

**TOWN OF GUILDERLAND  
PLANNING BOARD**

**January 26, 2011**

Minutes of meeting held Guilderland Town Hall, Route 20, Guilderland, NY 12084 at 7:30 P.M.

PRESENT: Stephen Feeney, Chairman  
Paul Caputo  
James Cohen  
Theresa Coburn  
Kimberly Jones  
Michael Cleary  
Thomas Robert

Linda Clark, Counsel  
Jan Weston, Town Planner

ABSENT:

\*\*\*\*\*

Chairman Feeney called the meeting to order at 7:30 p.m. He noted the exits for the sake of the audience in the event they were needed.

Chairman Feeney asked for a motion to approve the minutes of November 10, 2010 and December 8, 2010 with a few minor corrections, so moved by Thomas Robert, seconded by Paul Caputo and carried by a 7-0 vote by the Board.

\*\*\*\*\*

**CASE OF MILL HILL, Phases 2 & 3 – State Farm Road**

Chairman Feeney announced that this was a public hearing on the final site plan of phase 2 & 3 of the Mill Hill PUD consisting of 73 townhouses units. Skip Francis presenting.

Linda Clark, Counsel, read the Legal Notice as follows:

The case of the Michaels Group will be heard on Wednesday, January 26, 2011 at 7:30 p.m. at the Guilderland Town Hall, Route 20, Guilderland, New York 12084, for the purpose of obtaining final site plan approval for a project known as Mill Hill, phases 2 & 3.

Such subdivision is proposed as 73 townhouse units on 31 plus acres.

The general location of the site is on the west side of State Farm Road, opposite Dr. Shaw Road.

The property is zoned: PUD

Tax Map # 51.00-3-1.12 & 1.13

Plans are open for inspection, by appointment, at the Planning Department during normal business hours.

Dated: January 10 2011

Stephen Feeney, Chairman, Planning Board

Jan Weston, Town Planner, read the comments of the Planning Department as follows:  
Mill Hill PUD - State Farm Road

The applicant is requesting final site plan approval for phases, 2 and 3 which has reduced the number of townhouse units from 74 to 73. Also, in response to Planning Board suggestions, the separation between Eagle's Gate and Mill Rose Court has been increased and sidewalks have been added to provide for continuous loops. The TDE has stated that there are only minor technical issues left to address. No objection to final approval.

Donald Zee, Attorney for applicant, gave a short presentation. We are seeking final approval for 73 townhouses. Access to the premises would be by a private road known as Mill Hill Court, which is being utilized by the Nursing Home that is in Phase 1. We are in the rear of the existing Stewarts property and are proposing to construct private roadways off of this private road, which is at the cul-de-sac. These roadways will be privately owned and maintained by a Homeowners Association. The property is zoned PUD and the PUD was amended May 18<sup>th</sup> of last year. There were two major changes to the PUD for this Mill Hill project. One was the age restriction that was amended from age 62 down to 55 and older. Secondly, there was modification of the building types. An elimination limitation of 88 multi-family units and the zoning permitted up to 74 townhouses and we are seeking approval for 73 town homes. This project was submitted to the Albany County Planning Board for their review and they have submitted a comment back in December of 2010. Their comment was that they wanted to make sure that we have received approval by NYSDOT for the emergency accesses and the impact of the drainage.

Skip Francis, CT Male Associates, hit some of the highlights of the technical aspects. Albany County asked us to review it with the DOT. We did submit to them and they replied in the December 22<sup>nd</sup> with their acceptance and concurrence with the emergency access way. It is consistent with all previous plans that have been before this Board. The actual curb cut location on Rt. 155 has not changed. Also, with respect to stormwater, the town stormwater management officer signed an acceptance form in November. We had the TDE review our SWPPP plan and the stormwater management practices are in conformance with the now current 2008 stormwater design manual, and we are prepared to file our notice of intent well before March of this year when a new manual goes into effect.

We have also prepared a water, sewer report and Superintendent, William West, and he is in concurrence with the facilities and the way they are arranged. All of the facilities will alternately be dedicated to the town for maintenance. The HOA would only be responsible for cleanouts with the buildings out to the streets.

The Planner has mentioned the addition of sidewalks throughout the community. We added a community mail kiosk that is located just at the end of the cul-de-sac.

In summary, we had submitted three submissions to the TDE and they provided their comments and had addressed all of the comments

Chairman stated: I have received a memo from Donald Albright, dated January 24, 2011, regarding the hydrant location on Fathers Way. (On File)

Skip Francis, explained: I did talk with Mr. Albright and we had moved the hydrant location to the inside of the cul-de-sac so that a fire apparatus can roll into the cul-de-sac and drop off the hydrant connection bag. This has been resolved.

Chairman noted for the record: we did receive communication from NYSDOT, dated December 22, 2010, from Mark Kennedy, Region Traffic Engineer, and in part reads as follows: we have completed our review of your October 27, 2010 submittal and the revised Site Plans. The revised plans address the comments previously provided by this office and we can concur with the design of the proposed emergency access roadway connections to NYS Route 155. (On file)

Also, we have a letter from Albany County Planning Board, dated December 16, 2010, and their recommendation read as follows: Modify local approval to included:

1. A Notice of Intent filed with the New York State Department of Environmental Conservation affirming that a Stormwater Pollution Prevention Plan has been prepared is being implemented or submission of a Stormwater Pollution Prevention Plan that is consistent with the requirements included in the New York State Department of Environmental Conservation SPDES General Permit for Stormwater Discharges (GP-0-10-001, January 29 2010) for construction activities that disturb more than one acre of land.
2. Review by the New York State Department of Transportation for design of highway access, drainage and assessment of road capacity for the proposed emergency access point to SR 155. (On file)

Chairman asked about the pavement material for the emergency access. Is that a green approach?

Mr. Francis said yes. That is a green approach and that we proposed it for the access road around the stormwater basin.

Chairman stated: One other point is that we eliminated the roadway connection between Eagles Gate to Mill Rose Court.

Donald Fletcher, from Barton & Loguidice, stated that we reviewed the plans and there are a few minor things that need to be taken care of with the SWPPP, and they have been working on that.

Chairman asked if there is anyone from the audience who would like to address the application and there were none.

Chairman entertained a motion to close the hearing, so moved by Michael Cleary and seconded by Kimberly Jones and carried by a 7-0 vote by the Board.

Chairman was willing to make a motion for final approval in the matter of Mill Hill Phase 2 & 3 with the following conditions:

- Town Designated Engineer approval
- Town Water & Wastewater Superintendent approval
- Albany County Health Department approval
- NYSDOT approval

- \$2,085.00 per dwelling unit – sewer mitigation fee (with sewer hook-up application)

The motion was seconded by Michael Cleary and carried by a 7-0 vote by the Board.

\*\*\*\*\*

# **CASE OF JOHNSTON ROAD LLC – Homes Terrace**

Chairman Feeney announced that this was a public hearing on the preliminary and final plat of a 5-lot subdivision of 12 acres. Zoned RO40. Joe Bianchine presenting.

Linda Clark, Counsel, read the Legal Notice as follows:

The case of the Johnston Rd. LLC. will be heard on Wednesday, January 26, 2011, at 7:30 p.m. at the Guilderland Town Hall, Route 20, Guilderland, New York 12084 for the purpose of obtaining final plat approval for an unnamed subdivision.

Such subdivision is proposed as: 5 lots cut from 12 acres.

The general location of the site is at 6247 Johnston Road, between Johnston, Holmes Terrace and Wendom Roads.

The property is zoned: RO40

Tax Map # 52.13-2-30

Plans are open for inspection, by appointment, at the Planning Department during normal business hours.

Dated: January 10, 2011

Stephen Feeney, Chairman, Planning Board

Jan Weston, Town Planner, read the comments of the Planning Department as follows:

Johnston Road LLC - Johnston Road

The applicant has requested final plat approval for a 5 lot subdivision of 12 acres. One lot presently contains a house which accesses Johnston Road, one lot will access Wendom Road, and the remaining three lots will access Homes Terrace which will be improved with a cul-de-sac. I have the following comments:

- The Homes Terrace cul-de-sac does not quite extend to the 8 acre parcel which has been given to the Town for parkland. The plat shows a small triangular piece of land that would be donated to the Town to allow for access. However, this access would be very narrow and cut in front of the home at 7 Homes Terrace. The donated piece should be larger to provide a more reasonable access.
- Lot # 5 contains federal wetlands. The plat shows the 35 ft setback but the building envelope should be revised to reflect this limitation. Also protective language should be added to the plat and deeds to insure that they are not disturbed.
- Lot # 5 also shows a well and well house. The ownership and purpose of these should be explained. Also, because of the length of the proposed driveway, a

driveway cross-section should be included to insure that emergency vehicles will be able to access the site.

- Lot # 1 will include a lot line adjustment with the lands of Quadrini.
- A SWPPP will be required.

No objection to final approval contingent on the above comments and the review of the TDE.

Chairman stated for the record: We also heard from the Albany County Planning Board notice, dated 1/26/2011. (On file)

Chairman added: I am assuming that we would have to continued this hearing to see what Albany County is talking about.

Chairman added: Also, site plan review from the Guilderland Conservation Advisory Council, dated August 30, 2010. (On file)

We also have additional communication from Chuck Cahill, Westmere Fire Department regarding the hydrants. (On file)

A letter, dated August 23, 2010, addressed to Ken Runion, Supervisor, from Nelson Center, in regards to concerns about water problems in the construction on lot 4 and the cul-de-sac at the end of Homes Terrace. (On File)

Joe Bianchine, ABD Engineers Surveyors, presenting: The applicant owns 12 acres of land and would like to subdivide the parcel into 5 lots, constructing 4 single-family homes. Lot #3 will be sold as is with the existing house and a large barn. This lot has an existing frontage and driveway. Lot # 1 is a keyhole lot and has access to Wendom Road and to Johnston Road, but we prefer to have access off of Wendom Road for one new house on this 1.9 acre lot, and under the keyhole regulations there is 1.5 acres of usable land. We will comply with the fire department regulations. There is a lot line adjustment on lot #1 to accommodate an encroachment from the lands of Quadrini.

At Home Terrace we are extending the cul-de-sac and developing 3 lots off of the cul-de-sac. Lot #2, is 1.2 acres and meets all of the town requirements and has the frontage on Home Terrace and there will be one house there. Lot #4 is 1.4 acres and is not a keyhole lot, and would have one house on it. Lot #5 is 4.2 acres and is a keyhole lot and contains the federal wetlands. We will show the 35 ft. setbacks from the wetlands and will show that on the map.

The well house on lot #5 is no longer in use and will be abandoned, and will sealed the well and moved the structure.

The town owns 8 acres that was given to them sometime ago and we did provide a narrow strip of land for access to that, and now will widened that access to provide a more reasonable access.

On Mr. Center's property the drainage runs back into the town's land and does not come towards our cul-de-sac. There is nothing that we could do there. Mr. Center may have a problem because of the berms that prevent runoffs off his property but it is on the town's property, not ours.

Chairman asked is there is any blockage on what you are doing.

Mr. Bianchine explained that there is no blockage at all and we are not directing any drainage towards it and will be discharging to the creek in the back. The creek in the back is what the county was concerned about. There was a lawsuit about 15 years ago with Mr. Rittano and won that lawsuit because the county increased the drainage onto his property.

We started with a small cul-de-sac then made it into a larger cul-de-sac to be able to get plows and emergency vehicles and then we ended up with a full town cul-de-sac. After that was done we then had to put in a drainage system.

Mr. Bianchine explained further on the drainage system using pipes and catch basins. We will not be increasing the rate of flow of water down to Johnston Road.

Chairman asked if we are getting changes in the new SWPPP manual and if they would do what is required from them.

Mr. Bianchine stated that the new SWPPP is requiring pretty much of what we had before.

Ken Johnson, Delaware Engineering stated: We have not had a chance to look at the new drainage and were not aware of the lawsuit by the Albany County.

Chairman asked: The new road is going to maintain the existing width of Home Terrace, therefore, Home Terrace is staying the same. Is that correct?

Mr. Bianchine said that is correct.

Chairman asked: Are you doing a standard width section of the cul-de-sac.

Mr. Bianchine said that we are going into a full town cul-de-sac. That will be a pavement width of 28 feet.

Chairman stated: You are creating a lot more environmental impact with the increased water. Why could you not just maintain a similar radius with less pavement. If you went with the same width that you are proposing on Homes Terrace and just applied the same radius requirements. Would that help reduce some of the runoff?

Mr. Bianchine said it would reduce the amount of runoff.

Teresa Bakner, Attorney, representing the property owner, stated: typically, there is some provision for a waiver of requirements if they are not absolutely necessarily given the size of the subdivision.

Linda Clark, Counsel, stated: We would have to look at this lawsuit issue at what the decision was, and then we will see if there is anything that we can do to reduce the impervious surface.

Chairman explained: The Planning Board does not make that decision. It is a Highway Superintendent decision based on the code. We can make recommendations, but the Town Board has to accept the road based on the TDE's recommendation

Teresa Bakner, Attorney, added: It would be great to revisit that issue. Especially since the town does not want to take ownership of the stormwater system, even though the storm system is put in there only to serve the road which is being dedicated to the town.

Chairman asked who would maintain the pipe.

Mr. Johnston explained that the homeowner would have that responsibility beyond the right-of-way of the cul-de-sac.

Chairman stated: We have two issues. We need to find out what Rittano verses the County of Albany means, and then we need to find out what is the most efficient way and environmentally sensitive way to deal with the water. I would think that there could be a lesser standard that would function safety wise.

You will still need to get plows around and ensure the emergency vehicles will not have a problem. It needs to be designed to handle that.

Ms.Bakner suggested having a meeting in advance before the next Planning Board meeting on the issue of the stormwater, the cul-de-sac and the piping.

Ms. Weston explained: I would just want you to know that when we did the Glassworks PUD subdivision, which is going to have less than standard road width, the town has passed a highway resolution with these standards. That is the town law. I don't think that this Planning Board or Todd Gifford, Superintendent of Highways, has the right to waive from those standards.

Chairman agreed. The Homes Terrace section is not being built to town standards.

Mr. Bianchine stated: We are not rebuilding anything on Home Terrace. We are leaving it just as it is. We will just tie into it and there will be no extensions.

Chairman asked for any comments from the audience and there were none.

Chairman stated: The Guilderland Conservation Advisory Council site inspection, dated August 30, 2010, summarized it as: The GCAC does not have any other major concerns regarding the other four lots so long as the final plan notes the need to minimize tree cutting not only for the purpose of maintaining privacy for the residents as well as the neighborhood but also for the purpose of erosion and flood control. (On file)

Chairman added: We may require just some sort of note on the plans as far as how you will stake out your wetland boundaries and setbacks.

Michael Cleary wanted to know how this ties in the 8-acre parcel which has been given to the Town for parkland.

Joe Bianchine explained: Right now we have a triangular piece of land that belongs to the Town and there is another 20 ft. strip that forms the keyhole lot of lot 5. We would take the 20 ft. from lot 5 and add it to the towns piece and then the town will get a 40 ft. strip. That triangular will become part of the right-of-way.

Chairman asked for a motion to continued the public hearing, so moved by Terry Coburn and seconded by Paul Caputo and carried by a 7-0 vote by the Board.

\*\*\*\*\*

### **JENSEN – 3614 Carman Road**

Chairman Feeney announced that this was a site plan review to allow an addition and apartment unit to the present building. Zoned R40. Dwight Jensen presenting.

Jan Weston, Town Planner, read the comments of the Planning Department as follows:

Jensen – 3614 Carman Road

The applicant is requesting permission to add a small addition to the rear of the existing sign shop and also to add a second story that will contain a dwelling unit. Because the property is zoned R15, this will be the expansion of a non-conforming use.

No site plan changes are anticipated or changes to the existing parking. However, the structure itself will be upgraded from a commercial cement structure to a structure with a more residential appearance including more windows and vinyl siding. Further, the lands around this property are all NYS wetland and cannot be developed. No planning objections.

Dwight Jensen presenting: I was here once before back in 2006, and wanted to double the size of the building and found out that this was not allowed. Since then, I have scaled it back and found that I was allowed to go to a 25% increase for a non-conforming structure, and add an addition of an apartment on the second floor of the building.

Chairman questioned: There are wetlands on the site and the map does note that but there is no source to the wetlands. Was that just taken from a DEC map?

Mr. Jensen explained: Yes it was. When I originally came here, the way the engineers designed the parking lot, they had to set it up so that no runoff from plowing the lot can run into the wetlands that were next to it. The lot is 325 ft. deep and they allowed me because the previous owner has disturbed it.

I was going to be allowed to use about 225 ft. back of it and the rest I could not touch. I can push snow on it but could not develop it. This was a DEC requirement.

Chairman stated: You will need to comply with any of the NYSDEC permits.

Chairman asked about the parking and the applicant said that the parking would be pretty much the same.



Chairman stated that you would need to submit a copy of the permit in the files.

David Jensen explained that to my understanding, I actually was issued some type of a variance to operate out of that building back when I came here.

Chairman stated: You will be using this building for a sign shop, is that correct.

Mr. Jensen said yes.

Chairman asked for any comments from the audience and there were none.

Chairman asked for any comments from the Board and there were none.

Chairman was willing to make a motion for site plan approval for Dwight Jensen, 3614 Carman Road, for an apartment addition to the sign shop with the following conditions:

- compliance with NYSDEC permits requirements and conditions.
- comply with all building code requirements for fire safety.

The motion was seconded by Thomas Robert and carried by a 7-0 vote by the Board.

\*\*\*\*\*

#### **TIP to TOE NAIL SALON**

Chairman Feeney announced that this is a site plan review to allow a nail salon. Zoned Local Business.

Jan Weston, Town Planner, read the comments of the Planning Department as follows:

Tip to Toe Nail Salon - 1871 Western Avenue

The applicant is requesting a special use permit to use the first floor of the building as a nail salon. The building is a two-story wood-frame structure, with a commercial area on the first floor, and an exterior stairway leading to an apartment on the second floor. There are a total of 8 parking spaces. Sight distances pose no problem for ingress and egress. No objections.

Note: Thomas Robert recused himself from this application.

Elaine Freedman presenting: The special use permit was to allow a nail salon in an existing building previously used as a doctor's office and now the applicant would like to buy this building and use it for a Nail Salon and there is plenty of parking spaces.

Chairman asked for any comments from the Board and there were none.

Chairman asked for any comments from the audience and there were none.

Chairman entertained a motion for site plan approval in the matter of Tip to Toe Nail Salon, 1871 Western Avenue, so moved by Michael Cleary and carried by a 6-0 vote by the Board. (Thomas Robert recused)

\*\*\*\*\*

## **MILL HILL PUD**

Chairman Feeney announced that this was an advisory opinion on amending the permitted uses for phase 4 to include an Assisted Living Facility/Memory Care Facility, and/or Nursing Care Home as defined in Section 280-5 of the Zoning Code.

Jan Weston explained: The original PUD for phase 4 was written for a nursing home and the proposed language will be to amend it to include an assisted living facility/memory care Facility, and/or Nursing Care Home.

Chairman asked if there are definitions of those facilities associated with this law. I am assuming we have to amend our definition section.

Jan Weston stated: To further complicate it, we are taking the definition of nursing home out. That was the zoning revision committee's recommendation and adding elder care.

Chairman stated: My suggestion is that the Town Board request the committee to provide amended definitions. Consistent with what we are doing and consistent in what they are trying to do. Peter Barber, Chairman of Zoning Board, and I have look at it very quickly late this evening about coming up with some definitions. One will be residential facility assistant living, residential facility independent living and then residential health care facility nursing home. Those are some of our thoughts on amending our existing code to sort of meet the new requirements.

Linda Clark, Counsel, stated: The language in the old PUD was a little outdated.

Chairman stated: In our existing definition of a nursing home, you can probably make the argument that it is all encompassing. It might not be a bad idea to take it to the committee to give the Town Board a recommendation.

Linda Clark, Counsel stated: I was contacted by Atrias' Attorney today indicating that they had submitted a letter to the Town Board, advocating a particular position on the question as to whether or not the proposed development fits within the definition, and the legislative intent in fact of the original PUD. I have now a copy of that letter and will put it into the files.

Chairman mentioned that the biggest thing was the intent of the original law was to have a continuing care and that with the nursing home being the last stop. What is proposed is similar to what is there now.

Ms. Weston explained that it is going to be center for memory care and a one story just for assisting living.

Linda Clark, Counsel, wanted to know that the proposed change-in-law that we have before us, is this what the town board had before they asked for our opinion.

Chairman stated: It came to us as a site plan amendment and then questions were raised about this not being consistent with the existing PUD. The Planning Board request is: is it town staffs or the town board to decide if this is consistent. Now they are proposing to amend that original PUD to specifically include the type of facility that is being proposed.

Terry Coburn stated: The type that is being proposed is an assisted living and they are saying that it is different but it is not. It is the same use as Atria is.

Chairman stated: Under the initial PUD, this section was to be a skilled nursing facility. I am assuming that the intent was that was sort of the last stop on a continuum care.

Terry Coburn stated: Originally, when Quadrini came in with this proposal it was apartments and town houses, and then you would move forward as you became less able to take care of yourself. Next, it would be going to assisted living and skilled nursing. Now that different individuals own the properties, that continuity is broken.

My biggest thing is that this PUD that started out to have all of these things, now we have a Stewart store, assisted living, townhouses, and now another assisted living.

Chairman read the section of the town's zoning law of the PUD.

Ms. Weston stated: It is up to the Town Board but they have asked for our opinion.

Paul Caputo said that the intent would have been different with the PUD.

Chairman explained: It is our opinion because it is an amendment to the zoning code, but is the amendment really just a definitional change.

Terry Coburn wanted to know if the PUD law is separate from the zoning law.

Paul Caputo said yes it is. That is the way it is written. I am very uncomfortable with this change-in-the law, just because it seems like we are trying to fit a round peg in a square hole. The fact of the matter is that we definitely need more skilled nursing in our community. My main opposition to this is changing it to suit the needs of the developer.

There was further discussion on the nursing home verse the assisting living.

James Cohen stated: We need to define what the planning purposes are.

Linda Clark, Counsel, added: What the Town Board is proposing is, does this fit squarely within the definition of a skilled nursing home facility. The Town Board would like to clarify the definition and make it broader, so that this type of facility would fit. The question before the Board is do you feel so strongly about the original plan for this step care that you would rather have nothing there until someone comes in with a skilled nursing facility, or would you advised the Town Board to expand this

definition?.

Paul Caputo thought it would be better if we make the law to be something other.

Chairman thought that this needs to be given a little more thought than this. I think that it would be advisable to the Town Board to send it to the Zoning Board Review Committee.

Ms Weston stated: Everyone can agree on the definitions but the basic question is, what was the intent of that PUD? The Town Board would have to choose. Would they allow all three of those definitions at Mill Hill or just the skilled nursing?

Thomas Robert stated: If Atria wasn't there and the only question was, are they only go to put up a skilled nursing facility or a memory care facility in that location, and we weren't at all concerned with how it may impact Atria, would we still be having this discussion?

Ms. Weston asked: Wasn't Atria originally a Nursing Home?

David Luntz, Counsel to Atria, explained that it was originally built as the Foundation View, which was an adult home, not a nursing home.

Terry Coburn wanted to know the difference between an Adult Home and Assisted Living.

Mr. Luntz explained the difference in the definition of a Nursing Home and the Zoning Law. The only comment that I would make to that is, if the Town Board and the planning process didn't contemplate a distinction between the Adult Home in Phase 1 and the Nursing Home contemplated for Phase 4, then why would they have made that distinction in the law. It is mentioned right in the PUD Nursing Home for Phase 4. If there were no difference between assisted living and a nursing home they would not have made that distinction.

Chairman stated: The point that I am trying to make is that our existing definition is so vague; I think it would encompass those. Given the definition in our existing code, we should revisit that with the Zoning Committee and have them look at modifying those. We are changing the original intent of the PUD. It is no longer going to be a nursing home.

Ms. Weston agreed that does needs to be done, but it is not the solution to the problem.

Linda Clark, Counsel, mentioned that we did received the proposed amendment, but it didn't line up with the record that the Town Board had in developing the proposed changed law. We just got a letter today with significant background information that just came up. I am just concerned that the Board does not have enough information it needs to really make an informed recommendation to the town Board.

Michael Cleary stated: What they are asking us for is an advisory opinion to include an assisted living/memory care in this PUD. The Board should ask if there is a need for this.

Linda Clark, Attorney, added that we don't have the files that the Town Board had when it made this proposed law.

Terry Coburn wanted to know if assisted living and the skilled nursing home were a not-for-profit.

Attorney for Atria said no. Atria is a for profit. Some are not for profit and some are for profit.

There was further discussion between the difference of assisted living and the memory care facility.

Paul Caputo stated: I don't think that the law should be changed to change that original intent of the PUD.

Chairman stated: My question is, are we going to get a vote that passes tonight? Does it make a difference for anybody if we approved this? Atria is going to make a request to continue the hearing whether table this to obtain further information, or the Town Board grants that request at their meeting in February.

Terry Coburn stated: If I were told definitely that skilled nursing homes were out of the question, then I would have to settle for that.

Chairman stated: I don't think that it is an unreasonable position of the Planning Board that we got this memo a day or two ago. I did not have the ability to make any kind of independent review of this. I got the original law late this afternoon, so I don't think this was a reasonable amount of time.

Whether it is a formal motion or not, the definition should be worked out and that the committee that the Town Board has put together reviewing the zoning code, be given an opportunity to provide definitions for residential assisted living and independent living and nursing care facility.

Michael Cleary wanted to know if we can deal with what we are suppose to deal with.

Chairman made a motion for a referral to the Zoning Revision Committee that they be given an opportunity to provide input on revised definitions for the residential health care facility in the town zoning law, such as assisted living, independent living and nursing home facility, prior to taking final action on this. The motion was seconded by Terry Coburn.

Linda Clark, Counsel stated: The Chairman is making a motion to have the definitions relevant to this item on the agenda be reviewed by the Zoning Committee The

definitions includes the classes of facilities, residential health care, and assisted living and independent living and nursing home facility. They will then go to the Zoning Review Committee for recommendation to the Town Board, subject to this Board's ultimate consideration of whether what kind of advisory we will be able to give to the Board.

Michael Cleary and Kim Jones wanted the Town Board define the definitions independent of Local Law I, 2011 before they could vote.

There was a revote.

Chairman made a motion for minor revisions as a friendly amendment, and it was seconded by Terry Coburn and carried by a 7-0 vote by the Board.

Chairman stated: What is still before the Board is how you feel about this not being a nursing home anymore. Terry Coburn made the motion to continue our opinion until we have further information on the availability and the need for skilled nursing homes.

Linda Clark, Counsel, stated that as a friendly amendment you would also want the file that the Town Board considered in referring this to us. We don't even have the background.

Chairman added: The opportunity to review the existing PUD law, and various communications that have come in from other parties and then we can make our own independent investigation at that point.

There was further discussion.

Linda Clark, Counsel, added: As I understand the motion with the clarification that I offered, is a motion from Terry Coburn to continue the current item to get additional information regarding the need and availability of skilled nursing facilities, and obtained background information, and the final materials consider by the Town Board.

No one seconded the motion, therefore the motion failed.

Michael Cleary made the motion in favor of amending the permitted uses of Phase 4 to include the assisted living facility/memory care facility/and or nursing care home as defined in Section 280-5 of the Zoning Code.

Linda Clark, Counsel added: Immediate favorable advisory opinion to go with the motion.

The motion was seconded by Thomas Robert and carried by a 5-2 vote by the Board.  
(Caputo & Coburn opposed)

\*\*\*\*\*

## **EMPIRE AVENUE BARRICADE**

Chairman Feeney announced that this was to consider setting a public hearing for the temporary removal of the barricade on Empire Avenue.

Chairman stated: We have a letter on file, addressed to Kenneth Runion, Supervisor, dated January 24, 2011 from Ryan and Erwin Dublin, in regards to request consideration for the temporary removal of the barricade located on Empire Avenue. (On file)

Also, a memo from Supervisor Runion to Jan Weston, Town Planner, in regards to having the Planning Board to review the safety concerns. (on file)

Chairman stated: Certainly we can do that, but I am not sure of the exact address. We will look into the safety issues as requested by the Supervisor. I am guessing that it is on the stub side and not the cul-de-sac side of the barricade. The bus can't go and pick her up at her driveway and back out.

There was further discussion.

Ms. Weston explained that it is on the west side of the stub.

Chairman stated: As the supervisor requested, we will have to look at this and the safety issue and see if this is a unique situation.

Linda Clark, Counsel stated: If the bus goes down your road, they will pick you up, if they don't go down you will walk to the end.

Chairman stated: It is not a block of ten houses or more. It's equivalent to one house or one large lot. We can look into it but I don't think that it is really unique from a safety perspective.

Jan Weston, Town Planner, wanted to continue this.

Chairman stated: This is a snow issue.

Michael Cleary said that there is really no traffic back there. When you have to walk on the street where there are more houses then there is a safety concern.

Terry Coburn explained that where she use to live, her kids, regardless of age had to walk to end of the road to get the bus. At Heritage Village, all the kids have to walk to the corner of Rt. 155.

Chairman just wanted to clarify from the letter, where it is located. There is really no traffic issue. We will look into it and provide some response to the Supervisor.

Chairman tabled the request to consider safety concerns raised by an Empire Avenue resident in order to gather further information.

Chairman entertained a motion to adjourn, so moved By Terry Coburn, seconded by Thomas Robert, and carried by a 7-0 vote by the Board.

\*\*\*\*\*

MEETING ADJOURNED: 10:00 P.M.



**TOWN OF GUILDERLAND  
PLANNING BOARD**

**January 26, 2011**

**MILL HILL, phases 2 & 3 – State Farm Road**

**JOHNSTON ROAD LLC – Homes Terrace**

**JENSEN – 3614 Carman Road**

**TIP to TOE Nail Salon – 1871 Western Avenue**

**MILL HILL PUD**

**EMPIRE AVENUE BARRICADE**