

Meeting of the Planning Board of the Town of Lewisboro held at the Town Offices at Orchard Square, 20 Cross River Plaza, Lower Level, Cross River, New York on Tuesday, November 19, 2013 at 7:30 p.m..

Present: Jerome Kerner, Chairman  
Ronald Tetelman  
Gregory LaSorsa  
John O'Donnell  
Robert Goett  
Jan Johannessen, AICP, Kellard Sessions Consulting, Town Planner/Wetland Consultant  
Joseph Cermele, PE, Kellard Sessions Consulting, Town Engineer  
David Sessions, RLA, AICP, Kellard Sessions Consulting, Wetland Inspector  
Margaret Clark, Esq., Special Counsel  
Lawrence Praga, Esq., Planning Board Counsel  
Lisa Pisera, Planning Board Secretary

Also in Attendance: Janet Andersen, Conservation Advisory Council (CAC).

The Chairman called the meeting to order at 7:30 p.m. and noted the emergency exits.

## **I. SKETCH PLAN REVIEW**

### **Jean Emond/Jane Balanoff, 70 Twin Lakes Road, South Salem, New York – Application for Wetland Activity Permit Approval to rebuild screened porch.**

Brad DeMotte, DeMotte Architects, was present on behalf of the applicant.

Mr. DeMotte reviewed the screened porch remodeling, terrace addition, terrace removal, front walk reconstruction and repair of stairs and railing to lower deck and dock as detailed in the project description letter sent to the Planning Board, dated October 17, 2013. In addition to the items outlined in the letter, Mr. DeMotte stated that the applicant is proposing two 24" stone piers with short bungalow columns that would support a canopy over the garage. Mr. DeMotte stated that other than the two stone piers, the footprint of the house would not be increased.

No mitigation is being proposed. Erosion control will be provided. Silt fences will be installed, although no erosion is expected.

Mr. DeMotte addressed comments made in the Kellard Sessions memo dated November 13, 2013. With regard to roof drainage, Mr. DeMotte stated that there are currently gutters and leaders on the house. The applicant is proposing not to have any gutters on the house. A gravel trench with trench drain would be constructed around the perimeter of the house. Mr. DeMotte discussed drainage options: tying into underground leader drains that are present, however it is unknown where they lead; and rain garden or dry wells. Drainage options will be discussed and agreed upon with the Town Engineer.

Mr. DeMotte stated that the owners come to the house on the weekends and would prefer to wait until the exterior of the house is remodeled before proposing plantings.

In order to get the trench drain in, the foundation plantings would have to be removed. These are the only plantings being removed.



Mr. DeMotte stated that the area on the low side of the stone wall, behind the screen porch, is overgrown. At some point this area would be cleaned out and planted appropriately.

Mr. Johannessen stated that if the applicant intends to remove brush between the rear of the house and the lake that it should be identified on the plans, as well as how the affected area will be revegetated.

Mr. DeMotte stated that the clearing of the brush would not be done as part of this project.

Mr. Johannessen stated that if the brush were to be removed and replanted, a wetland permit would be required. Mr. Johannessen suggested that the plans identify that the area will be cleared and revegetated.

Mr. Kerner suggested that the type of vegetation be identified, and the method of planting be addressed.

Mr. Johannessen stated that he will give generic guidelines to include in this permit.

Ms. Andersen stated that if a site walk were scheduled, the CAC would like to be present. Ms. Andersen also stated that if a lot of disturbance on the slope would occur, or if trees would be cut, the CAC would like to see something other than a lawn going into the lake.

Mr. DeMotte stated that the area referred to by Ms. Andersen would not be an established lawn. The area would be cleaned out and planted.

Mr. Johannessen stated that the stormwater comment in the Kellard Sessions memo must be addressed.

Mr. O'Donnell expressed concern as to whether there would be enough room for expansion of the septic if necessary, and about leaders emptying into the lake, stating that is preferable that they stay out of the lake.

In response to Mr. O'Donnell, Mr. Johannessen stated that the site is compliant with zoning and that there are no additional extensions into the setback. Mr. Johannessen stated that there would be a net decrease in impervious cover because the proposed rear patio is smaller than the front patio to be removed.

The applicant will schedule a meeting with Kellard Sessions to review drainage and landscaping. The applicant will appear before the board at a future date with revised plans.

## **II. DECISION**

### **Eager Beaver Tree Service, 131 Smith Ridge Road, South Salem, New York – Approval of median, as built.**

Mr. Johannessen reviewed the resolution prepared for the approval of the as built median divider, as required in the stipulation of settlement, referencing the survey prepared by Kulhanek & Plan Land Surveyors, PC, dated August 20, 2013 which illustrates the as built median divider.

Mr. O'Donnell stated his belief that the Board does not have enough information. There is no information regarding the remaining portions of the site plan and whether there is any New York State Department of Transportation (NYSDOT) approval. Mr. O'Donnell stated that although the Board is satisfying a court order, to approve the as built median only, he does not believe that §220.52 of the Town Code is being satisfied.



Mr. Johannessen stated that (earlier today) on Tuesday, November 19, 2013, he had spoken to Stuart Sprague of the NYSDOT, and received confirmation that the NYSDOT permit was closed on November 18, 2012.

Mr. Sessions noted that inspection reports from the NYSDOT were on file.

On a motion made by Ronald Tetelman, seconded by Robert Goett, the resolution dated November 19, 2013 granting approval of the median divider, as built, to Eager Beaver Tree Service was adopted.

In Favor: Mr. Tetelman, Mr. Goett, Mr. Kerner, Mr. LaSorsa.

Abstain: Mr. O'Donnell.

### III. SITE WALK REPORTS

**Hazelnut Farms, 21 Waccabuc River Lane, South Salem, New York (Lynn Bygott, owner of record), Application for Waiver of Site Development Plan Procedures to construct a covered riding ring.  
Cal # 7-13PB**

All Planning Board members were present for the site walk which took place on November 9, 2013. Mr. Sessions, Lynn Bygott, Hazelnut Farms, and Andrew Cheung, Agricultural Council Engineer, were also present on the site walk.

A summary of the site walk was provided.

Mr. Tetelman stated that a plan of action was discussed. The applicant will resubmit a plan to the Board which will include the number of horses being proposed. Updated drainage will also be included.

Mr. O'Donnell noted that according to the applicant, the neighbors had been invited; however, they declined because they felt it was too early to come.

There was discussion of animal units.

There was work underway and a building permit was displayed at the door of the barn. The number of horses sought by the applicant was restated as ten. There was discussion of the need for clarification on the precise number of acres on the site, to which Mr. Cheung will respond. The road seemed wider than was anticipated from earlier submissions. There was discussion of whether an easement exists, and if so, where. It was noted that this is a legal issue.

Mr. Sessions stated that there is a state wetland on-site. The applicant's consultant was not prepared to address the New York State stormwater regulations and Town stormwater regulations. Mr. Sessions informed the applicant's consultant/ that although this is an agricultural property, a Stormwater Pollution Prevention Plan (SWPPP) from the New York State Department of Environmental Conservation (NYS DEC) is required and that the applicant is not exempt from NYS DEC or local stormwater and wetland regulations. Over 5,000 square feet of impervious surface is being proposed.

Mr. Kerner expressed concern over the flag lots that are serviced off of the main road. Their access crosses four of the flag lots. To avoid the crossing, the applicant would have to grade and trench, which could cause



drainage onto someone else's property, creating the need for a retaining wall. As stated by Mr. O'Donnell, seeing the easement and understanding the rights and limitations within the easement would be beneficial.

**Venanzio and Mary Cannova, 153 Main Street, South Salem, New York – Application for Wetland Activity Permit Approval to construct an addition to existing home.**

All Planning Board members were present at the November 9, 2013 site walk. Mr. Cannova was also present.

The applicant indicated he was revising his plan he was instructed to revise and resubmit to the Planning Board.

**Eric Gural and Nancy Bear, 106 Boway Road, South Salem, New York – Application for Wetland Activity Permit Approval to construct an addition to existing residence and expand/reconstruct existing septic system.**

All Planning Board members were present at the November 9, 2013 the site walk. Also present was Jim DeLalla, DeLalla Associates,

Mr. Kerner noted that there were two wetland setback lines shown on the drawing: a 100 foot NYS DEC setback; and a 150 foot Town setback. The house sits in the buffer between the two setbacks. Because the house was built in approximately 1955, it predated the Town's 150 foot setback. A five to ten foot expansion of the house on the wetland side is shown. Mr. Kerner expressed concern of the effects during construction of the additions. The applicant plans to mitigate by removing invasive plants.

Mr. O'Donnell noted that the plan proposed was sensitive to the concern of the Board.

Mr. Sessions stated that the plan was well presented.

Mr. O'Donnell suggested that there be a septic inspection regulation due to the presence on the lake.

The Board determined that the proposed action would be handled administratively by the Town Wetland Inspector.

**James Snyder, 42 Bishop Park Road, Pound Ridge, New York – Applications for Wetland Activity Permit and Stormwater Permit Approvals to construct a 3 season porch and new terrace, enclose existing porch, replace existing deck, and make interior renovations.**

All Planning Board members were present on the November 9, 2013 site walk. Also present was Ken Okamoto, architect for the applicant.

Mr. O'Donnell noted concerns of the placement of the generator. It was suggested to the applicant that a new location for the generator be considered.

Concern of the roof leaders, erosion, and the possibility of the roof leaders draining into the lake was noted. Should there be leaders going into the lake, they should be clarified.

Mr. O'Donnell also stated that the presentation by Mr. Okamoto indicated that the project will be done consistent with good practice.





Mr. Sessions stated his belief that the existing leaders under the deck would be connected to the rain garden. Leaders associated with the new construction would be connected to the infiltrators. The infiltrators would then have an overflow that would connect to the rain garden.

The applicant was willing to consider hooking up all of the roof leaders into some sort of stormwater device.

Mr. O'Donnell suggested that the applicant provide a history of the septic compliance that is required on the property.

Mr. Goett stated that he would like to see an alternative location for the generator, and the roof leaders addressed.

Mr. O'Donnell suggested that Mr. Sessions reach out to Mr. Okamoto regarding the history of the septic compliance.

It was clarified that there was no prior violation on the property. The issue being discussed is septic compliance.

The applicant will appear on the December 17, 2013 agenda, upon timely submission of materials.

#### **IV. DISCUSSION**

**Sarner/Trunzo Lot Line Change, Bishop Park Road, Pound Ridge – Application for Lot Line Change from Adam and Nancy Sarner, 25 Bishop Park Road, Pound Ridge N. Y. and Stacy Trunzo, 27 Bishop Park Road, Pound Ridge, N. Y Cal# 9-12 P.B. – Correction to Resolution dated September 17, 2013.**

Mr. Johannessen reviewed the proposed resolution. The Planning Board issued a Final Subdivision Plat Approval on September 17, 2013. The resolution contained an error in the second "Whereas" regarding the tax parcel lot numbers associated with the parcels. It was brought to Mr. Johannessen's attention by the project attorney. The proposed resolution corrects this error.

On a motion made by Mr. O'Donnell, seconded by Mr. LaSorsa, the resolution dated November 19, 2013 granting Amendment to September 17, 2013 Resolution to Adam Sarner and Stacy Trunzo was adopted.

In Favor: Mr. O'Donnell, Mr. LaSorsa, Mr. Kerner, Mr. Goett, Mr. Tetelman

**Rebeca Quintanilla, 138 Post Office Road, South Salem – Wetland Questionnaire – Cut dying trees, stack wood, mulch/chip branches, plant 15 Norfolk pines.**

Rebeca Quintanilla was present.

Mr. Sessions and Ms. Quintanilla approached the Board. Ms. Quintanilla stated that eight to nine ash trees which were completely declining or destroyed by storm had been cut and carried by hand to the driveway and mulched. Ms. Quintanilla requested permission to use motorized equipment to plant 15 Norfolk Pine trees. The trees were purchased and are being held at the nursery.

Ms. Quintanilla stated that she experiences erosion from Post Office Road.



Ms. Quintanilla stated that the stumps of the Ash trees had not been removed only cut to the ground.

Ms. Quintanilla stated that she had not discussed the project with her neighbor.

Mr. Sessions stated that he had been to the site. He was not aware that the trees had already been cut. Motorized equipment is needed to transport the trees being planted. The existing pathway will be used.

Mr. Kerner noted that the area in question is in a wetland buffer area.

The planting of Norfolk Pines was discussed, as they are not typically suggested for this area.

Ms. Andersen stated that the entire CAC has not had a chance to review the application. The CAC is concerned that the Norfolk Pines may not be native to the area. The CAC would encourage a mix of native plants that support native species.

Mr. Sessions stated his opinion that the after review by the Board, the project could be handled administratively, under his direction. Mr. Sessions also stated that the planting of the evergreens would benefit both Ms. Quintanilla and her neighbor.

Ms. Quintanilla stated that she is willing to plant other plants in addition to the Norfolk Pines.

Ms. Quintanilla was instructed to work with Mr. Sessions to determine what species of plants should be planted.

The Board determined that the proposed action would be handled administratively by the Town Wetland Inspector.

## **V. PUBLIC HEARING**

**Rudolph C. Petruccelli, Oscaleta Road, South Salem, New York - Application for Subdivision Plat Approval and Wetland Activity Permit Approval to permit the construction of a three bedroom, single-family residence and associated deck, porch, driveway, walkway, landscaping, septic system, potable well, fencing and stormwater facilities.  
Cal # 8-12PB and Cal# 61-09 WP**

The Public Hearing was called to order at 8:22 p.m.

Mr. Tetelman recused himself and stepped down from the podium.

Ms. Andersen recused herself from her CAC role. Ms. Andersen stated that she will be speaking on behalf of the Three Lakes Council.

Mr. Kerner asked that individuals wishing to speak sign in.

Mr. Kerner stated that there will be no comments by the Board. The Public Hearing would not be closed this evening.

Michael Sirignano, Esq., represented the applicant. Steve Marino, Tim Miller Associates, Inc. was present on behalf of the applicant.



Mr. Sirignano provided proof of the mailing of the public hearing notice to the Planning Board Secretary. Mr. Sirignano also provided a photo as proof of posting of the public hearing sign.

Mr. Sirignano stated that Mr. Petruccelli purchased the 0.69 acre lot on the west side of Oscaleta Road on April 1, 1982 from Irene Skolnik. According to the Tax Assessor's office this parcel has been a separate tax lot since 1972 (Tax Lot 46).

Mr. Sirignano presented the first water resources map adopted on January 9, 1973. (At one point Mr. Sirignano stated that map was adopted by the Lewisboro Planning Board, at another point he stated it was adopted by the Town Board). The map showed that the wetlands mapped at that time are now designated as state wetlands. The locally regulated wetland straddles the boundary line between proposed Lot 1 and proposed Lot 2, and is not shown on the water resources map.

The NYS DEC first mapped the state wetland boundary on January 13, 1987. The NYS DEC filed the first freshwater wetland map for this state regulated wetland, designated as L13, effective October 7, 1987.

Two earthen berms were created between 1960 and 1976 on the southerly and westerly borders of the local wetland.

Mr. Sirignano stated that the abutting residents to the north, Mr. and Mrs. Harold Rosenbaum, have an eight inch PVC pipe, covered by a decorative bridge, which extends onto Mr. Petruccelli's property. The pipe channels and discharges groundwater and stormwater onto Mr. Petruccelli's property. Mr. Petruccelli has twice written to the Rosenbaums asking them to remove the pipe and to contain the water to the Rosenbaum property by method of a dry well or other system. Mr. Petruccelli has received no response to his requests.

Mr. Sirignano stated that there are two applications before the Board: application for subdivision plat approval; and application for wetland activity permit approval. The lot is 85 feet south of Cove Road. Mr. Petruccelli first appeared before the Board in May, 2010. At that time, Mr. Praga advised that Mr. Petruccelli's wetland permit application must be accompanied by a subdivision application because Mr. Petruccelli's lot (designated as Lot 2 on the plat displayed), was created by deed conveyances at a time when Lewisboro subdivision regulations were in effect. Mr. Petruccelli agreed to make the joint application.

Mr. Sirignano reviewed the chain of title on the property. Mervin and Helen Dickens conveyed the entire 1.887 acre parcel to Anthony Cuocco by deed dated April 9, 1970. Mr. Cuocco commissioned Bunney Associates to create a subdivision plat. That plat is dated March 31, 1970, revised June 16, 1972. Mr. Sirignano displayed the plat. The plat was submitted to the WCHD. The WCHD commissioner at the time signed and certified that the WCHD had no jurisdiction over the subdivision because at that time there was no need for WCHD approval over a two lot subdivision in Lewisboro.

Mr. Cuocco carved out and sold his lots. Mr. Cuocco conveyed Lot 1, which is 1.189 acres, to Stanley M. Lewis, Inc. on December 7, 1972. On that same day, Stanley M. Lewis conveyed Lot 1 to Jane W. Lewis. On December 9, 1979, Jane W. Lewis conveyed Lot 1 back to Stanley M. Lewis, Inc. Lot 1 became Tax Lot 47 (formerly part of Tax Lot 46). That designation as a distinct tax lot on the Assessor's record took place on December 14, 1972.

Peter L. Sullivan and John P. Annicelli took title to Lot 1 on September 20, 1996. Mr. Sullivan and Mr. Annicelli conveyed Lot 1 to the Three Lakes Council by deed dated October 10, 1996, who remain the current owners.



On October 11, 1977, Mr. Cuocco conveyed Lot 2 to Marian Dussinger. Mariann Dussinger conveyed Lot 2 to Irene Skolnick on October 26, 1979. Irene Skolnick conveyed Lot 2 to Rudolph Petruccelli on March 31, 1982. Because a condition of Mr. Petruccelli's NYS DEC wetland permit requires a deed covenant, a deed dated October 29, 2012 was filed in order to comply with the NYS DEC permit.

Mr. Sirignano stated his opinion that if subdivision approval is required of Mr. Petruccelli, then subdivision approval is also required of Three Lakes Council.

Mr. Sirignano stated that Mr. Petruccelli's 0.669 acre lot conforms to current gross area requirements for this R1/2 acre zoning district. Although Mr. Petruccelli can't meet the 20,000 square feet of contiguous buildable area, due to the small, triangular, locally regulated wetland in the center in the center of the lot, the Lewisboro Building Inspector has determined that, "the lot does not need to comply with today's code," with respect to the contiguous buildable area, because, "it is not a new lot and the Planning Board is now legalizing the lot." This is part of the prior proceedings.

Mr. O'Donnell stated that the deed history is reflected in the title report and is already part of the record. Mr. O'Donnell asked for confirmation that the purchase price of the property was \$4,000. Mr. O'Donnell suggested that Mr. Sirignano correspond with Mr. Praga regarding the legal status of the Three Lakes Council property, as Mr. Praga will advise the Board.

Mr. Sirignano discussed the wetland activity permit application. Mr. Sirignano stated that since the original application, many revisions to the site plan have occurred.

The house has been moved completely out of the wetlands. There will be some disturbance to put in the footings. The driveway and the garage have been relocated to the south side of the house. Permeable pavers will be used for the driveway. The septic has been reduced by one-third and the house has been downsized from four bedrooms to three. The height of the fill in the wetlands has been decreased to a maximum of three feet.

Mr. Sirignano stated for the record that on June 17, 2011, the NYS DEC issued freshwater wetlands permit to Mr. Petruccelli for "construction of a new single family residence and septic system on the adjacent area of New York State area of freshwater wetland, L13, Class 2. Approximately 0.22 acres of adjacent area will be disturbed for the placement of fill and construction of a raised-bed septic." A condition of the NYS DEC permit is that Mr. Petruccelli must record a deed covenant confirming that a portion of his building lot is subject to NYS DEC regulations so that any future owner would be on notice that the NYS DEC has jurisdiction and approval authority over any additional proposed changes to the house or the site. Mr. Petruccelli has complied with that condition. As part of the NYS DEC permit approval, the NYS DEC determined that this project is a Type II action under SEQRA and not subject to further environmental review procedures. The NYS DEC wetland is what separates Lot 2 and the locally regulated wetland from Lake Waccabuc.

On January 31, 2011 the WCHD confirmed that they received the proposed septic system construction plans and reported to the NYS DEC that the WCHD "has determined that the construction plans are approvable." The WCHD will not give final approval and sign off on a septic plan until subdivision approval is received.

The Army Corps of Engineers (ACOE) certified in a letter dated January 30, 2013 that a Department of the Army permit is not required for this proposal.

The NYC DEP has co-review authority with the WCHD on the septic. By letter dated January 18, 2011, the NYC DEP reported to the NYS DEC that an application to the NYS DEC for a variance allowing construction





of the septic system “within a NYS DEC wetland buffer is capable of being approved as is the proposed design of the (Sanitary Sewage Treatment System) SSTS.”

The Planning Board wetland permit, 61-09WP, was issued to give Mr. Petruccelli permission to conduct soil testing for the septic system (deep hole, and perc tests). The WCHD witnessed the tests. One of the holes found ground water at five feet. The rest of the holes went down to eight feet without encountering any ground water. These test results were forwarded to the NYS DEC and WCHD and have been reviewed by both agencies. Deep hole tests were also done for stormwater infiltrators which were witnessed by Kellard Sessions. No ground water or rock was found to a depth of eight feet.

The local wetland boundaries were originally flagged by Mary Jaehnig, wetland consultant for Mr. Petruccelli, on May 28, 2004, updated on July 29, 2012. For health reasons, Ms. Jaehnig could not attend the public hearing originally scheduled on September 17, 2013, rescheduled to November 19, 2013. Mr. Petruccelli has retained Steve Marino as his current wetland consultant. In 2013, Mr. Marino confirmed the same wetland boundaries as Ms. Jaehnig.

Mr. Sirignano stated that is the belief of himself and Mr. Marino that the locally regulated wetland is not a particularly important wetland. Under §217-181 of the Town Code, the ecological benefits of wetlands and watercourses are enumerated. Of the 13 benefits listed, it is the belief of Mr. Sirignano that only three are served, all having to do with stormwater retention and dispersion: subdivisions A, B, and G.

There have been a number of manmade disturbances and impacts to the property, all occurring prior to Mr. Petruccelli purchasing the property, including the construction of the house to the immediate north, the placement of a large berm on the western edge and the southern edge which has created a closed retention area.

Mary Jaehnig reported to the Board in two letters dated August 2, 2012 and December 12, 2012 that the locally limited wetland and small watershed serves limited wetland functions, mostly stormwater retention to recharge to the underlying bedrock. Ms. Jaehnig also reported that the soils have developed wetland soil characteristics over time due to the off-site drainage and standing water condition. Ms. Jaehnig further found that the standing water area will diminish and may even disappear if surface water inflow from the neighbor's eight inch PVC drainage pipe were eliminated.

Mr. Sirignano stated that he has read all of the letters and emails from concerned neighbors.

Mr. Sirignano reviewed the concept of “standing”. Parties must show that the impact upon them is different than the impact on the general public. Mr. Sirignano stated his opinion that other than two individuals, neighbors cannot show legal standing. In his opinion, those with standing are the Three Lakes Council and Mr. and Mrs. Rosenbaum.

Mr. Sirignano stated that in one of his letters, Mr. Rosenbaum indicated that he installed a second sump pump in his driveway; the first one pre-existing in his garage. Mr. Rosenbaum does not indicate where the two sump pumps are pumping ground water, and where the ground water is going. It was the belief of Ms. Jaehnig, and is the belief of Mr. Petruccelli and Mr. Marino that ground waters are coming off of the Rosenbaum property, flowing onto Mr. Petruccelli's property, and getting trapped because of the berms.

Steve Marino, Tim Miller Associates displayed the plan and aerial photos previously submitted to the Planning Board along with the November 5, 2013 Wetland Functional Assessment.



Mr. Marino stated the size of the wetland is approximately 7,000 square feet, with approximately 5,000 square feet of the wetland being on Mr. Petrucci's property.

Mr. Marino reviewed the wetland application submitted by Mr. Petrucci. In order to construct the small yard area, approximately 2,200 square feet of the existing town wetland would have to be filled to create a rear yard. The applicant is proposing a retaining wall which would separate the development part of the parcel from the remainder of the wetland. Additional mitigation measures are also being proposed.

Mr. Marino reviewed the historical context of the wetland. Mr. Marino addressed the aerial photos submitted which go back to 1947. The 1947 aerial shows no development on or near the property. Between 1960 and 1976, activities occurred on the property, as shown on the 1976 aerial. The 1976 aerial shows that a large earthen berm was constructed coming in off of Cove Road onto Lots 1 and 2, extending to the south. A second berm which comes in opposite Twin Lakes meets up with the berm coming in off of Cove Road. There are two sand and gravel berms on the property.

Based on the placement of the larger berm, stormwater and runoff from the neighborhood, which had formerly come down through the neighborhood and drained off the slope into the wetland adjacent to Lake Waccabuc, as well as into Lake Waccabuc, was cut off, resulting in an impoundment of water in that area, which accumulated over time. The 1976 aerial shows the beginnings of a small pocket of wetland because of the constriction of flow through the neighborhood. The topography of the neighborhood is from north/northeast down through the site and into the lake. With the construction of the berm, the water is now trapped, resulting in ponding. As a result the upland vegetation that was previously in the area died back and red maple trees of varying health remain. There is no herbaceous vegetation growing.

The 2004 and 2009 aerial photos show the pocket of wetland expanding. The photos show ponding water.

It is the belief of Mr. Marino that the habitat and function of the pocket of wetland cannot compare to the habitat and function of the extensive wooded swamp along the lake.

Mr. Marino reviewed the Wetland Functional Assessment dated November 5, 2013, specifically page 2.

Based on the assessment, Mr. Marino concluded that the prime function of the wetland pocket is stormwater control and flood reduction. Because of the berm, water is trapped so that adjacent properties are not flooded. However the adjacent properties are preventing the water from getting to the lake.

There is 2,200 square feet of wetland impacted.

Mr. Marino reviewed the plan submitted.

In the southeast corner of the site, the applicant is proposing to expand the existing wetland by excavating about two feet of material to get down to the base water level that the existing wetland is now holding. The applicant would remove invasive species, replant and establish wetland vegetation in the area. 1,300 square feet of wetland would be created in the corner.

Invasives would be removed from the septic area and replaced with seed mix to provide greater wildlife value. The area would be mowed once to twice per year.

A conservation easement would be established on the rear of the property, including part of the NYS DEC wetland.



There is about 18,000 square feet of total disturbance. With the inclusion of conservation easement, restored buffer, enhancement of the wetland and creation of the wetland, there is 17,000 square feet of mitigation, resulting in approximately a 1:1 mitigation ratio.

Since the primary function of the wetland is stormwater retention, replicating stormwater function on the site is important. The driveway is now impervious pavers so that stormwater would go into the ground rather than run into Oscaleta Road or the wetland. Stormwater from the house would be placed in infiltration galleries to be designed by Mr. Petrucci's office.

Mr. Marino concluded his portion of the presentation.

Mr. Sirignano summarized his presentation stating his that the project proposed by the applicant is in accordance with the policies of Town Code, §217. There is no substantial evidence to support denial of Mr. Petrucci's application for wetland activity permit. Mr. Sirignano stated that evidence supports approval with reasonable conditions to which Mr. Petrucci would be agreeable to hearing. Mr. Sirignano stated that denial of this application would constitute an unconstitutional taking of Mr. Petrucci's personal property rights and would render his lot valueless.

Mr. Sirignano stated that if Mr. Petrucci's application were to be denied, a taking would be constituted because it would result in the economic destruction of Mr. Petrucci's private property by Town government action.

Mr. Sirignano stated that off-site opportunities have been investigated, but there are no opportunities on properties that Mr. Petrucci controls.

Mr. Petrucci confirmed that Mr. Sirignano's presentation was complete.

Mr. Kerner invited comments from the public.

Janet Andersen, 5 Orchard Drive, South Salem, resident, President, Three Lakes Council, paraphrased the Three Lakes Council letters dated February 9, 2013, September 3, 2013, and November 13, 2013.

Mr. Paul Lewis, 44 Twin Lakes Road, summarized his letter dated September 16, 2013.

Mr. Fred Cowles, 111 Oscaleta Road, addressed the Board.

Mr. Cowles stated that he lives across the street from the property and believes that he does have standing to sue. Mr. Cowles stated that when he purchased his property in 1973, he had a view of Lake Waccabuc. Before buying his property, Mr. Cowles did his due diligence by speaking to Ed Blum, his attorney who lives on Cove Road. Mr. Blum assured Mr. Cowles that he had good title and also that a house could not be built across the street because it was wetlands. Mr. Blum provided history of the failed subdivision and the reason why Mr. Cuocco tried to subdivide by deed rather than going before the Planning Board, which at that time would have had to approve a subdivision.

Mr. Cowles referred to the aerial photos submitted by Mr. Marino. The 1976 photo shows the berms void of vegetation causing reason to believe that they were put in around 1970, which is consistent with statements provided by Mr. Marino. Mr. Cowles stated his opinion that the berms were put in by Mr. Cuocco because the placement of the berms is consistent with Mr. Cuocco's attempt to subdivide by deed.



Mr. Cowles stated that he had written a letter dated November 18, 2013 which he chose not to read, but asked that the applicant and his counsel and consultant read.

Mr. Cowles questioned that if the wetland did not exist when the berms went in, what was the purpose of the creation of the berms. Mr. Cowles stated his opinion that the berms were necessary because the land was already wet, and without the berms, it would not be possible to walk or drive on the land.

Mr. Cowles stated that if Mr. Petruccelli's application is approved, it would constitute an unconstitutional taking of Mr. Cowles' property because approval of Mr. Petruccelli's application would substantially reduce the value of his property, and he would have a right to sue.

Mr. Cowles asked that Mr. Sirignano or Mr. Petruccelli inform the public what approvals have been given by the Lewisboro Planning Board to build a house on a lot which is entirely wetlands or wetlands buffer. If there is no such case, why would Mr. Petruccelli be granted exceptional preferential treatment, especially when this town was a total victor in the Manbeck case, which should be used as a roadmap in enforcing wetlands law.

Mr. Cowles stated that he disagrees with Mr. Sirignano's statement that only the Three Lakes Council and the Rosenbaum's have standing. Mr. Cowle's stated his opinion that anyone who lives on, uses, or whose real estate values depend on the Town's preserves, has an interest in this case.

Dr. Peter Treyz, 81 Twin Lakes Road, South Salem, stated that Ms. Andersen adequately expressed his concerns.

Alan Gottlieb, 51 Twin Lakes Road, South Salem stated that although he is opposed to the approval, Mr. Petruccelli has a valid point in that the pipe of the neighbor to the north is dumping water onto Mr. Petruccelli's property.

Harold Rosenbaum, 2 Cove Road, South Salem addressed the Board. Mr. Rosenbaum is the neighbor to the north of Mr. Petruccelli's property. Mr. Rosenbaum read the letter sent to him by Mr. Petruccelli dated July 1, 2010, regarding the PVC pipe.

Mr. Rosenbaum stated that he moved to 2 Cove Road in 1989, clarifying that his wife and her former husband bought the property a few years prior to 1989. Mr. Rosenbaum stated that the pipe was on the 2 Cove Road property in 1989, and was in place when his wife originally moved into the property, further stating that the pipe is on the Rosenbaum property, not Mr. Petruccelli's property. Mr. Rosenbaum stated that workers employed by Mr. Petruccelli had come onto his property and attempted to remove the pipe. Mr. Rosenbaum contacted the police and it was determined that the pipe was on Mr. Rosenbaum's property. Mr. Rosenbaum indicated that anyone wishing to see the pipe is welcome to do so.

Mr. Rosenbaum stated that his basement has flooded 15 times. During one of the storms, Mr. Rosenbaum observed that water from the pipe remained on his property. Mr. Rosenbaum stated that he has taken photos of Mr. Petruccelli's property when there have been "lakes" and "frozen lakes".

Mr. Rosenbaum confirmed that he had not responded to Mr. Petruccelli's letters, stating that he did not see a reason to reply.

Mr. Rosenbaum addressed the second sump pump on his property. Two days after the (2013) storm, the Assistant Supervisor of the Highway Department observed the water level to be approximately 18 inches high





on Mr. Rosenbaum's door. A higher lip on Oscaleta was created in order to ease the flooding. The basement flooding has caused physical harm to Mr. Rosenbaum due to mold. Mr. Rosenbaum has suffered from asthma and pneumonia. A sump pump with backup batteries was installed in the driveway, about 8 feet from the house. Pipes surrounding the house were also replaced. Between the sump pump in the driveway and the sump pump in the basement, Mr. Rosenbaum is hopeful that flooding of the basement will be alleviated.

Water now goes to the underground pipe, and under the bridge, staying on Mr. Rosenbaum's property.

Mr. Rosenbaum questioned how there can be flooding on his property, and yet no water eight feet down on Mr. Petrucci's property, as previously stated.

Mr. Rosenbaum read the letter written to him by Mr. Petrucci, dated August 21, 2013, requesting removal of the pipe. The August 21, 2013 letter also stated that the Planning Board had been to Mr. Petrucci's property on August 6, 2013 and had observed the pipe. The letter further stated that at the August 13, 2013 Planning Board meeting, the Board requested information regarding the origin of the lines tied into the pipe. Mr. Rosenbaum stated that he had never received said request from the Planning Board. Mr. Rosenbaum indicated that had he received the request from the Board, he would have responded to them.

Mr. Rosenbaum claims that he had read somewhere that Mr. Petrucci stated that Mr. Rosenbaum welcomed the house proposed by Mr. Petrucci. Mr. Rosenbaum stated that he never said that he welcomed the house.

Ms. Andersen again addressed the Board, referencing Eastbrook Construction Company, as discussed in the Three Lakes Council letter dated November 13, 2013. Ms. Andersen showed on the plan where Eastbrook had attempted to build a house on the property currently owned by The Three Lakes Council (Lot 2). Ms. Andersen stated that Eastbrook had obtained a building permit, not knowing that there was a wetland on the property. The wetland inspector at the time went to the site, and determined that a wetland permit was needed. A stop order was issued. The wetland permit was not approved.

On a motion made by John O'Donnell, seconded by Robert Goett, the Public Hearing of Rudolph C. Petrucci, Oscaleta Road, South Salem, New York - Application for Subdivision Plat Approval and Wetland Activity Permit Approval to permit the construction of a three bedroom, single-family residence and associated deck, porch, driveway, walkway, landscaping, septic system, potable well, fencing and stormwater facilities, Cal # 8-12PB and Cal# 61-09 WP was adjourned to December 17, 2013 (subsequently rescheduled to January 28, 2014 at the request of the applicant).

In Favor: Mr. O'Donnell, Mr. Goett, Mr. Kerner, Mr. LaSorsa.  
Abstain: Mr. Tetelman

## **VI. EXECUTIVE SESSION AND ADJOURNMENT**

On a motion made by Mr. LaSorsa, seconded by Mr. Goett, the Board entered into Executive Session with counsel for attorney/client privilege discussions at 10:02 p.m.

All In Favor: Mr. LaSorsa, Mr. Goett, Mr. Kerner, Mr. O'Donnell.  
Abstain: Mr. Tetelman.

On a motion made by Mr. LaSorsa, seconded by Mr. Goett, the Board exited Executive Session at 10:50 p.m.

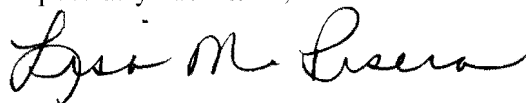
All In Favor: Mr. LaSorsa, Mr. Goett, Mr. Kerner, Mr. Tetelman, Mr. O'Donnell.



On a motion made by Mr. LaSorsa, seconded by Mr. Goett, the meeting was adjourned at 10:51 p.m.

All In Favor: Mr. LaSorsa, Mr. Goett, Mr. Kerner, Mr. Tetelman, Mr. O'Donnell.

Respectfully submitted,

A handwritten signature in cursive script, reading "Lisa M. Pisera". The signature is written in black ink and is positioned above the printed name and title.

Lisa M. Pisera  
Planning Board Secretary

