

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, January 28, 2014 at 7:30 p.m..

Present: Jerome Kerner, Chairman
Robert Goett
Gregory LaSorsa
John O'Donnell
Ronald Tetelman
Joseph Cermele, PE, Kellard Sessions Consulting, Town Engineer
David Sessions, RLA, AICP, Kellard Sessions Consulting, Wetland Inspector
Lawrence Praga, Esq., Keane & Beane P.C., Planning Board Counsel
Greg Monteleone, Esq., Special Counsel
Lisa Pisera, Planning Board Secretary

Also in Attendance: Janet Andersen, Conservation Advisory Council (CAC) and Judson Siebert, Esq., Keane & Beane P.C.

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

Estate Motors Mercedes Benz, (Charisma Holding, Inc., owner of record), 321 Main Street (NYS Rte. 22), Goldens Bridge, - Application for Waiver of Site Plan Approval Procedures – Approval to demolish two old wood frame buildings located on property, Cal# 4-13PB

Mr. Kerner stated that Estate Motors was taken off of the agenda at the request of the applicant.

I. WETLAND VIOLATIONS

Michael DeCandia, 174 North Salem Road, Katonah, Cal # 1-13WV and Cal# 109-12WP

Mr. DeCandia was not present.

Mr. Kerner recused himself and stepped down from the podium. Mr. O'Donnell acted as Chairman.

Mr. O'Donnell stated that an admission from Mr. DeCandia was received at the December 17, 2013 meeting. Following the meeting, the Board deliberated on methods of mitigation and penalty. Counsel prepared a resolution.

All Board members acknowledged that they had seen and reviewed the resolution. There was no discussion.

On a motion made by Mr. Tetelman, seconded by Mr. Goett, the Resolution dated January 28, 2014, Violation of Wetland and Watercourse Law, Michael DeCandia, Cal# 1-13WV, was adopted.

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

Abstain: Mr. Kerner

Mr. Kerner returned to the podium and resumed his position as Chairman.

Kenneth Alderman, 11 Birch Spring Road, South Salem, Cal# 2-13WV

Mr. Alderman was not present.

Mr. Kerner stated that Patricia B. and Kenneth Alderman were in violation of §217-5 of the Code of the Town of Lewisboro. The Board deliberated on the matter. Counsel prepared a resolution.

All Board members acknowledged that they had seen and reviewed the resolution. There was no discussion.

On a motion made by Mr. O'Donnell, seconded by Mr. Goett, the Resolution dated January 28, 2014, Violation of Wetland and Watercourse Law, Patricia B. and Kenneth Alderman, Cal# 2-13WV, was adopted.

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

II. SKETCH PLAN REVIEW**Rice/Arfa, Ridgefield Avenue, South Salem, New York – Application for Lot Line Change from Brian Rice, 159 Ridgefield Avenue, South Salem, New York and Johnathan Arfa and Barbara Bernstein, 149 Ridgefield Avenue, South Salem, New York. Cal # 10-13 PB**

Heather Rice was present. David O'Dell, surveyor, was also present on behalf of Heather and Brian Rice.

Mr. O'Dell stated that the applicant is proposing a lot line change to give the Rice property more side yard setback, and that Mr. Arfa was agreeable.

Mr. O'Dell stated that he agrees to address all of the comments contained in the Kellard Sessions memo dated January 22, 2014.

Mr. O'Dell stated that he had used a geographic information system (GIS) when preparing the plan submitted for the lot line change. Mr. O'Dell stated that he would call Kellard Sessions to find out where he could obtain the secondary source mapping used by Kellard Sessions.

Mr. Sessions stated that a short EAF must be completed. Mr. O'Dell agreed to submit the EAF.

In response to Mr. O'Donnell, Ms. Rice stated that the Rice's do not currently intend to expand their home. Ms. Rice stated that the lot line change is being proposed because the Rice vegetable garden has been on the neighbor's property for many years. The Rice's are proposing the change at this time because Mr. Arfa may be selling his home in the near future.

Mr. O'Donnell asked that the applicant confirm that there are no Building Department violations or complaints, and that there has been no prior Planning Board activity.

Mr. Sessions stated that the applicant requires Westchester County Department of Health (WCDH) approval. Mr. O'Dell stated that he had not yet been in contact with the WCDH.

In response to Mr. LaSorsa, Ms. Rice stated that the Rice's have been utilizing the neighbor's property for approximately ten years. Ms. Rice stated that Mr. Arfa was not aware that the Rice's were using his property until they brought it to his attention. Mr. Arfa had no issue with this.

Ms. Andersen stated that the CAC reviewed the application and had no comments.

The applicant was instructed to resubmit to the Planning Board. Materials must be submitted by February 14, 2014 in order to appear on the February 25, 2014 Planning Board agenda.

Jean Emond/Jane Balanoff, 70 Twin Lakes Road, South Salem, New York – Application for Wetland Activity Permit Approval to rebuild screened porch. Cal# 111-13WP

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

Mr. DeMotte addressed issues regarding the stormwater plan and landscaping plan discussed at the November 19, 2013 Planning Board meeting.

Mr. DeMotte stated that an engineered stormwater plan is not required because there is a decrease in impervious area. The applicant is required to deal with the water coming off of the roof; however no engineering plan is needed.

Mr. DeMotte stated that the applicant is proposing an in-ground gutter system around the perimeter of the house. The applicant is proposing to install two level spreaders, one to handle each half of the house. Each level spreader will terminate on the south side of the existing stone wall, being parallel to the stone wall.

Mr. DeMotte responded to comments in the Kellard Sessions memo dated January 22, 2014. The applicant will modify the level spreader detail to include filter fabric. The applicant will also divert water away from the well by installing two short runs of gutters to a leader, which would tie into the underground gutter, and hold the gutter away from the well. The applicant will install a buried propane tank for the proposed generator, as well as a new HVAC system. The applicant is interviewing propane suppliers and once selected, will coordinate the location of the tank with the supplier, most likely in the front or side yard. There will be no additional disturbance.

Mr. DeMotte addressed the landscaping plan. Mr. DeMotte stated that subsequent to the November 19, 2013 Planning Board meeting, he had met with Mr. Johannessen to discuss the plan. Mr. DeMotte agreed to loosely define the area to be disturbed, which is the area downhill of the stone wall, behind the house. The area is overgrown with invasive species, and very rocky. It was agreed that the best approach would be to define the area and plan; and then come up with a list of plants.

In response to comments contained in the CAC memo dated January 14, 2014, Mr. DeMotte stated that no trees will be removed, and that this is indicated on the plans submitted. The CAC also requested that details on the species, quantities, and sizes of mitigated plantings be provided. Mr. DeMotte stated that this would require a planting plan. Mr. DeMotte asked that this be left more loosely defined. Mr. DeMotte stated that all planting would be done by hand.

Ms. Andersen stated that the CAC would be agreeable to a loosely defined plan, provided that this was acceptable to Kellard Sessions.

Mr. Sessions stated the plans listed on the plans are all native and are acceptable.

In response to Mr. Goett, Mr. DeMotte stated that the purpose of the generator was for use during a power outage. Mr. Goett asked if anything was going to be done to divert noise from the generator. Mr. DeMotte stated that it could be screened.

On a motion made by Mr. O'Donnell, seconded by Mr. LaSorsa, it was determined that the proposed action be handled administratively by the Town Wetland Inspector, with particular concern to the placement of the generator, and compliance with Town Code to minimize the sound encroachment of neighbors and the lake.

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

Mr. Sessions was asked to get clarification on the well, as Ms. Andersen pointed out (from an individual standpoint, not as CAC co-chairperson), that the applicants may be users of the Twin Lakes water supply.

Mr. O'Donnell suggested that because the property is located on the lake, a requirement of annual septic inspection be considered.

III. DISCUSSION

Bike/and Pedestrian Plan

Dan Welsh presented a draft of the proposed Lewisboro Bike and Pedestrian Master Plan Addendum.

Mr. Welsh stated that the Town Board was told by the Department of Transportation (DOT) that the Master Plan should include a Bike and Pedestrian Plan in order to give the Town more leverage in securing DOT attention for upgrades to state roads.

Mr. Welsh stated that a Bike and Pedestrian Plan should give the Town better ratings when applying for grants.

Mr. Welsh stated that codifying the plan would allow the Planning Board to take the plan into consideration when reviewing Planning Board projects.

Mr. Welsh stated that a Bike and Pedestrian plan would promote opportunities for healthier outdoor activity, provide enhancement to hamlet/commercial environment, and increase safety.

Mr. Welsh stated that the draft came out of earlier work, including: grant proposals for Goldens Bridge and Cross River; a Safe Routes to School workshop done for the Cross River John Jay Campus area; documents contained in the Regional Sustainability Plan that was finished in the fall of 2013; and documents from the Transportation Subcommittee.

The proposed plan references a 2001 Bike and Pedestrian Plan contracted for Westchester and Orange Counties.

Mr. Welsh stated that the number one priority is to look at the hamlet centers and civic nodes. The goal is to enable individuals living within one mile of these areas to be able to walk to them.

Secondly, the plan would address inter-hamlet connections.

The third aspect of the plan is to address inter-municipal connections. This includes efforts between Lewisboro and Somers to make the abandoned Somers-to-Mahopac rail line accessible. This would provide a connection between Somers and Goldens Bridge, allowing Somers residents to commute to the Goldens Bridge train station. It would also provide Lewisboro residents with a connection to the North County bike trail.

Not yet included in the plan is the possibility of mountain bike trails in Brownell preserve, redoing the cross country trails, and possibly connecting to Mount Holly preserve.

Mr. Welsh asked the Planning Board what level of detail would be needed for the Bike and Pedestrian Plan. He also asked what level of involvement the Planning Board would like to have in the process.

Mr. Welsh stated that he would be asking other committees for their informal feedback.

Mr. Welsh stated his intent to organize three different community sessions: Goldens Bridge; Cross River; and Vista.

Mr. Kerner stated that consideration must be given to the fact that there will not be a significant change in the road networks or the widths of the roads. Safety must be considered.

Mr. Welsh responded that with regard to state roads, the most desired result should be presented, leaving room for negotiation, although the best result will most likely be an enhanced shoulder.

Mr. Tetelman suggested that connecting the High School and the Middle School complexes to the Cross River business center be a priority. He also suggested that the area around the Goldens Bridge train station also be a priority, making it easier for residents to walk to the train station.

Because wetland buffers will be involved, Mr. Tetelman suggested that those areas be identified as soon as possible so that the Planning Board aspect of the plan can be expedited.

Mr. Kerner pointed out that the Katonah sidewalk from Jay Street to the Katonah train station is a good example to follow. Mr. Welsh agreed that a similar sidewalk for the Goldens Bridge train station would be beneficial in terms of functionality and safety.

Mr. O'Donnell stated that when Complete Streets was discussed, the Planning Board had two main concerns: that it should be applied throughout the entire town, not just the in the nodes; and that Lewisboro should try to be in sync with other existing plans. The overriding principles involved in a plan become easier to see when comparing them to other projects.

Mr. Welsh stated that he felt it would be beneficial to get input from as many people as possible with regard to their opinions as to what would be best for their neighborhoods.

Mr. O'Donnell suggested that in addition to looking at commercial nodes, consideration be given to individuals who want to bike or walk to the library. Mr. Welsh noted that this was one of the nodes included.

Mr. Kerner acknowledged Mr. Welsh's perseverance in developing the Bike and Pedestrian Plan. Mr. Kerner also stated that the Planning Board would be willing to participate in a work session when the time comes.

Mr. Welsh stated that he would keep the Planning Board updated.

IV. PROJECT REVIEW

O-2 Living Realty Group, LLC (Yellow Monkey Village), 792 Route 35, Cross River, New York – Application for Waiver of Site Development Plan Procedures - Proposing a change of use and certain site modifications, all of which require a site plan approval. Cal# 11-13PB

Andrew Wynnyk, architect, was present on behalf of the applicant. Rosemary Devlin, owner, was also present.

Mr. Wynnyk stated that there is an existing site plan which was approved in 1978. The applicant provided an updated survey, as had been requested.

Mr. Wynnyk indicated that the property would remain a retail complex. No additional parking is required based on the uses.

Mr. Wynnyk stated that the applicant is trying to confirm that the uses are all retail, and legalize the uses.

Mr. O'Donnell pointed out that the 1978 Resolution (16-78PB) included a condition that required an annual lease renewal with New York City.

Mr. Sessions stated that in addition to the comments outlined in the Kellard Sessions memo dated January 22, 2014, the applicant should speak with Bibbo Associates regarding the proximity of the site and the proposed impervious surface to the reservoir and watercourse. There is reason to believe that the watercourse is a reservoir stem. However, Route 35 in this area is a designated Main Streets area, which means that the creation of an impervious surface within a limited distance is permitted if a Stormwater Pollution Prevention Plan (SWPPP) is prepared and approved.

Mr. Sessions stated that the proposed American Disabilities Act (ADA) parking spaces require asphalt. Mr. Kerner noted that these parking places are in a new location and it is a long way around to get to the ramp. Mr. Kerner suggested that the ramp be moved to the location of the loading space.

In response to Mr. O'Donnell, Ms. Devlin stated that juices are being prepared on the site for consumption on and off of the premises.

Ms. Devlin stated that the applicant has received WCDH approval for a new stormwater system. Mr. O'Donnell asked that this be reviewed by Mr. Sessions.

In response to Mr. O'Donnell, Mr. Sessions stated that behind the buildings, there was a concrete pad, and dumpster pad. There seem to be a few small structures between the building and the property line which are within the side yard or rear yard setback. There is a 15 foot setback. The building seems to be less than 15 feet from the setback, which could be a pre-existing non-conforming situation.

Mr. Wynnyk stated that the concrete pad was there when the owner purchased the property.

Mr. O'Donnell stated that after the items discussed have been clarified for Mr. Sessions, that the applicant should return to the Planning Board and ask that the public hearing be waived.

Mr. Kerner instructed Mr. Wynnyk to contact the Planning Board secretary for a copy of the 1978 Planning Board Resolution (16-78PB).

Mr. Sessions stated that there is a state wetland system just beyond the existing parking area. Any modifications to the parking area or disturbances within 100 feet require a state wetland permit. Mr. Wynnyk stated that Bibbo is in the process of researching this matter.

Mr. Sessions stated that clarification of the need for an impervious surface for the handicapped parking is needed. Creation of the impervious surface is probably within the wetland distance.

V. PUBLIC HEARING - Continuation

**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**

There were no objections to the advertisement of the public hearing. The Chairman asked whether anyone wanted the notice to be read. No one present responded affirmatively.

The public hearing resumed at 8:22 p.m.

Ms. Andersen recused herself as CAC Co-Chairperson, asking to reserve the right to speak as an individual.

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

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

Mr. Sirignano stated that he had submitted a letter to the Planning Board, dated January 22, 2014, addressing the issues raised at the November 19, 2013 Planning Board meeting (Attachment A). Mr. Sirignano did not read the letter during the meeting.

Mr. Sirignano acknowledged receipt of letters and emails received from residents subsequent to the November 2013 meeting.

Mr. Sirignano stated that a market analysis prepared by a licensed real estate broker had been submitted (Attachment B).

At the November 2013 meeting, Mr. Sirignano was asked if there had been any Planning Board approvals similar to the application of Mr. Petruccelli. In response, Mr. Sirignano submitted the following Planning Board resolutions: Joe Riina Development Corporation, Cal# 61-07WP; Terry and Michael Bocklet, Cal# 96-05WP; Anton Kola, Cal# 40-07WP; Robin and Jasmine Joseph, Cal# 1-04WP; Elide Building Corporation, Cal# 28-03WP; and 1st Taxing District of the City of Norwalk, Browns Reservoir Dam Rehabilitation, Cal# 7-10WP. Mr. Sirignano reviewed these resolutions. Copies of these resolutions are available upon request to the Planning Board Secretary.

In response to Mr. O'Donnell, Mr. Sirignano stated that of the resolutions submitted, those granted for construction of a new residence were the Riina, Joseph and Elide resolutions.

Mr. Sirignano reviewed Section 217-5 of the Code of the Town of Lewisboro, stating his opinion that under the code, Mr. Petruccelli's application is not a prohibited activity. Mr. Sirignano further stated that under Section 217-5D(1)(e), the application is listed as a permitted activity which can be approved by the Planning Board.

Mr. Marino summarized what was discussed at the November 19, 2013 meeting. A history of the wetland on the property was discussed. The 1966 aerial photo of the property shows that there was not a wetland on the property. The construction of berms created an impoundment and over time, and a wetland developed on the site, which is shown on the 1976 aerial photo.

Mr. Marino stated that the entire parcel is located on a wetland or wetland buffer. In response, modifications to the plan have been made, and a comprehensive mitigation plan is being proposed to offset any impacts that will occur.

Mr. Marino stated that the entire house is outside of the wetland. There is some wetland disturbance related to grading and clearing in the back, in order to have a backyard behind the dwelling. However, it still functions as a drainage way. Grading will be done to allow water to continue to flow, however it will no longer be wetland.

The entire wetland on the site is approximately 7,700 square feet, and is not regulated by the NYS DEC or Army Core of Engineers (ACOE).

As part of the overall plan, approximately 2,200 square feet of the wetland will be filled. Proposed mitigation includes: wetland enhancement, restoration, and creation; a conservation easement on the western part of the property; replanting of the area where the septic system will go; and drainage improvements on the site. This results in a 1:1 mitigation ratio for the property.

Mr. Marino submitted an aerial photo, on which he had superimposed the location of the proposed dwelling, in order to compare the location of the proposed house to existing homes. The house being proposed is located 300-350 feet from the lake. There are currently a number of houses located on the lake, in the lake, or within 20-30 feet of the lake.

Mr. Marino stated that there is a NYS DEC wetland between the house and the lake. Any additional runoff will filter through the NYS DEC wetland. There is an NYS DEC permit in place for the septic system.

In response to Mr. O'Donnell, Mr. Sirignano stated that the significance of the berm being man-made is that it shows a pre-existing condition to Mr. Petruccelli's ownership of the property, and that Mr. Petruccelli did not create his own hardship. Mr. Marino stated that what is being proposed will not have a long-term impact on the function and benefits of a wetland.

In response to Mr. O'Donnell, Mr. Marino stated that with regard to the Three Lakes property to the south, the work being proposed by applicant will be approximately 300 – 400 feet from where the stream crosses under the road, connecting the two lakes.

There were no further questions from the Board.

Mr. Kerner opened discussion to the public.

David Wright, Esq., represented the Three Lakes Council. Mr. Wright summarized his letter dated January 28, 2014, which he submitted to the Board (Attachment C). Topics addressed in this letter include: "Nature of this Application"; "Lack of Mitigation"; "Not every lot is buildable"; "There is no hardship"; "What is the quantity of wetland that is to be destroyed?"; "What is the importance of this wetland?"; "Standard to guide permit issuance"; "Some additional observations about water source(s)"; "Our Appeal to ZBA"; "This Board's independent duty of review"; and "The Board should consider precedent".

Mr. Wright stated that, in his opinion, the proposed site is unable to be developed.

Mr. Wright stated that the Lewisboro Town Code strives for a "no net loss policy". If a wetland or wetland buffer is destroyed, it must be replaced.

Mr. Wright disputed the mitigation proposed by the applicant (see Attachment C). With regard to “Wetlands Enhancement – Area #2”, Mr. Wright stated that the applicant has not identified the source of the water. It has been suggested that the water in the wetland is from the pipe from the neighboring Rosenbaum property. However, there is no science behind this claim, only opinion. No hydrology reports have been submitted. There is no way to know if a newly constructed/enhanced wetland will function properly if the source of the water is unknown.

With regard to hardship, Mr. Wright stated that the Three Lakes Council has offered, in writing, to purchase the land from Mr. Petruccelli for \$10,000 (Attachment D). This is an irrevocable offer which will remain open for 60 days (from January 28, 2014).

Mr. Wright submitted photographs as evidence that the delineated wetland has shifted over time. These photographs are included in Attachment C.

Mr. Wright stated that the Three Lakes Council has filed an appeal to the Zoning Board (Attachment E).

Mr. Wright cited Walsh v. Spadaccia, 73 Misc.2d 666, 343 N.Y.S.2d (S. Ct. Westch. Co. 1973) – Attachment F.

Lenny Meyerson, Consulting Engineer for Three Lakes Council, addressed the Board.

Mr. Meyerson reviewed his memo, Petruccelli Site Development Proposal, which includes the following topics: Eutrophication; Wetlands; Mitigation; Engineering Questions; and Credentials (Attachment G).

Mr. Meyerson stated his opinion that there are parcels near the lake that, under today’s regulations, would not be approved.

Mr. Meyerson discussed eutrophication, stating that man is the greatest contributor of nutrients and phosphorous to the lake. When phosphorous is added beyond the threshold of what the plants can use, it becomes detrimental to the lake. This is what is occurring in Lake Waccabuc, causing the lake to be stressed.

Mr. Meyerson submitted the document, “Limnology Indicators on Lake Waccabuc” (Attachment H), which contains graphs created by using data from the Citizens Lake Statewide Assessment Program. These graphs show what is happening to phosphorous on Lake Waccabuc. There is an upward trend in phosphorous loading. The graphs also include data regarding the rising water temperatures in Lake Waccabuc. Eutrophication is affected by rising water temperatures. The graph shows water temperatures rising between 1985 and 2012. Eutrophication is biochemical. Biochemical reactions are more sustained and more severe as water temperatures rise.

Mr. Myerson stated that when he had gone to the lot, it was covered with snow. Mr. Myerson viewed photos that had been given to him by neighbors of Mr. Petruccelli. From these photos, he could see that the lot was wet at different times of the year. The photos also showed the pipe coming from the Rosenbaum property. It is the opinion of Mr. Meyerson that the pipe contributed to, but was not the cause of the water on Mr. Petruccelli’s property.

Mr. Meyerson stated his opinion that the wetland on Mr. Petruccelli’s property is not a segmented wetland area. From Mr. Meyerson’s experience, wetlands are connected. With regard to this wetland; there is a wet area between the road and the lake; other neighbors experience wet basements; the site abuts a NYS DEC buffer.

It is Mr. Meyerson’s opinion that mitigation on Mr. Petruccelli’s lot would be difficult.

Mr. Meyerson stated that man cannot replicate what naturally occurs in nature. Man-made wetlands require a lot of surface area.

Mr. Meyerson reviewed the "Mitigation" and "Engineering Question" portion his memo.

Peter Gross, 54 Twin Lakes Road, South Salem, Vice President, Three Lakes Council, and board member of the Two Lake Club, addressed the Board. Mr. Gross paraphrased the memo which he submitted to the Board (Attachment I).

Janet Andersen, 5 Orchard Drive, South Salem, addressed the Board. Ms. Andersen read her memo dated January 28, 2014 (Attachment J). Ms. Andersen submitted the document, "Rudolph Petruccelli – Tax Payment History – Osaleta Road" (Attachment K). Ms. Andersen submitted, and reviewed, the maps, "Residential Vacant Lands in Lewisboro near Three Lakes" (Attachment L), and "Petruccelli Local Wetland Areas" (Attachment M).

Charles Mason, 26 South Shore Drive, South Salem, attorney for the South Shore Waccabuc Association, addressed the Board. Mr. Mason stated that he has a summer home on Lake Waccabuc. Mr. Mason stated his concerns regarding the quality of the water, and the septic system leaching into the lake. Mr. Mason stated that much of what he was going to discuss had been covered by Mr. Wright and Mr. Meyerson. Mr. Mason has served on the Town of Mamaroneck Planning Board, CAC and other committees. Mr. Mason stated that he is surprised that Mr. Petruccelli's application has gotten this far in the Planning Board process.

George Peterkin, 5 South Shore Drive, South Salem, President, South Shore Waccabuc Association, addressed the Board. Mr. Peterkin stated that he is representing 30 homeowners who oppose the project proposed by Mr. Petruccelli. These 30 homeowners have a "heritage" investment. Many of these homeowners are third and fourth generation owners of their properties, and have lived on the property for their entire lives. Approval of Mr. Petruccelli's application is viewed as "the starting point". These homeowners are concerned that what occurred on Peach Lake in North Salem will occur on Lake Waccabuc.

Elaine Vlachos read the email dated January 18, 2014 that she had sent to the Planning Board (Attachment N).

Mr. Kerner stated that he respects Ms. Vlachos, but objects to the implication of favoritism in the opening of her email. The application of Mr. Petruccelli is still an open issue, in the process of a public hearing. Mr. Kerner stated that the Planning Board is a fair-minded Board, and that there is no favoritism or special treatment being given.

Ms. Vlachos stated that she is in agreement with Mr. Mason's opinion that the application should have been rejected out of hand.

Paul Lewis, 44 Twin Lakes Road, South Salem, member of the Three Lakes Council, addressed the Board. Mr. Lewis read his memo dated January 28, 2014 (Attachment O).

Jean Lewis read the letter submitted by Lee Blum, Cove Road, South Salem (Attachment P)

Peter Beardsley, 6 Waterview Court, South Salem, addressed the Board. Mr. Beardsley stated that he has lived on Lake Waccabuc since 1950. He has served as an officer of the Lake Waccabuc Association, President and Treasurer of the Three Lakes Council, Chairman and member of the CAC, and President of the Planning Board. Mr. Beardsley stated that his house is on Lake Waccabuc, and sits higher than his neighbors.

Mr. Beardsley stated that there are a number of houses on Lake Waccabuc that are much closer to the Lake than the proposed house of Mr. Petruccelli. When looking at an atlas, all of the houses on the lake have been there since approximately 1929 – 1931. Owners of these homes know that they have a responsibility to maintain water quality.

Mr. Beardsley stated that he has submitted written comment in the past. Mr. Beardsley stated that the area has experienced extremes in weather and rainfall. When heavy rain occurs, the water level in Lake Waccabuc can rise by as much as two feet to 30 inches. When this happens, flooding occurs. Many of the homes that are low in relation to the lake level have sump pumps, knowing that their basements will be flooded. Septic systems that are approvable and functional have a likelihood of failing during heavy rains.

Mr. Beardsley stated that many of the houses on the lake that were built in the 1920's and 1930's, prior to zoning and wetlands ordinances would not be approved today. Mr. Beardsley acknowledged that many of the lakefront houses draw water from the lake and have filtration systems. Mr. Beardsley stated that any intrusion on the wetland and wetland buffer impacts all of the residents of the lake community.

Mr. Beardsley stated that based on the denial of the Eastbrook application thirty years ago, it is his opinion that there is no rational basis to approve the application of Mr. Petruccelli.

Mike Gordon, 37 Twin Lakes Road, South Salem, addressed the Board. Mr. Gordon stated that he also owns a home at 47 South Shore Drive, South Salem. Mr. Gordon stated that he shares the concerns of the individuals who spoke before him. Mr. Gordon stated that the applicant has clearly acknowledged that the burden of proof with respect to showing no net impact sits with the applicant. In the opinion of Mr. Gordon, that burden of proof has not been met.

Joe Tansey, 61 Knapp Road, South Salem, addressed the Board. Mr. Tansey's property is adjacent to the wetland from the Oscaleta side. Mr. Tansey stated his opinion that the wetland is actually swamp area. Mr. Tansey referenced his letter dated January 28, 2014 (Attachment Q). It is the opinion of Mr. Tansey that the wetland is under siege.

In response to Mr. O'Donnell, Mr. Tansey stated that the swamp includes part of the area owned by Twin Lakes. Mr. Tansey stated that the swamp area is the area between Oscaleta and Waccabuc, the widest area being about ¼ mile.

Mr. O'Donnell asked how far north the area being referred to as swampland extends from the canal. Mr. Kerner asked Mr. Tansey to illustrate on the photo submitted by Mr. Marino the area in question. (The photo marked by Mr. Tansey is in the Planning Board file.)

In response to Mr. Kerner, Mr. Tansey stated that he did not know why there has been a significant reduction in aquatic insects, reptiles, as stated in his letter. It was the opinion of Mr. Tansey that disturbance of the wetland or wetland buffer would result in irreparable damage.

John Lemke, 5 Shady Glen Court, South Salem, Officer, Lake Waccabuc Association, addressed the Board. Mr. Lemke stated that he is in agreement with the comments made by Mr. Beardsley and Mr. Gross. Mr. Lemke stated that most of the 15 to 20 homes that draw water from the lake are members of the Lake Waccabuc Association and are opposed to the approval of Mr. Petruccelli's application.

Allan Gottlieb paraphrased the letter submitted by Brittany Serra, President, Two Lakes Club(Attachment R).

Fred Cowles, 111 Oscaleta Road, South Salem, submitted a letter for the record (Attachment S).

Mr. Sirignano stated that there was much reference to the adjacent lot to the south, and the prior application (Eastbrook) that was denied. There are NYS DEC wetlands on that lot. There are no NYS DEC regulated wetlands on Mr. Petruccelli's property.

Mr. Sirignano stated that, because the applicant is not proposing to build a house on or near the shoreline of Lake Waccabuc, many of the comments made are irrelevant. Mr. Sirignano stated that there was no testimony that the state-of-the-art septic system being proposed by the applicant will have any impact the waters of Lake Waccabuc. There has been no scientific testimony that there is any defect in the design of the septic system.

In response to Mr. Kerner's question regarding the validity of the science of the hydrology, Mr. Marino responded that it was never stated that the sole source of water on the property was coming from the pipe to the north. The applicant acknowledged that there is a watershed that drains down, and that the wetland was formed when the berm was created, stopping the natural flow of water entering the site. No science to dispute this fact was submitted. The site is full of invasive species and mosquitoes. It is not functioning as a wetland with any significant benefit. The applicant is not disputing the importance of the wetlands around Lake Waccabuc, however, the pocket of wetland to be impacted is not located around Lake Waccabuc. It is an isolated pocket trapped by two berms on the west and southern side. Mr. Marino asked that the two wetland systems be distinguished. Mr. Marino stated that the applicant would work with the Three Lakes Council to remove the berm and restore the flow of water, as part of the mitigation.

In response to Mr. O'Donnell, Mr. Sirignano stated that all additional mitigation agreeable to the applicant is stated in Mr. Sirignano's letter dated January 22, 2014.

In response to Mr. O'Donnell, Mr. Marino stated that he disagrees with opinions that the water coming from the Rosenbaum pipe is not a significant issue with regard to this application. Mr. Marino stated that water is being pumped from the pipe onto Mr. Petruccelli's property. Mr. Marino was unable to quantify the amount of water.

Mr. O'Donnell asked, in the absence of the pipe, if the water would still end up on Mr. Petruccelli's property. Mr. Marino responded that the water would go into Mr. Rosenbaum's basement. Should the basement overflow, the water would flow in the same direction that the pipe is now flowing.

Mr. O'Donnell asked if there is any official documentation as to the number of people who actually get their drinking water from Lake Waccabuc.

Ms. Andersen responded that a survey of 350 residents in the area was done in 2005. 187 people responded to the survey, approximately 51%. Of those responses, 17 people indicated that they source their water from the lake. Care was taken to avoid duplicate responses.

In response to Mr. O'Donnell, Ms. Andersen stated that it was not asked if the individuals getting their drinking water from the lake used any type of treatment before drinking. Ms. Andersen stated that people with lake rights are considered part of the "community". All of the 17 responses were from individuals on Lake Waccabuc. Ms. Andersen stated that she is not aware of any more current data.

Mr. Beardsley stated that anyone who drinks water from the lake has a filtration system.

Mr. O'Donnell asked, when reviewing applications, if the State or Department of Health considers: whether a lake nearby is a source of drinking water; and if there is any evaluation done with regard to the drinking water capacity or quality in lakes such as Lake Waccabuc.

Mr. Meyerson responded that this is the case if there is a surface discharge. When there are septic systems and subsurface discharge, it is not relevant. A lake that has drinking water would be classified as a Class A water body and would have to meet more stringent standards under water quality regulations. In a lake community which has septic systems, the WCDH would use the standard evaluation as to whether the septic system meets WCDH standards.

Mr. Marino stated that the approval received by Mr. Petruccelli was based on a Class 1 wetland.

In response to Mr. O'Donnell, Mr. Meyerson stated that the WCDH does not consider the fact that there might be a drinking water supply nearby when going through the septic approval process.

Mr. Meyerson stated that nutrient removal is not a consideration when going through the septic approval process. The WCDH wants to be sure that there is proper soil distance from water so that there is attenuation in the soils.

Mr. Marino stated that phosphorous is the nutrient of concern with regard to fresh water. With regard to septic, nitrogen is the nutrient of concern.

Mr. Kerner stated that there is recreational motor boating on the lake, and questioned whether this has any adverse effect on the lake, drinking water and environment. Mr. Meyerson stated that it would be wise not to have motorboat traffic.

Ms. Andersen stated that the Town Lake Management Plan that was completed in 2009 indicated that septic systems were the source of phosphorous that was harming the lakes. Their major recommendations were twofold: look into the possibility of sewerage; do not put any new septic systems within 100 meters of a watercourse, wetland that communicates with the lake. There is a NYS DEC wetland on the edge of the property that communicates with Lake Waccabuc.

Mr. O'Donnell asked if the Town Lake Management Plan, the Three Lakes Management Plan, and/or the Town Lake Committee Plan were ever adopted by the Lewisboro government.

Ms. Andersen responded that the Town Lake Management Plan had not been adopted by the Town. The Town or municipality has no involvement with the Three Lakes Management Plan. Ms. Andersen was not familiar with the Town Lake Committee Plan.

Mr. Beardsley stated that he has no knowledge of adoption of these plans by the town.

Mr. Sirignano had no comment as to the relevance of the plans, or as to whether they had been adopted.

Mr. O'Donnell asked if anyone possessed documented proof as to when the wetland was first mapped or indexed. Mr. Lewis responded that this could have taken place around 1973. Mr. O'Donnell asked that Mr. Lewis provide to the Planning Board Secretary any information that he has for circulation to the Board.

Ms. Andersen stated her belief that one of the documents (a Topography map) submitted by the applicant had a 1945/1947 topography map that showed that there was a wetland on a portion of the property, at least covering what is currently the NYS DEC wetland.

Mr. Praga stated that there is no vehicle to leave a public hearing open solely to submissions.

Mr. Sirignano stated that the wetland delineations on the plans were confirmed by Mary Jaehnig, then by Steve Marino, and the Town Consultant, leaving no question as to the accuracy of the locally regulated small wetland.

Mr. Kerner stated that an inadvertent error may have occurred, as pointed out by Ms. Andersen with regard to the omission of the flags in 2012.

Mr. Praga suggested that Mr. Sirignano confirm with the applicant's surveyor the reason for the absence of the flags.

Mr. Petruccelli stated that when the surveyor went to the property, the flags were not there. The map currently before the Planning Board is certified not only by Mr. Petruccelli's consultant, but by the Town Consultant as well.

Mr. Sessions confirmed that the location of the flags accurately represented the location of the wetlands in the field. What has not been confirmed, and cannot be confirmed, is the accuracy of the surveyor. It is the responsibility of the surveyor to accurately transfer the information to the survey.

Mr. Sirignano stated that the surveyor signed and sealed the survey. This is prima facie evidence as to his accuracy.

On a motion by Mr. Goett, seconded by Mr. LaSorsa, the Public Hearing of 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 was adjourned to February 25, 2014.

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

Abstain: Mr. Tetelman

Mr. Tetelman resumed his position at the podium.

VI. DISCUSSION

South Salem Fire District, Dry Hydrant, Veccarro, 5 Ponds Road

Mike Lombardi, South Salem Fire Department, was present.

Mr. Lombardi reviewed the application.

Mr. Lombardi confirmed that permission from the property owner had been received.

Mr. Praga reviewed the documentation provided by the South Salem Fire Department. All was in order. The Board determined that the proposed action would be handled administratively by the Town Wetland Inspector.

Rui Ferreira Oliveira, 8 Brookside Trail, South Salem – Application for Wetland Activity Permit Approval to install retaining wall, landscaping walls and drywell – Cal. #'s 25-12 WP/1-10 WV

Mr. Sessions stated that the project has not been completed to date. The weather is now an issue. Mr. Sessions estimated the project to be 75% complete.

In response to Mr. Tetelman, Mr. Oliveira stated that only rocks and top soil remain on his property.

Mr. Kerner stated that should an extension be given, the next step beyond the extension would be Civil Court.

Mr. O'Donnell stated that Mr. Oliveira is currently not in compliance with the terms of the Planning Board resolution.

On a motion made by Mr. O'Donnell, seconded by Mr. Goett, Mr. Oliveira was instructed to complete all physical construction by April 1, 2015, complete all seeding by April 15, 2014, and complete vegetation and stabilization by May 30, 2014.

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

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

In response to Mr. Sessions, Mr. O'Donnell stated that the date of the benchmark report to be submitted by Mr. Oliveira be left to Mr. Sessions' discretion.

VII. MINUTES OF December 17, 2013

On a motion made by Tetelman seconded by Mr. Goett, the minutes of December 17, 2013 were adopted.

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

VIII. ADJOURNMENT

On a motion made by Tetelman seconded by Mr. LaSorsa, the meeting was adjourned at 10:56 p.m.

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

Respectfully submitted,



Lisa M. Pisera
Planning Board Secretary