

The Planning Board of the Town of Cicero held a meeting on **Monday, November 26, 2012** at **7:00 p.m.** in the Cicero Town Hall at 8236 Brewerton Road, Cicero, New York 13039.

Agenda:

- Pledge of Allegiance
- Notes from the Chairman
- Major Subdivision Final Plan Revised, Hancock Airpark Sections A & B 7th Amendment, East Taft and Thompson Road, 1 Lot Amended **(approved)**
- Zone Change, Corscor LLC & Vision Development, (Syracuse Utilities), 9543 & 9583 Brewerton Road, Agricultural & General Commercial to General Commercial Plus **(no representative, no action)**
- Major Subdivision Preliminary Plan, Public Hearing, Tocco Villaggio, 5533 Route 31, 5 Lots **(public hearing closed, to return)**
- Motion to approve the Planning Board Minutes from November 12, 2012 **(approved)**
- Minor Subdivision Preliminary & Final Plan, Public Hearing, Estate of Robert Wood, 8037-8043 Brewerton Road, 2 Lots **(public hearing closed, to return)**
- Minor Subdivision Preliminary & Final Plan, Public Hearing, Miralago Section 3, 5869 Ladd Road, 2 Lots **(public hearing closed, to return)**

Board Members Present: Bob Smith (Chairman), Joe Ruscitto, Greg Card, Pat Honors, Chuck Abbey, Sharon May and Mark Marzullo

Others Present: Neil Germain (Esquire, Germain & Germain), Mark Parrish (P.E., O'Brien & Gere), Steve Procopio (Code Enforcement Officer), Doug Wickman (P.E., C&S Engineering), Jessica Zambrano (Town Councilperson) and Tonia Mosley (Clerk)

Chairman Smith opened the meeting by noting the three emergency exits in the room and asked that all cell phones are silenced. Then he asked Mrs. May to lead the Pledge of Allegiance.

NOTES FROM THE CHAIRMAN

-Mr. Smith reminded Board members of the Syracuse Metropolitan Transportation Council (SMTTC) planning session to be held at the Village of North Syracuse Community Center on December 4th at 9:30 a.m. for the Onondaga County Sustainable Streets Project. The SMTTC

will focus on sidewalks and pedestrian traffic. Tomorrow is the deadline for registration.

-The Chairman reminded Board members of approaching end of year requirements for training. Training certificates should be delivered to the Town Clerk.

-The representative for Cady Brothers (8024 Brewerton Road) attended the Wednesday work shop session and was made aware of requirements which fall under the site plan process.

**MAJOR SUBDIVISION REVISED FINAL PLAN
HANCOCK AIRPARK SECTIONS A & B 7TH AMENDMENT
EAST TAFT AND THOMPSON ROADS (TAX MAP# 057.-02-29.1, 29.3 & 31.2)
1 LOT AMENDED, HANCOCK FIELD DEVELOPMENT CORP.
SEE ATTACHMENT A: OBG LETTER DATED AUGUST 10, 2012**

Representative: Lori A. Dietz, Hancock Field Development Corp.

Mr. Smith commented on the changes made at Hancock Airpark. The area looks great. The site has been cleaned up. Monument signs were added. It makes it look nice for the community and provides a good representation of our Town.

Ms. Dietz introduced herself thanking Mr. Smith for his positive comments. She noted she was here today for two items. The first is to add property to the lot where Empire Crane is currently located—Lot 17B. The small southern boundary line will be eliminated allowing the area down to the road to be added to the lot. The second area is here. We want to subdivide the lot at the end of this cul-de-sac so that the existing building can be sold to one of our current tenants.

Empire Crane is expanding. It is my understanding that after we transfer the property they will be in to see you to add a building.

Mr. Honors asked what was at that location now.

Ms. Dietz responded there is a building in the northern part where Empire Crane is currently located. South of that they have paved and put in stone where they are storing some of their equipment. There is a grassy area below that.

The Chairman asked if this was a part of the General Commercial Plus (GC+) zone change that was made.

Ms. Dietz replied yes.

Mr. Smith asked the Board's professionals for their comments.

Mr. Parrish stated this is relatively minor. It is my understanding that the Board approved this a few months ago, but that plan was never filed. As such they have come back in asking for an amendment to reflect these minor lot line changes.

Mr. Germain concurred that this was a minor revision of what was already approved.

Mrs. May made a motion regarding SEQR. She read: Be it further resolved that the Planning Board of the Town of Cicero hereby determines that the proposed action will not have a significant effect on the environment and that this resolution shall constitute a negative declaration for the purposes of Article 8 of the Environmental Conservation Law of the State of New York. **Mr. Smith seconded the motion** and asked for a vote.

*Ayes: 7 Nays: 0 Abstained: 0 **Approved***

Mr. Marzullo moved for the adoption of a resolution approving the REVISED subdivision application known as Hancock Airpark Sections A & B 7th Amendment, 1 Lot Amended. **Mrs. May seconded the motion.** Chairman Smith asked for a vote.

*Ayes: 7 Nays: 0 Abstained: 0 **Approved***

**ZONE CHANGE, CORSCOR LLC & VISION DEVELOPMENT (SYRACUSE UTILITIES)
9543 & 9583 BREWERTON ROAD
AGRICULTURAL (AG) & GENERAL COMMERCIAL (GC) TO GENERAL COMMERCIAL PLUS (GC+)
GENE SCORZELLI**

Mr. Smith explained that the applicant's representatives were unable to attend tonight's meeting. A public hearing has been set by the Town Board. The Planning Board will consider this for our next agenda.

MAJOR SUBDIVISION PRELIMINARY PLAN, PUBLIC HEARING
TOCCO VILLAGGIO, 5533 STATE ROUTE 31, 5 LOTS, CHA INC.
SEE ATTACHMENT B: OBG LETTER DATED 11.26.12

Representative: Hal Romans, Surveyor, Ianuzi & Romans Land Surveying, P.C.

Mr. Smith noted that as we have not received any reply from the County, their meeting will not be until December 5th, none of the remaining subdivisions will be eligible for action by the Planning Board tonight. We are holding the public hearings for all comments on all three projects.

Mr. Romans introduced himself. The current plan shows the driveway locations that were requested by the Board. We are here tonight for a subdivision of approximately 27 acres on the north side of Route 31. Lawton Road is to the south. Legionnaire Drive is shown here. We show the existing physician's building and the post office located at the northeast corner. We show the existing driveways for both of those buildings.

There was a question at the sketch plan meeting concerning stacking ability at the intersection of Route 31 and Lawton Road and how far back that entranceway is. Additionally you can see that it probably has room for 7-8 cars for a total of about 15.

Mr. Smith asked so you can stack about 15 cars from the intersection back to the postal building.

Mr. Romans responded very easily. This is where Legionnaire will widen out, at the intersection on that side. As far as traffic, it should be sufficient.

The physician's building lot is not a part of our subdivision. We show our one commercial lot. The balance of the property goes to the north. That is all residential for apartment use. The lots are broken out according to size. On each lot we show the encumbered area and the allowed number of units. Remember, upon completion, this project hopes to have 144 residential units.

Legionnaire will be extended to the north and then to the west over to the Town of Clay. Fortunately the road will follow along the west side of the Town line and then come back into

the Town of Cicero to service the lots here with a temporary turnaround.

This is the preliminary plan for subdivision. The applicant has been going through the site plan process with the Board. They have coordinated with the Town of Cicero to do improvements to Legionnaire Drive. They will partner on the project with the Town of Cicero Highway Department to do the under-drain, etc. Our client is going to put a binder and top course on the pavement to improve the entire stretch of road all of the way out to the intersection. There is a proposed sidewalk.

Mr. Smith: At its completion, including the lots in Clay, this will be closer to 350-400 households.

Mr. Romans responded correct. On the Town of Clay side it is a Planned Development District (PDD). Basically it has commercial in the same way up near Route 31 and then transitions back to the residential units. The larger portion of the property is located on the Town of Clay side.

Mr. Smith asked if it was approved.

Mr. Romans explained they have not been in for subdivision, but the PDD has gone through the process. This applicant worked with J.K. Tobin on the improvements for Route 31 and the re-alignment of Lawton Road. Everything from the Town of Clay side and the Cicero side will use that full access intersection. There is another entrance to the west located in the Town of Clay opposite the Lawton Valley Hunt residential subdivision entrance. That is a right-in right-out only entrance as approved by the New York State Department of Transportation (NYSDOT).

Mr. Smith: Is that all the NYSDOT will approve there?

Mr. Romans responded yes.

Mr. Card noted that area of Lawton Valley Hunt has already been marked and curbed. It is clearly a right-in, right-out only access. That will be done across the street?

Mr. Romans: It is my understanding they have the permits to do that.

Mr. Honors asked about sidewalks.

Mr. Romans clarified that the sidewalk would be brought down and extended all of the way to the intersection. It goes west on Legionnaire also.

Mr. Card questioned all the way to the Town of Clay. The Town of Clay does not want sidewalks?

Mr. Romans: Correct. The sidewalk will be in the Town of Cicero's right-of-way (R.O.W.)

Mr. Abbey asked if there would be sidewalks after the road comes back into the Town of Cicero, to the northern section.

Mr. Romans responded I don't believe so. The sidewalk is really to help the commercial and residential areas right here. Those areas would have walking access to the Post Office.

More discussion occurred regarding un-encumbered areas and the final number of units. Mr. Romans explained ideally there would be two buildings with 36 units a piece in Section One. He noted the applicant would like to try and build almost 50% of the apartments first. The developer hopes that would generate more interest in the commercial area.

Chairman Smith explained that the sewer study had been completed and received. Are we all set with that capacity's impact?

Mr. Parrish responded they have done a study which shows this development, on Cicero's and Clay's sides along with some other known development projects, will use roughly 10% of the capacity of the sewers. There are certainly some available capacities left.

Mr. Smith stated with the presentation completed, I will open up the public hearing. *(The public hearing was opened at 7:24 p.m.)* I will ask anyone who would like to speak for the project to please approach the microphone. (There was no response.) If there anyone who would like to speak against the project please approach the microphone. (There was no response.) With there being no comments, I would like a motion to close the public hearing.

Mr. Ruscitto made a motion to close the public hearing. **Mr. Honors seconded the motion.** The chairman asked for a vote.

Ayes: 7 Nays: 0 Abstained: 0 Approved (The public hearing closed at 7:25 p.m.)

MOTION TO APPROVE THE MINUTES FROM THE NOVEMBER 12, 2012 MEETING

Mrs. May made a motion to approve the minutes from the November 12, 2012 meeting including the clarification of Mr. Smith's comments on page 4 in paragraph 2. **Mr. Abbey seconded the motion.** The Chairman asked for a vote.

Ayes: 6 Nays: 0 Abstained: 1 Approved

**MINOR SUBDIVISION PRELIMINARY & FINAL PLAN, PUBLIC HEARING
ESTATE OF ROBERT WOOD, 8037-8043 BREWERTON ROAD
2 LOTS, C.T. MALE ASSOCIATES**

Representative: Dave Sliski, C.T. Male Associates

Mr. Sliski introduced himself stating my client is proposing a two lot subdivision of the existing 10.5 acre parcel. Lot 1 is the proposed AutoZone lot. That site plan has been brought before the Board. That is a 2.78 acre parcel. Lot 2 is the remaining portion, 8.38 acres.

The proposed AutoZone development would have a driveway from Brewerton Road. We are proposing an access through that driveway, through the site to Lot 2 for access to Lot 2. Lot 2 would also utilize an existing ingress/egress easement through the Target parcel.

At the last meeting there were concerns about the driveway location. We are waiting for comments back from AutoZone in regards to those proposed changes. That might effect the placement of that ingress/egress easement.

Mr. Smith noted there were also questions regarding Lot 2 and how much of that was wetland and/or developable. That issue is a part of subdivision.

Mr. Sliski responded correct. There was a wetland delineation done by the DEC 40 years ago. It was only valid for 3 years. The engineer has calls into the DEC for verification. We have not received a reply yet. I believe we provided a sketch at the last meeting of what those delineations would be. I have more copies of that sketch.

At this time the developer does not have any plans for Lot 2. The only portion of the Lot that is really developable would be the small area here. The back area is where the existing wetlands are.

At the last meeting the Board also requested access to the lot down here. We brought that to AutoZone to see if they would be willing to grant that or not. We have not been able to get comments back from them.

Mr. Smith stated we expect to have answers on those two issues before the next meeting.

Mr. Sliski agreed.

Mr. Germain added we will also need a draft copy of those easements.

Mr. Smith explained those two locations will be a part of the site plan process for AutoZone. But, while considering a subdivision, I think that the Board should be aware of how much of Lot 2 is usable. We certainly need to be aware of the easements.

With that I will open the public hearing for comments regarding the project. (*The public hearing opened at 7:35 p.m.*) Would anyone wishing to speak for the project, please approach the microphone and identify yourself. (There was no response.) If anyone would like to speak against the project, please approach the microphone and identify yourself. (There was no response.)

Mr. Germain explained that the Board could hold the public hearing open until the next meeting. However, you might want to re-consider holding the public hearing open solely to receive responses from the applicant. You are still going to get those answers before final approval. You are still going to continue with the process. Closing the hearing would only mean that the public input of the process would be over.

But, you can certainly hold the public hearing open if you want to.

Mr. Smith noted the neat and efficient way would be to close the public hearing. Then comments would be directed back to the Board at the appropriate time.

Mrs. May made a motion to close the public hearing. **Mr. Abbey seconded the motion.** The Chairman asked for a vote.

Ayes: 7 Nays: 0 Abstained: 0 Approved
(The public hearing closed at 7:36 p.m.)

**MINOR SUBDIVISION PRELIMINARY & FINAL PLAN, PUBLIC HEARING
MIRALAGO SECTION 3, 5869 LADD ROAD, 2 LOTS, EL DAN HOMES
SEE ATTACHMENT C: OBG LETTER DATED 11.26.12**

Representative: Dan Barnaba, Present, Eldan Homes

Mr. Barnaba introduced himself stating this appearance follows an appearance before the Board for a zone change recommendation. A zone change was granted by the Town Board. Now we are showing you the proposed subdivision of approximately 1.5 acres, 2 lots that are approximately $\frac{3}{4}$ acre each.

We are asking that the existing home, detached garage and shed be part of Lot 54. An equal size lot, Lot 55, would be created next to it. The only factor in the placement of the subdivision line was to split the property in half. Each lot has frontage of about 132 feet.

The lots are already located in sewer and water districts. The new building lot will have access to public water and public sewer connections—and gas. The sewer is across the road. The plan contains a note that suggests the Lot 55's driveway would come off of Miralago prohibiting a driveway off of Ladd Road.

The Chairman asked the Board's professionals for comments.

Mr. Germain noted the lots would be inline with Code.

Mr. Barnaba explained Lots 54 and 55 are R-12 parcels. It happens that the existing house

on Lot 54 is biased to one side of the property line, leaving room for a nice size lot next to it.

Mr. Card noted when subdivisions were approved in the past; we made sure that they were compliant with the existing code. I'm looking at the shed on Lot 54. We would not approve that shed.

Mr. Germain explained that with the zone change from Agricultural to R-12, the shed would be a pre-existing non-conforming use. They are not asking for a change or expansion of the shed. They are asking for a subdivision that is only going to affect Lot 55. The zone change has been approved and passed. This parcel will be in compliance with that zoning as approved.

Mr. Card asked if Lot 54 would be required to hook-up to the sewer and water.

Mr. Procopio responded, so far they have not been made to. If the septic system failed, at that time the lot would be required to hook-up to the sewer. They are already hooked-up to public water.

Mr. Card stated he did not know if it was mandatory. Since they are in a sewer district, are they getting taxed for it?

Mr. Procopio: I believe so, yes.

Mr. Card: If they are being taxed, it would be to their advantage to hook-up.

Chairman Smith opened the public hearing on the proposed subdivision. (*The public hearing opened at 7:40 p.m.*) He asked those who wanted to speak for the project to approach the podium, identifying themselves for the record. (There was no response.) If there anyone who would like to speak against the project, please approach the podium and give us your name.

Adam Panek, 9257 Pine Lake Path: My wife, two daughters and I reside on Lot 53. We built our home in 2005. I am here along with many of our neighbors to oppose this subdivision.

Mr. Panek read the following statement:

**Town of Cicero Public Hearing
Opposition to Subdivision of 5869 Ladd Road
Adam E. Panek
November 26, 2012**

My name is Adam Panek and I reside at 9257 Pine Lake Path with my wife and two young daughters. We built our home in 2005. I'm here today to oppose the subdivision of the 5869 Ladd Road property. My home borders the Ladd Road property to the East.

The Miralago development that we have called home for nearly seven years was our answer to the overbuilding and small lots that is continuing in Cicero. There is already a home on the 1.5+/- acre lot. Some of the homes in our neighborhood exceed that size.

Most importantly, the Miralago development is subject to protective covenants that drew us and many others to this neighborhood. To add these lots to our neighborhood and not have them subject to the same protective covenants we enjoy would render our covenants somewhat useless. We could potentially have two lots with limited or no covenants be a part of a neighborhood where every other lot has covenants. We currently have 51 (originally 53 lots-2 individuals have double lots) homes subject to these protective covenants. If the builder is allowed to build a home without the same covenants as everyone else, how do we ensure they will keep their house in compliance with our protective covenants that the neighborhood follows; the answer is we can't. There are only 51 homes in Miralago, one that doesn't follow the protective covenants will detract from the entire neighborhood and it won't "fit in" with the rest of the neighborhood. Here are just some of the protective covenants we currently enjoy.

Our Declaration of Protective Covenants require all homes must be a minimum of 2,000 square feet (1800 for a ranch), 20% of the front elevation must be sided with natural or composite stone or brick, must be a minimum of 2 car garage and must be side load design, maximum garage is 4 car and only a 3 or 4 car may face forward, owner must maintain land and building in good repair, no boats, no trailers, no motor homes etc., all fences must be wood, wrought iron or vinyl, all homes must have conforming light post and mailbox, no above ground pools, all homes must have paved, concrete or brick driveways and landscaping must be completed within 1 year of closing.

This list is not all inclusive, just a sample of the covenants that were a significant part of our decision making process in selecting our lot. The house located on 5869 Ladd Road is clearly not a part of the development since it's driveway access is from Ladd Road not Miralago Lane. The new home to be built by Mr. Barnaba will have its driveway on Miralago Lane but it will be free from all the requirements set forth above

We strongly oppose this subdivision as it will damage the character of our neighborhood, and our hope is that you will deny until such time it is subject to every and all of our protective covenants. In addition, our attorneys' are currently preparing a petition under Article 78 to be filed in the NYS Supreme court in the next day or two. So it may be in the best interest of all concerned to postpone this vote until such time that the courts have decided our case.

Thank you
Adam & Donna Panek

Mr. Panek continued. I have been told by my attorneys to do this. We are well within the statute of limitations on the Article 78.

Mr. Smith: You do understand that this Board is unable to take any action tonight because we do not have a County referral. No action will be taken tonight.

Mr. Panek replied that he did not know that. He requested that a copy of his covenant be included in the minutes. (SEE ATTACHMENT D.)

Mr. Germain: Before we get into the covenants, this Board has absolutely no authority to enforce any protective covenant that is within a deed or whatever instrument that was filed when the property was purchased. You simply don't have the authority to enforce private, protective covenants of land owners. We can't impose it. You are not going to enforce it. It is almost irreverent to your conversation.

That lot may or may not be subject to protective covenants. I don't know. Those are private agreements between private landowners. During the subdivision process, this Board has no authority whatsoever to enforce protective covenants of neighbors. I don't know, because I have not examined them, if they would apply to Lot 55, 54 or 52.

The reality you face is that you do not have the authority to enforce, modify or amend protective covenants.

Mr. Marzullo: Do we have the authority to require the covenant to match the rest of the subdivision?

Mr. Germain: First, you don't even know what the covenants are or are not. If you are talking about making a contingency to enforce or force protective covenants on the current land owner as part of the subdivision process---that would be extremely atypical. You are talking about enforcing a private agreement.

Mr. Marzullo: I am not suggesting that we should. But, I think that is the question. I don't believe the question was about enforcing the existing covenant. I think the question is whether or not this lot should be subject to that covenant.

Mr. Panek: The subdivision is part of our development. It will be advertised as a part of the Miralago Development. 51 houses are subject to these covenants. Most of us enjoy those covenants.

Mr. Germain: What makes you think that Lot 55 would not be a part of the overall development?

Mr. Panek: When Dan stopped over before July 4th, he said that he was going to put a small house on the property with a front loading garage.

Mr. Barnaba: There is a contract for that house for a little over 2100 square feet. We are waiting for the couple to sell their house. They will be spending well over \$250,000. It is well above the average square footage for the area.

Mr. Panek: Is it a side loading garage?

Mr. Barnaba: I don't recall.

Mr. Panek: In our deed it says 5869 will not be required to be a part of Miralago's covenants. It is right in my deed. I don't have that with me but it is public information.

Mr. Smith: I understand that. What I think that we are hearing from our attorney, and what was a condition of previous subdivisions, is that this Board does not have the authority to impose or enforce a private agreement between two parties.

Mr. Panek: I understand that. There is also going to be an Article 78 filed.

Mr. Smith: I understand that. I was at the Town Board meeting for the zoning. I know that the zoning was also supposed to be subject to an Article 78. But, we would have to take action before an Article 78 can be filed and we have not done that yet. I have noted your concerns.

Tim Keohane, 5867 Miralago Lane: I live on Lot 19 in Section 1. I have lived in this development for nine years. We have gone through nine years of construction. The development is finally complete. Now we hear of this Miralago Section 3, a two home subdivision.

For me this makes no sense whatsoever. It is a beautiful farmhouse. I can not contemplate splitting that lot in two or why the builder would want to do that.

One of your Board members was asking about the shed earlier. I walk my dog every morning by that lot. That shed came in well after the road was put in.

My concern is that there are a lot of kids in the neighborhood. We have gone through construction for nine years. To create a two lot subdivision makes no sense. We have a lot of people who pay taxes in the neighborhood. I can't say that one person would be for this subdivision. I know I am not. I speak for most of the people in Section 1.

Cindy Pistell, Lot 34 Miralago. I moved into this neighborhood because of all of the rules and regulations. I moved out of my old neighborhood because the house next door started to put junk cars up onto blocks. It was not safe for my kids.

I was told a lot of things. I was told that the neighborhood would be done and that we had all of the lots that we were going to have. I built a ranch in the neighborhood. Eldan Homes even offered to take half off the costs to make it the Craftsman Style, to make it go higher up. They were trying to make us all fit in, to make the neighborhood look right.

I know that the neighbors are concerned that if this house goes in---we all did not want it to begin with but it is going to happen---and it does not have the same rules that we all do. It only takes one house in the neighborhood to ruin the whole neighborhood. We work hard for our money. We pay a lot of money for our houses, for our taxes. I feel that I was told things that are now going to change. I'm not really sure if Dan really cares now. All we want to do is to keep our neighborhood looking like it does now.

Mr. Smith asked if there were any other lots to be developed. Is there the potential for Miralago to be added to?

Mr. Barnaba: There is property across Ladd Road to the south. There is property that abuts up to a road stub. There is a road stub just beyond Lots 51 & 52 that abuts the land to the east. I suspect that the road stub contemplates an expansion onto the adjacent parcel. That property

sold at auction to the owner of Paragon Environmental.

I have seen a couple of layouts for the development of that future site. But, the property is fairly challenging to develop in this economy. Again, I suspect the road stub is a form of notice that there might be some future development. I am sure that the developer would not have put the stub in without direction from the Board and its professionals.

I don't own any other property.

Mr. Smith: Generally this Board does require a road stub where we think more construction will occur.

Mr. Barnaba: There is another vacant lot within the community. I can not recall where it is, maybe Lot 20 or 21. It currently has a basketball court with lights, etc. That was probably not contemplated with the deed covenants. Because it is a viable building lot it could have a house on it some day.

Paul Giasi, Lot 42A. Mr. Barnaba is referring to our lot. We wanted to put a fairly large house on the lot and a pool. Because we abut wetlands there is a portion of our property that we can not use. In order to fit all of the things we wanted on the property, we bought two lots. That being said, I am directly across the street from the property in question. If my understanding is correct, they will have to dig up the road to get access to the sewer.

Mr. Smith: The Town Board would have to authorize that during the buildout.

Mr. Germain: That is not a Planning Board issue.

Mr. Smith: The sewer is there. Obviously, it has to get to the new lot.

Mr. Giasi: Forgive me. I'm biased. I am concerned that the zoning was changed with all of the opposition that was brought against the change. My wife went around the neighborhood and got 70+ signatures. I thought with that kind of opposition from the 50+ owners of those properties---all who pay exorbitant taxes---I thought that there would have been a little more

consideration in changing the zoning. This one particular property seems to be a sore thumb. I understand there is a viable reason. But I can see nothing but opposition from me and my fellow neighbors. It was represented to us when we bought our house that Miralago had specific lots. This was a grade out lot on the paper that we looked at when we planned our house. There was no consideration of another house being built across from me that I would have to look at. I was planning on looking at the nice little farmhouse in the distance now. I echo the opposition.

Mr. Smith: The zoning was approved. At this point as an administrative Board, that is what we have to look at. The Town Board did pass the zone change. They are a legislative Board and can do that.

The Town Board did send it to us for our recommendation. We recommended that the change pass. I was at the Town Board meeting when opposition was voiced. But, the change is made. We have to deal with zoning as it exists now.

Mr. Barnaba: I do not want to get into a debate with these folks. I built most of their homes. They are very passionate. That is how I know that they like the product and the neighborhood. I think that there are some misunderstandings about what we are trying to accomplish.

We sold these buyers their homes years ago. I had no inclination to build another house in the neighborhood. The opportunity came about because the development was such a success. The homes went very well.

It should be noted that Lot 55 will probably be bigger than all but three or four lots in the neighborhood. Our involvement in the community came because a couple of other builders were not making the sales, were not finishing the neighborhood. So our company came in and built their homes.

We are very proud of this neighborhood. It represents our company. We would not do anything that would not fit the character of the neighborhood. I am very accessible by email and phone. I have not received any calls.

When I did meet Mr. Panek out at the site I even offered him the opportunity to buy some of

the land between Lots 53 and 55, perhaps even purchase a conservation easement so that the green area and trees would stay in place. At the time I felt that his biggest fear was that the new home would be too close to his house. We were willing to make some accommodations in that regard.

Mr. Honors: I was not at that Town Board meeting. Was the opposition to the zone change because of spot zoning?

Mr. Barnaba: The Town's attorney addressed that issue by submitting a memorandum of law.

I have developed land for 15 years. I have gone before various Towns for a dozen or so zone changes. I would notice a bunch of people in the room wondering why they were there. I can't imagine that they would oppose our zoning. So, when it came on to this project it never occurred to me that someone would oppose this. I felt the way we had the lots configured is the opposite of spot zoning. If you left the existing lot as Agricultural, it would not fit into the rest of the neighborhood. This is an opportunity to take those last two lots and make them a part of the neighborhood.

Mr. Marzullo: Dan I am familiar with the subdivision. I sold a lot of the homes there years ago. I can understand the neighbor's concerns, especially if they were not aware of what you were doing. You mentioned that the square footage was going to be above the 2000 that is required. I think that there were some other significant restrictions—the side load garage, the percentage of stone front, the lamppost, the mailbox---those types of things that brought these homeowners all together as part of the community.

I don't want to put you on the spot but I would ask you to consider some of those more important ones. I know that you are familiar with them because all of your other houses comply.

Mr. Barnaba: We signed a contract with a buyer, but we must wait for them to sell their current house. For the value that we put on this building, the lot is .75 acres with public water and public sewer; you can't get that in the Town of Cicero. It is a building lot with of value between \$50,000 and \$70,000. We don't build houses under \$200,000 on a lot that size. Two of your Board members are real estate agents. They understand.

I don't agree with all of the covenants. I personally don't like seeing a 3-4 car garage with that much garage door facing the street. I can't say if this is a side load. I just don't recall. It is wide enough to accommodate a side load.

Mr. Marzullo: When you come back I would like to know whether or not those more important subdivision restrictions would apply to this property.

Mr. Barnaba: The neighbors have taken on a rather threatening posture. If we had sat down I'm sure that we could have discussed imposing some covenants on the property that might allay some of their concerns.

Mr. Marzullo: I don't see anything threatening here. I'm talking about you and this Board.

Mr. Barnaba: I consider an Article 78 procedure threatening. If they had just called me perhaps we could have negotiated.

Mr. Germain: Privately you probably still could. But as far as this being a Planning Board or a Town matter---that would be between you and the neighbors that you negotiate with.

Mr. Barnaba: I always try to be a good citizen. I try not to put people in the path of conflict.

Mr. Smith: It would seem that everyone would be well served to try and get together to solve this issue before we ask for what our authority allows us to do and before something is imposed upon the community. In my opinion it would seem better that everyone tries to get together to come up with a resolution.

More discussion occurred.

Mrs. May made a motion to close the public hearing. **Mr. Abbey seconded the motion.** The Chairman asked for a vote.

*Ayes: 7 Nays: 0 Abstained: 0 **Approved***

(The public hearing closed at 8:00 p.m.)

Mrs. May made a motion to adjourn. **Mr. Smith seconded the motion.** The motion was

approved unanimously.

IN AS MUCH AS THERE WAS NO FURTHER BUSINESS BEFORE THE BOARD, THE MEETING WAS
ADJOURNED AT 8:05 P.M.

Submitted By:

Tonia Mosley, Clerk

ATTACHMENT A

August 10, 2012

Planning Board

Town of Cicero

P.O. Box 1517

Cicero, New York 13039-1517

Attention: Robert Smith, Chairman

RE: Hancock Airpark Section A & B 7th Amended Final Plan

FILE: 0101/25439.430

Dear Board Members:

We have reviewed the Final Plan [2 sheets] dated January 5, 2012 revised July 24, 2012 as prepared by Ianuzi & Romans, P.C. for the above referenced project. Hancock Airpark Section A & B 7th Amended consists of improvements to Stewart Drive, Ethan Allen Street, Caswell Street, and Hancock Drive in Hancock Airpark along with associated utilities and stormwater management facilities. The Final Plan is being submitted to convey to the Town of Cicero the road rights-of-way and easements for these facilities and includes the creation or modification to Lot Nos. 1B, 3A, 1E, and 1G. The Plan is in general conformance with Town Code requirements for Final Plans.

The Developer has completed improvements to the road and utilities in the areas where the roads are to be dedicated. The Town Engineer should provide a letter to the Town Board recommending required security deposits for utilities and uncompleted work. Upon approval of the Final Plan by the Planning Board, it is recommended the Chairman delay signing the Final Plan until the Town Attorney has verified the Developer has the necessary agreements and securities in place.

If you have any questions or comments, please do not hesitate to contact us.

Very truly yours,

O'BRIEN & GERE ENGINEERS, INC.



Mark C. Parrish, P.E.

Managing Engineer

ATTACHMENT B: PAGE 1

November 26, 2012

Planning Board

Town of Cicero
8236 Brewerton Road
Cicero, New York 13039
Attention: Robert Smith, Chairman

RE: Tocco Villagio Preliminary Plan
FILE: 0101/25439.397

Dear Board Members:

We have reviewed the following in regard to the above referenced project for conformance with Town Code requirements for Preliminary Plans and effect on Town utilities and roads:

- 1) Preliminary Plan (2 sheets) dated October 12, 2010 last revised November 9, 2012
 - 2) Legionnaire Drive Plan and Profile, undated
 - 3) Alberici Avenue Plan and Profile, undated
 - 4) Details, undated
 - 5) Stormwater Pollution Prevention Plan (SWPPP) dated June 2012 and October 17, 2012 modifications
 - 6) Sewer Capacity Review dated June 22, 2012.
- Ianuzi & Romans Land Surveying, P.C. prepared Item 1 and CHA prepared Items 2 to 6.

The 26.84 acre site is bounded on the south by New York State Route 31, on the west by the Town line and on the east by Legionnaire Drive. The site generally consists of brush and woods. It is proposed to develop a subdivision with one commercial and nine residential lots. The site is zoned Residential R-M and General Commercial GC. Our comments are as follows:

- 1) The site has frontage on New York State Route 31, which is a State highway and Legionnaire Drive, which is a Town highway. Access to the commercial lot, Lot 1, and two of the residential lots located on the southern portion of the site, Lots 2 and 3, is to be provided by an extension of Legionnaire Drive. Access to the other residential lots, Lots 4 to 10, located on the northern portion of the site is to be provided from Alberici Avenue and Pareti Place. Alberici Avenue is proposed to be a Town of Cicero highway. Pareti Place is proposed to be a Town of Clay highway and will connect Alberici Avenue with Legionnaire Drive. A note has been placed on the Plan indicating Lots 4 to 10 cannot be developed until Pareti Place has been accepted by the Town of Clay. The following are additional comments relative to site access and traffic:
 - a) Legionnaire Drive will serve as the main access to not only the portion of the subdivision located within the Town of Cicero but also for an area proposed for significant development within the Town of Clay. The Developer has coordinated with the New York State Department of Transportation (NYSDOT) to provide improvements along Route 31. This includes installation of a traffic signal at the intersection of Route 31 and Legionnaire Drive. A letter has been provided from the NYSDOT indicating construction of the signal will start in the fall of 2013.
 - b) The Plan shows the following improvements to traffic and site access as requested by the Planning Board:
 - i) Improvements to the existing portion of Legionnaire Drive
 - ii) A sidewalk to be installed along Legionnaire Drive from Route 31 to Pareti Place.
 - iii) Modifications to move the U.S. Post Office access onto Legionnaire Drive northerly away from the stacking area for the signalized intersection.

ATTACHMENT B: PAGE 2

- iv) A turning lane on Legionnaire Drive for access to the commercial lot.
 - c) The cross section for Legionnaire Drive and Pareti Place is consistent with cross section recently adopted by the Town and includes a 24-foot typical road width with a permeable grass shoulder edge treatment. It is noted a concrete valley gutter detail is provided on the Details but does not appear to be necessary as no concrete valley gutters are proposed.
- 2) The site is located within the Cicero Sewer District. Sanitary sewer service will be provided by extension of a gravity sewer system from a 15-inch Town sewer located along Legionnaire Drive. The layout of the sanitary sewer system generally is feasible. A detailed review of the sanitary sewer facilities will be performed when the Contract Drawings are submitted to the Town Board for approval. The following are additional comments relative to sanitary sewer service:
- a) The Sewer Capacity Review indicates the capacity of the 15-inch Town sewer is approximately 2.4 million gallons per day (gpd). The estimated flow rate from the proposed project including the proposed development in Clay and other surrounding properties is 0.24 mgd or approximately 10% of the available capacity in the 15-inch sewer.
 - b) It is proposed to extend sewer service from the site to serve the development in the Town of Clay. It will be necessary to execute an inter-municipal agreement to allow for the sanitary sewer service from the Town of Cicero.
- 3) Stormwater runoff from the site is generally tributary to two existing detention facilities in Cicero Meadowlands and adjacent properties. As the project will disturb greater than 1-acre of area a NYSDEC SPDES Permit for Stormwater Discharges from Construction Activities is required for the project. In general stormwater is to be directed to three proposed wet pond stormwater management areas (SWMA's), which will provide the required stormwater quantity and quality mitigation. The SWPPP also includes a discussion of Green Infrastructure (GI) and Runoff Reduction Volume (RRV) measures that are proposed to be provided. The SWPPP has been reviewed for general feasibility of the stormwater management for the subdivision and not strict conformance with the requirements of the Permit or the detailed design of the stormwater management areas. Review of these items will be completed during the review of the Contract Drawings or Site Plans for the project. The following are additional comments relative to stormwater management:
- a) The SWMA located on Lot 1 is designed to provide mitigation for only the construction of Legionnaire Drive. The SWMA will need to be modified upon development of Lot 1 to provide mitigation for future development of Lot 1.
 - b) The SWMA's located on Lot 1 and Lot 2 discharge to an existing detention basin adjacent to the medical center constructed as part of the previous development of Cicero Meadowlands. This detention basin discharges to another existing detention basin located in the northeast corner of Cicero Meadowlands. These detention basins are overgrown with vegetation and are in need of maintenance. It is recommended maintenance, and if necessary, improvements to these areas be undertaken to accommodate the proposed discharges from the project.
 - c) As previously noted the SWMA on Lot 2 is proposed to discharge to the detention basin adjacent to the medical center. This SWMA was originally designed to discharge directly to the detention basin located on the northeast corner of Cicero Meadowlands. Consideration should be given to modifying the proposed discharge from the SWMA to conform to the original plan. This could eliminate the need to make modifications to the outlet structure in the detention basin adjacent to the medical center and will reduce the potential for nuisance standing water.
- 4) The site is located within the Cicero Water District Extension No. 4. Water service is to be provided by extension of a 10-inch water main located along Legionnaire Drive. The Applicant should coordinate provision of water service with the Onondaga County Water Authority (OCWA).

ATTACHMENT B: PAGE 3

- 5) The site is not located within a flood plain as identified on the 1994 FEMA Flood Insurance Rate Maps.
- 6) There are no wetlands located on the site according to the National Wetland Inventory Map and New York State Freshwater Wetland Map.
- 7) The following are miscellaneous comments on the Preliminary Plan:
 - a) The Town Code requires the area of a lot be calculated excluding the area encumbered by easements for stormwater management areas, wetlands, and utility easements for transmission lines not directly serving the subdivision. Notes are provided for Lots 2 and 4 to 7, which are encumbered by easements for stormwater management areas that state the lot area exclusive of the easements and the subsequent number of residential units allowed on each lot.

If you have any questions or comments, please do not hesitate to contact us.

Very truly yours,

O'BRIEN & GERE ENGINEERS, INC.



Mark C. Parrish, P.E.
Managing Engineer

ATTACHMENT C: PAGE 1

November 26, 2012

Planning Board

Town of Cicero
8236 Brewerton Road
Cicero, New York 13039-1517
Attention: Robert Smith, Chairman

RE: Miralago Section No. 3 Subdivision Plan

FILE: 0101/25439.439

Dear Board Members:

We have reviewed the following materials in regard to the above referenced project for conformance with Town Code requirements for subdivision plans and effect on Town utilities and roads:

1. Preliminary Plan dated August 10, 2012 revised November 2, 2012
2. Final Plan dated November 2, 2012

Ianuzi & Romans Land Surveying, P.C. prepared the above items.

The 1.566-acre site is bounded on the south by Ladd Road, on the north by Miralago Lane, and on the east and west by Lots 52 and 53 of the Miralago subdivision. It is proposed to subdivide the site to create two single-family residential lots. Lot 54 will contain an existing house and related structures and Lot 55 is currently vacant. The site is zoned Residential R-12. The Plan is in general conformance with Town Code requirements for subdivision plans subject to the following comments:

- 1) The site is located within the Lakeshore Sewer District. The existing house is provided sanitary sewer service by a septic system. An 8-inch Town sanitary sewer located along the north side of Miralago Lane is available to provide sewer service to both lots, if necessary. The applicant should contact the Town of Cicero to coordinate provision of any new sewer service from the Town sewer.
- 2) The site has frontage along Ladd Road, which is a County highway and Miralago Lane, which is a Town highway. The house on Lot 54 has access onto Ladd Road. Lot 55 will have access to Miralago Lane as a note has been placed on the Plan indicating driveway access is not permitted to Ladd Road for Lot 55.
- 3) Stormwater runoff from the site is generally tributary to drainage facilities along Ladd Road and Miralago Lane. It appears the project will disturb less than 1-acre of land so a New York State Department of Environmental Conservation SPDES General Permit for Stormwater Discharges from Construction Activities is not required for the project. The construction on Lot 55 should have minimal impact on stormwater runoff if existing runoff patterns are maintained.
- 4) The site is located within the Bartel Road Water District. An 8-inch water main located along the south side of Miralago Lane provides service to the existing house and is available to provide water service to Lot 55. The applicant should coordinate provision of water service with the Onondaga County Water Authority (OCWA).
- 5) The site does not contain a Federal Wetland as identified on the National Wetland Inventory Map or a State Wetland as identified on the New York State Freshwater Wetland Map.

ATTACHMENT C: PAGE 2

- 6) The site is not located within a floodplain per the 1994 FEMA Flood Insurance Rate Maps.
- 7) The Board should identify appropriate park fees for the project.

Upon approval of the Final Plan by the Planning Board, it is recommended the Chairman delay signing the Final Plan until the Town Attorney has verified the Developer has the necessary agreements and securities in place.

If you have any questions or comments, please do not hesitate to contact us.

Very truly yours,

O'BRIEN & GERE ENGINEERS, INC.



Mark C. Parrish, P.E.
Managing Engineer

ATTACHMENT D: PAGE 1

Sec 1 ?
Map # 9516
11-4-02

0122

DECLARATION OF
PROTECTIVE COVENANTS
AND RESTRICTIONS

--- MIRALAGO Section 2 ---

This Declaration is being made as of this 27th day of February 2004, by ROXFORD REALTY, land developer, having principal offices at 218 North Main Street, North Syracuse, New York 13212 (herein called the "Declarant") for the benefit of the owners of certain residential lots which may hereafter be conveyed by said Declarant or its successors or assigns, as shown on a Final Plan of the Miralago Subdivision Section 2 made by Alfred N. Januzi Jr. dated November 22, 2002 and filed in the Onondaga County Clerk's Office on April 8, 2004 as Map No. 9831.

WITNESSETH:

WHEREAS, Declarant is the owner of all the residential lots as shown on the aforesaid Final Plan which lots are in part of Military Lot 11 in the Town of Cicero, County of Onondaga and State of New York; and

WHEREAS, it is the intention of Declarant that uniform covenants, conditions, and restrictions be imposed upon the aforesaid residential lots as numbered on the aforesaid Final Plan of the Miralago Subdivision Section 2, which covenants, conditions and restrictions shall run with the land for the benefit of the property within Miralago Section 2.

NOW, THEREFORE, in order to effectuate such intention and in order to provide uniform covenants, conditions and restrictions affecting the aforesaid residential lots on the aforesaid Final Plan of Miralago Section 2, the undersigned does hereby make this Declaration of covenants, conditions and restrictions affecting the aforesaid lots for the benefit of all the owners, present and future, of said lots and do declare that all the aforesaid lots shall be held and conveyed subject to the covenants, conditions and restrictions set forth in the following paragraphs of this Declaration for a period of fifty (50) years from the date the Declaration is recorded in the Onondaga County Clerk's Office, to wit:

FIRST: LAND USE AND BUILDING TYPE: Each of the aforesaid lots shall be used for one family residential purposes only. Any two (2) story dwelling constructed thereon shall contain a minimum of 2,000 square feet of building-living space, exclusive of garage, basement and porch areas and any one (1) story dwelling constructed thereon shall contain a minimum of 1,800 square feet of building-living space, exclusive of garage, basement and porch areas. No dwelling shall exceed two (2) stories in height. A minimum of 20% of the front elevation of each residential unit shall be sided with natural or composite stone or brick. No business or commercial buildings may be erected on any lot and no business may be conducted on any part thereof. No lot shall be used as a church, synagogue or other place of assembly for group worship or group meditation. No lot shall be used as a day-care center or group home for children or adults unrelated to the record owner of the lot. Temporary uses for model homes, parking lots and/or sales offices shall be permitted for any Builders who may buy lots from Declarant on lots owned by Declarant or any of said Builders.

SECOND: GARAGES: There shall be one (1) private garage, large enough to store at least two (2) cars but not more than four (4) cars, attached to each one family residence. All two (2) car attached garages must be of side load design. Three (3) and four (4) car attached

garages may be either of front load design or side load design. No detached garages shall be permitted on any of said lots with the exception of Lot number 47 which can have a detached garage, no larger than two (2) cars in size, in addition to the attached garage mentioned above in this paragraph.

THIRD: OWNER MAINTENANCE: Each owner shall keep and maintain all of the land and buildings owned by such owner in good condition and repair, including but not limited to the repairing, staining, or painting (or other appropriate external care) of all buildings and improvements, as well as the seeding, watering, mowing of all lawns, the pruning and trimming of all trees, hedges, shrubbery, and other plantings so that the same are not detrimental to adjoining lots, obstructive of view of street traffic, or unattractive in appearance. Each lot owner shall maintain the entire property to include all lawns, shrubbery and trees in the street right-of-way adjacent to such owner's lot. The owners and the succeeding titleholders of lots 1 & 53, which lots have sign easements within the confines of their boundaries, shall maintain and keep in good repair, in perpetuity, the subdivision monument signs erected on those lots within those sign easements by the Declarant.

FOURTH: BUILDING LOCATION: No building shall be located nearer to any street line than the building line set forth on the aforesaid subdivision maps, except as same may be modified by a variance granted by the Zoning Board of Appeals of the Town of Cicero. No building shall be located nearer to each side or rear lot line than that regulated by the Zoning Ordinance of The Town of Cicero except as modified by a variance granted by the Zoning Board of Appeals of the Town of Cicero. For the purposes of this covenant and except as otherwise set forth in said Zoning Ordinance, eaves, steps and open porches shall not be considered as part of a building; provided, however, that this shall not be construed to permit any part of a building on a lot to encroach upon another lot.

FIFTH: NUISANCES: No noxious or offensive activities shall be carried on upon any lot, nor shall anything be done thereon which may be, or may become an annoyance or a nuisance to the neighborhood. No receptacle of any nature or description shall be placed, erected, or maintained for the storage or depositing of garbage or refuse matter within street view, nor shall there be deposited any garbage or refuse in an unclosed receptacle within the same area.

SIXTH: TEMPORARY STRUCTURES & VEHICLES: No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other building shall be used on any lot at any time as a residence, either temporarily or permanently. All sheds shall be non-permanent structures and shall be the same exterior color as the dwelling. All non-permanent structures will be located behind the rear line of the dwelling. No boats, trailers of any kind, trucks other than pickup trucks used for passenger purposes, mobile homes, motor homes or recreational vehicles, shall be parked on the side of any house or in the driveway or on the front portion of the lot in said subdivision. No non-operable or non-registered motor vehicles (including snow mobiles) may be stored on any outside portion of the property at any time.

SEVENTH: MACHINERY: No machinery shall be placed or operated upon any lot except such machinery as is customarily used in the maintenance of a private residence or as may be located indoors and used in the pursuit of any home hobby.

EIGHTH: REPAIR WORK: No extensive repair work, including but not limited to the dismantling of any motor vehicle, boat or machine of any kind, shall be permitted outdoors on any lot.

NINTH: NOISE: The sound level, as measured at the edge of a lot, which is produced by mechanical, electrical, or vehicle operation on the lot, shall not exceed the average intensity of the street traffic in that area.

TENTH: LIGHTS: The use of high intensity light sources shall be controlled so that the neighboring properties and the vision of drivers of moving vehicles shall not be adversely affected by any glare of excessive light.

ELEVENTH: FENCES OR ENCLOSURES, MAILBOXES: No hedge, fence, wall or any other form of an enclosure (other than a permanent wall commonly termed a retaining wall) shall be erected, placed or permitted to remain upon that portion of any lot in the Subdivision, which lies between the front line of the main building erected on such lot and the road line. Any fence constructed on a lot shall be of wood, wrought iron or vinyl with no wire or chain-link fences being permitted. The Builder shall provide and install and each owner shall maintain a standardized quality mailbox on each owner's lot.

TWELFTH: SIGNS: No sign or plaque or other writing other than "For Sale" signs no larger than 30 inches by 30 inches, shall be placed or permitted to remain upon any part of a lot or the structure erected thereon, except one sign for professional purposes, or for designating the name and address of the resident therein, which shall not exceed four (4) inches in height, sixteen (16) inches in length, and one (1) inch in thickness and which shall be made of wood. This restriction shall not apply to Declarant or to builders of homes within the Subdivision during the period of marketing and construction only.

THIRTEENTH: DOMESTIC ANIMALS: No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except up to two (2) dogs, two (2) cats and one (1) other household pet provided that they are not kept, bred or maintained for any commercial purpose. All animals must be kept on a leash when they are outside the owner's property and must not become a nuisance to other owners by barking or other acts.

FOURTEENTH: POSTLAMPS: The Builder shall provide and install a standard postlamp with photo cell and no switch. Each owner and succeeding title holder shall maintain the postlamp with working light bulbs which must have a minimum total wattage of at least one hundred (100) watts per lamp thus adding to the security of the Subdivision.

FIFTEENTH: EASEMENTS: Easements for installation and maintenance of utilities and drainage facilities are reserved and shall be shown on the map to be filed. Within these easements no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities, or which may change the direction or flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easements area of each lot and all improvements in it shall be maintained continuously by the owner of the lot except for those improvements for which a public authority or utility company is responsible.

SIXTEENTH: SWIMMING POOLS, CLOTHES LINES, OUTSIDE ANTENNA: No above ground swimming pool, clothes line pole of a permanent nature, outside television antenna, radio antenna or any receiver dish larger than 1 meter in diameter shall be permitted on any portion of any lot in the subdivision.

SEVENTEENTH: DRIVEWAY AND LANDSCAPE: Within two (2) years of the date of closing on the newly constructed home, the driveway will have an asphalt, concrete or brick paver surface (at least two cars wide) at the owner's expense. Also, within one (1) year of the

date of closing on the newly constructed house, landscaping will be installed and maintained consistent with the overall standard of the subdivision.

EIGHTEENTH: WETLAND RESTRICTIONS: No dredging or filling of any kind or nature shall be allowed or permitted on that portion of any lot that is described as a Wetland without first obtaining any and all necessary permits required from federal, state and local agencies; and more specifically, from the Department of the Army Corps of Engineers and from the New York State Department of Environmental Conservation.

Pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344), the Army Corps of Engineers regulates the discharge of dredged or fill material into wetlands and waters of the U.S. The regulations under which the Corps of Engineers operate are contained in Title 33, Code of Federal Regulations, Parts 320 to 330 Inclusive, as such rules and regulations may be amended from time to time. Inquiries as to such permits may be made to the Department of the Army, Buffalo District, Corps of Engineers, at its then current address. The New York State Department of Environmental Conservation regulates work in Wetlands pursuant to Article 24 of the Environmental Conservation Law as such rules and regulations may be amended from time to time. Inquiries as to such permits may be made to the New York State Department of Environmental Conservation, Region 7, at its then current address.

The survey of each lot which contains a Wetland (lots 33,34,35,41,42,45,46,47&48) and within which all dredging and filling are prohibited as set out above, will define and describe the Wetland area. The survey of each of the above nine (9) lots will also show the fifty (50) foot wide area adjacent to the Wetland in which no ancillary structures may be constructed. Those surveys will also show an additional fifty (50) foot area in which ancillary structures may be constructed but in which no swimming pools may be located, as per the Special Conditions granted by New York State DEC Permit # 7-3122-00366/00002.

NINETEENTH: ENFORCEMENT: Any person or persons owning real property in said subdivision shall have the right to enforce the foregoing covenants and restrictions. Enforcement shall be by proceedings at law, or in equity, against any person or persons violating or attempting to violate any covenant, condition or restriction contained in this Declaration, either to restrain or enjoin such violation; or to recover damages for said violation. The owner of any said lot that is found to have violated or attempted to violate said covenants, conditions and/or restrictions, shall be liable for all legal costs, including reasonable attorney's fees occasioned by any necessary litigation to enforce same.

TWENTIETH: SEVERABILITY: The invalidation of any of these covenants, conditions and restrictions by judgment or court order, shall in no way affect the validity of any of the other provisions hereof, all of which shall remain in full force and effect.

TWENTY FIRST: WAIVERS: The Town of Cicero shall have the right to waive or modify minor violations or encroachments upon the foregoing building line, front line, side lines, side street line or rear lot line restrictions on any lot in said subdivision.

TWENTY SECOND: AMENDMENT: While any lots are owned by Declarant, the aforementioned covenants, conditions and restrictions, or any part of same, may be waived, altered or cancelled by Declarant at any time and from time to time by the recordation of an instrument executed by Declarant. After that time, the covenants, conditions and restrictions may be waived, altered or cancelled by a vote of two-thirds of the owners of all of the lots in the Miralago Subdivision, Section 2 and the filing of a resolution in the Onondaga County Clerk's Office which confirms such vote and action.

TWENTY THIRD: EFFECTIVE DATE: This Declaration shall become effective upon the recordation hereof in the Onondaga County Clerk's Office.

IN WITNESS WHEREOF, the Declarant does hereby cause this Declaration to be signed the day and year first above written.

ROXFORD REALTY

by *George J. Tucci*
George J. Tucci, Partner

State of New York, County of *Onondaga*

On *April 9, 2004* before me, the undersigned, personally appeared *George J. Tucci*

personally known to me or proved to me on the basis of satisfactory evidence to be the individual ~~(s)~~ whose name ~~(s)~~ is ~~(are)~~ subscribed to the within instrument and acknowledged to me that he/~~she~~~~they~~ executed the same in his/~~her~~~~their~~ capacity ~~(ies)~~, and that by his/~~her~~~~their~~ signature ~~(s)~~ on the instrument, the individual ~~(s)~~, or the person upon behalf of which the individual ~~(s)~~ acted, executed the instrument in the name of and on behalf of said Partnership.

MARY E. BISCOTTI
Notary Public in the State of New York

Mary E. Biscotti
(signature and office of individual taking acknowledgement)

**DECLARATION OF
PROTECTIVE COVENANTS
AND RESTRICTIONS**

----- SIGNATURE PAGE -----
MIRALAGO Section 2

We, the undersigned, have read the "Declaration of Protective Covenants and Restrictions" for **MIRALAGO Section 2**, and acknowledge that we are in receipt of a copy of same which is deemed to be an integral part of our Contract to Purchase Lot # _____ in the Subdivision known as **MIRALAGO**, in the Town of Cicero, County of Onondaga, State of New York.

PURCHASER

PURCHASER

CENTURY 21 Tucci Realty

By: _____
George J. Tucci