpose it was using it,
23 those spaces weren't free. People
24 had to pay for the spaces. They can
25 pay for the spaces now. None of that

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

has changed. They're not eliminating spaces, except as required by law. The garage is there. The spaces are there. People who want to rent the spaces, rent the spaces. The fact that the people who sold the garage to us over 20 years from the date of that sale, are now saying we shouldn't have sold it to you or can't be sold to you, notwithstanding all the time we had had it and owned it and improved it. In that way, it's called laches, because of the time. It's called the clean hands doctrine. You don't come before the court when you have unclean hands. If you've created the hardship and put that word in quotes, I don't believe there's a hardship by selling it to my client, regardless of who my client is or was. You sold it. You got paid for it. You acknowledged at the time you got paid for it, the building needed money, and sold it.

1
2 They sold it for what we maintain was
3 an arms-length transaction back in
4 '90 or '91 for 200,000. That goes to
5 certain issues having to deal with
6 the restrictive covenant and the
7 argument of the plaintiff in that
8 case. Also goes to the arguments of
9 some of the opponents, what we're
10 asking the board to do. We submitted
11 the paperwork and statement of points
12 in the statement of points. I
13 addressed each one of criteria
14 provided by the code we have to
15 address and stated whether or not we
16 complied with it. We comply. The
17 area today is much different than it
18 was in 1929 or maybe 1890 or so when
19 the original covenant was placed
20 there. I mentioned the garages that
21 are in the vicinity. In fact, the
22 City of Mount Vernon has a municipal
23 garage about a block away. It's a
24 neighborhood that's changed, but one
25 constant thing is, this garage has

1
2 been there since 1931. So it's not
3 going to negatively impact anybody by
4 remaining there. In fact, with less
5 parking spaces, an argument can be
6 made it has less of an impact, if
7 there was any impact. I believe the
8 board can go forward in making it's
9 determination of, notwithstanding
10 what the courts may do, that we have
11 met what I believe is the burden of
12 the code in establishing that this
13 use as a public garage or primary
14 garage, not an accessory garage, is
15 consistent with the code, consistent
16 with the requirements of the special
17 use permit of the code, in no way
18 shape or form should be denied
19 without some specific reasons that I
20 might be able to address.

21 CHAIRMAN HOLMES: Thank you.

22 Any questions from the members of the
23 board?

24 MR. LONG: The first question,
25 Mr. Adesso, when the garage was

1
2 reconfigured from, I think you said
3 forty-three spaces to whatever number
4 there is now in order to comply, was
5 site plan approval given to the
6 garage? The second question when the
7 garage was sold from the co-op unit,
8 did the co-op building, was a
9 variance given to the co-op building
10 because they then they -- when it was
11 subdivided I guess and sold off, the
12 garage was sold from the co-op
13 building. Did the existing building
14 meet the parking requirements?

15 MR. ADESSO: It was never
16 subdivided. It was always a separate
17 lot. It was always lot one and two.
18 It's always been that way. It was
19 never one lot cut down into two.
20 There was never a subdivision.
21 Remember the building was built first
22 and the garage was built second. Or
23 was the building first and the garage
24 was second? So you know, it wasn't a
25 subdivision of a large lot into two

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

small lots. It always existed as two separate lots.

MS. TROTT: Were they on the same deed at one point?

MS. SHERWANI: On the same deed.

MR. ADESSO: We're reserving that. You asked us to produce a deed that shows whether or not they're on one lot or not. We got a deed for the garage. That's a separate deed. I'm presuming there was a separate deed for the building.

MR. ALIFANTI: They were never on separate deeds from the beginning, they were always on one deed.

MR. ADESSO: When the property was sold the deeds were done separately, one for the building, one for the garage. Surveys were done and they were separate lots. They were easy enough to survey. They were in existence as separate lots. Meets and bound descriptions were

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

easy to find. So there are two deeds.

CHAIRMAN HOLMES: Okay.

MR. LONG: What about the site plan issue?

MR. ADESSO: I believe the site plan was submitted with the application for the Certificate of Occupancy. The Building Department should have a record to confirm that. When they asked to do the change of the Certificate of Occupancy, they were required to submit drawings and other things, which is the usual requirement of the City of Mount Vernon. I believe they submitted the site plan or drawing of the garage with that information intact. If this is approved, and there's an issue as to site plan, obviously we have to come back to this board for site plan approval. We're here now for special use permit. If it's determined we need to come back for

1
2 site plan approval, then we'll have
3 to come back for site plan approval.
4 This is clearly not that. This is
5 for the special use permit.

6 CHAIRMAN HOLMES: Great. Thank
7 you. Any other questions?

8 MR. LONG: That's all.

9 CHAIRMAN HOLMES: Any other
10 questions? Great. What I will do is
11 I'll ask for a motion to close the
12 public hearing.

13 MS. SNYDER: So moved.

14 MR. ALIFANTI: May I make a
15 brief clarification?

16 CHAIRMAN HOLMES: Yes.

17 MR. ALIFANTI: Just a couple of
18 points. The question of unclean
19 hands and laches. I represent the
20 co-op corporation. They're kind of
21 the victim here. They were not ever
22 the owners of that garage. They were
23 the first people to take a deed up to
24 that apartment building that did not
25 have a garage attached to it. The

1
2 prior owner, the landlord converted
3 to co-op, sold the garage right
4 before he created the co-op
5 corporation. This corporation did
6 not sell to the Fleetwood Garage
7 Corporation. The corporation never
8 had that. If you do a search, as has
9 been done when they took title, when
10 we took title, there was never a time
11 when there was anything but one deed
12 and one owner for both of those
13 properties. They may have always
14 been on separate lots. They were
15 always owned by one person. The lots
16 interlock. Part of our property is
17 on his and part of his property is on
18 ours. The terrain is such that his
19 roof is part of our backyard. The
20 idea that the covenant was written
21 sometime when it was all farm land is
22 not the case. The covenant, the
23 construction of the garage and
24 building were all in close time with
25 each other, within a few short number

1
2 of years. The construction of the
3 garage probably began right after the
4 construction of the building was
5 completed. The configuration there
6 now is certainly different than it
7 was in the 20's. It's not different
8 from what it was in 1991 when it was
9 broken off. It was a mistake to
10 break it off. The landlord and
11 purchaser here tonight in good faith
12 didn't realize the covenant existed.
13 I was involved in it at the time
14 peripherally. I didn't recognize it
15 exists. It was a mistake we all
16 made. It does exist. The building
17 has no other means to park. It's
18 been a severe hardship for the
19 building to not have the garage. To
20 suggest to be able to park there,
21 when you own. It's a big difference
22 than when you have an outside garage
23 owner to charge for that.

24 MR. GRIFFITH: You're saying
25 you knew that the garage was not

1
2 attached, but now 20 years later
3 you're interested in having it back.
4 I'm confused on the argument.

5 MR. ALIFANTI: When it was
6 conveyed 20 years ago the covenant
7 did not surface.

8 MR. GRIFFITH: You knew it
9 wasn't attached. You knew that you
10 didn't note it. The people you
11 represent knew that they didn't have
12 any parking. What gives them the
13 right to claim now 20 years later, we
14 have something we didn't purchase.
15 They knew it wasn't there. I'm not
16 understanding the argument when it
17 comes to the owners of the co-op.

18 MR. ALIFANTI: There has been
19 an ongoing dispute with the owner of
20 the garage for this whole entire
21 time, that never should have been
22 conveyed. The people who bought the
23 co-op didn't clearly understand they
24 were not going to have access to the
25 garage. The parking spaces were

1
2 offered to them when they bought the
3 co-op. Legally did the co-op
4 corporation not know it, that's
5 absolutely true, the shareholders
6 buying in there were offered an
7 opportunity to purchase parking as
8 well. It was sold as a seamless
9 transaction, get your co-op, get your
10 parking space.

11 MR. JUSTINO: At an extra cost.

12 MR. ALIFANTI: At an extra
13 monthly cost.

14 MR. GRIFFITH: Under the same
15 letterhead.

16 MR. ALIFANTI: Yeah. The sale
17 would have been made because at that
18 time it was being held by the sponsor
19 entity 651 Associates, would have
20 been under the same letter. All
21 times prior to that the garage was
22 held like that.

23 MS. TROTT: The buyer, Mr.
24 Adesso's client was one of the owners
25 prior to the transfer.

1
2 MR. ALIFANTI: He was. There
3 was a cash scenario. He paid
4 \$200,000. I'm not going to suggest
5 it was fair market value. I suggest
6 it was not marketed, not listed with
7 a broker and not try to get other
8 purchasers interested to see what it
9 could have gotten otherwise. It was
10 a fast quick deal for what may or may
11 not have been fair market value. I
12 don't know how we can figure that
13 out. It was never put onto the
14 market. I don't think surveys were
15 done at the time of the closing. It
16 was done subsequent.

17 MR. JUSTINO: The co-op plan
18 was approved by the state without the
19 garage.

20 MR. ALIFANTI: It was approved
21 by New York State. All New York
22 State does is ask the owner of the
23 building to fairly disclose what the
24 deal is. Doesn't oversee what is
25 accurate or not. They did no

1
2 investigation. The fact the Attorney
3 General's office accepts an offering
4 plan, doesn't mean it's accurate.
5 They specifically tell you when they
6 take the plan, they have done no
7 independent investigation. They're
8 relying on the representations of the
9 sponsor.

10 MR. JUSTINO: The sponsor did
11 not portray their parking lot
12 attached.

13 MR. ALIFANTI: That's correct.

14 CHAIRMAN HOLMES: Thank you.
15 Would you like to respond?

16 MR. ADESSO: Yes. Again taking
17 the last statement first, I think
18 we're all familiar with co-ops and
19 the very stringent requirements of
20 the law, offer be made to a purchaser
21 of a co-op unit based on anything not
22 contained in the offering plan that's
23 law. That offering plan is the
24 Bible. When a perspective buyer goes
25 to a broker and wants to buy a unit,

1
2 first thing they do, give them the
3 offering plan. They say read through
4 the offering plan, because you're
5 subject to whatever is contained in
6 the offering plan, this offering
7 plan, which I believe you wrote.

8 MR. ALIFANTI: My office did.

9 MR. ADESSO: Was very, very
10 clear on the fact that there was no
11 parking to be provided. The budget
12 doesn't even cover expenditures for a
13 parking garage. It's clear and by
14 the way, I believe and I'll get the
15 offering plan, I believe this
16 offering plan was filed before the
17 sale, not after the sale of this
18 garage. For anyone to say that it
19 was a mistake and the state kind of
20 just didn't notice it, and the people
21 there should have the right to buy a
22 space or pay for a space now, to me
23 is not a genuine argument. Because
24 they never were entitled to a parking
25 space in the garage according to the

1
2 offering plan, so unless that
3 offering plan was amended back then
4 to state whatever the facts were,
5 other than what I know the offering
6 plan to say, somebody got duped, and
7 maybe it was the purchasers of the
8 co-op units back then, if they were
9 told they were permitted to park in
10 the parking garage. In fact, there's
11 an agreement that existed, which
12 required my client to provide some
13 parking spaces to some of the co-op
14 people at a certain price, for a
15 certain period of time. If the
16 spaces weren't taken or occupied, he
17 can go to the third party and lease
18 it to them. That's exactly what
19 happened. I don't know how many
20 co-op owners existed at the time. I
21 understood six or seven out of the
22 entire building back in 1991. The
23 fact of the matter is, there wasn't a
24 demand for the parking.

25 CHAIRMAN HOLMES: You have

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

something additional?

MR. ADESSO: I don't want to beat a dead horse. I covered it in everything else I said. Nothing else to say at this point.

CHAIRMAN HOLMES: Entertain a motion to close the public hearing.

MR. SELSEY: Moved.

CHAIRMAN HOLMES: Second.

MS. SNYDER: Second.

CHAIRMAN HOLMES: All those in favor? All those opposed? Ayes have it.

MR. JUSTINO: I'm going to abstain.

CHAIRMAN HOLMES: One abstention, five ayes. I'll also ask for a motion for the following, as legal issues appear to exist regarding the property rights over the subject lot, this board will ask for a motion to hold this application in abeyance until Judicial determinations are made as to those

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

rights. Ask for a motion.

MR. SELSEY: Make a motion.

CHAIRMAN HOLMES: Second.

MS. SNYDER: Second.

CHAIRMAN HOLMES: All those in favor? All those opposed? All those abstaining.

MR. JUSTINO: I will abstain.

CHAIRMAN HOLMES: Any other abstentions? The ayes have it. Four ayes and two abstentions.

MR. GRIFFITH: I abstain.

CHAIRMAN HOLMES: The ayes have it. We'll go to item number three, recommendations, 3.1, Senior Citizen Floating Zone Ordinance. According to section 267-56 of the Zoning Code, if an amendment is to be considered by the City Council, it shall be referred for review and report to Planning Board, the Corporation Counsel and other boards, architectural review board, agency or official of the city, which the City

1
2 Council deems appropriate. All
3 boards, agencies and officials to
4 which such proposed amendment are
5 referred, shall not have less than
6 30 days from the date of forwarding
7 or from the date of revision from the
8 petitioner, whichever is later, to
9 submit their reports. I have a
10 question for staff. What was the
11 date of reporting or what is your
12 date of reporting to this board?

13 MR. LONG: The date? I'm
14 sorry.

15 CHAIRMAN HOLMES: You referred
16 to a date of reporting.

17 MR. LONG: That's the date in
18 which the City Council sends it to
19 you.

20 CHAIRMAN HOLMES: What date is
21 that?

22 MR. LONG: Either November or
23 December of '12.

24 CHAIRMAN HOLMES: When was it
25 submitted to the board physically?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. LONG: Physically?

CHAIRMAN HOLMES: Right.

MR. LONG: It would have been at the next board meeting, whenever they submitted it, it would have been at the next board meeting.

CHAIRMAN HOLMES: Can you provide the board with a specific date? To my recollection, we did not receive it then. Any board member recall that?

MR. LONG: It was sent by email. I had the city clerk send it to me. They had to write it out and send it to me in writing. I scanned it and emailed it to the board. I will get the email transmission again and re forward that back to you.

CHAIRMAN HOLMES: I understand that. My concern is the wording of this. I have a question. I'm open to other members of the board, if they recall when we received that. I don't remember if this board is

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

required to respond within 30 days of that.

MR. JUSTINO: That's not what it says.

MR. LONG: They have to give you at least 30 days.

MR. JUSTINO: Doesn't say the limit.

CHAIRMAN HOLMES: I misinterpreted. I stand corrected. I needed that. I interpreted differently. In that case we were not restricted to 30 days.

MR. LONG: No. Just to tell you where we are right now. Currently, again, the board is still vetting the finalized draft the staff has compiled. We have submitted it to the agencies to provide you as a board the comments, the Water Department, DPW, the office of aging, Police Department and the fire department. When the comments come back, we'll get those to you and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

you'll make a decision.

CHAIRMAN HOLMES: I'll
entertain a motion to --

MR. LONG: You don't have to.

CHAIRMAN HOLMES: We'll talk
about it next month. We have item 4.
I did not read the SEQRA
determination. Type II. This action
does not require SEQRA assessment.

Item 4: Referrals from
neighboring municipalities. 4.1.
Referral from Town of Eastchester.
New York State law requires that
municipalities and local
jurisdictions located within the
state send all proposed zoning
amendments to neighboring
municipalities. Accordingly, the
Mount Vernon City Council submitted a
referral to the Planning Board
regarding notification that it has
received from the Town of Eastchester
proposed amendments to the Town of
Eastchester's Local Law No. 5-2000,

1
2 the Zoning Law of the Town of
3 Eastchester, in the event that the
4 Planning Board may choose to respond.
5 SEQRA determination, type II, no
6 SEQRA action or assessment is
7 necessary. Discussion amongst the
8 board members or any thoughts about
9 it, the request for comments from the
10 board?

11 MR. JUSTINO: My suggestion
12 would be that we do not make any
13 commitment in regard to the proposal
14 that Eastchester has put forward. I
15 think it's totally in their
16 jurisdiction and it would not effect
17 property owners or the city itself in
18 whatever decision they make.

19 MR. GRIFFITH: I second the
20 motion.

21 CHAIRMAN HOLMES: That's a
22 motion.

23 MR. GRIFFITH: I second.

24 CHAIRMAN HOLMES: I don't
25 remember asking for a motion.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. JUSTINO: It can be a motion, unless if there's some other comments, we should hear them. If not, I'll turn it into a motion.

MS. TROTT: No comments.

MS. SNYDER: I agree with my fellow Commissioner and go ahead and make a resolution.

CHAIRMAN HOLMES: I will ask that the resolution be limited only to just our action.

MR. LONG: In this situation, if you choose not to comment, no resolution will be generated. There's nothing to send.

MR. JUSTINO: Nor do we need to make a motion.

MR. LONG: You should make the motion. I don't think a resolution will not be generated. You have no comment. You have no comment.

CHAIRMAN HOLMES: We don't have a comment.

MR. SELSEY: We should have a

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

motion.

CHAIRMAN HOLMES: Board member Justino chooses to make a motion. Board member Griffith decides to second the motion. It's unanimous.

MR. JUSTINO: For the record, so I don't have to state it again, I believe it's on the record what I stated, should be the position of the board and I would make that as a motion and Mr. Griffith seconded it.

CHAIRMAN HOLMES: I will offer amendment to the motion.

MR. JUSTINO: Please do.

CHAIRMAN HOLMES: That we exclude the second part of it, which is you mentioned about effect on the city. I suggest we exclude that part. The first part I agree with. That's what I recommend. The statement be made exclusive that we not make a comment. That's my recommendation.

MS. SNYDER: Sounds good to me.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. JUSTINO: That's fine.

CHAIRMAN HOLMES: I would suggest you make the motion.

MR. SELSEY: I make a motion there is no comment.

MR. GRIFFITH: Second that motion.

CHAIRMAN HOLMES: All those in favor? Unanimous.

(Hearing Adjourned 7:15 p.m.)