

Meeting of the Planning Board of the Town of Lewisboro held at the Town House, 11 Main Street, South Salem, New York on Tuesday April 14, 2009 at 7:30 P.M.

Present: P.J. Rossi, Chairman
Joseph Decaminada
John Gusmano
Richard Ellrodt
Maureen Maguire
Jan Johannessen, Kellard-Sessions Consulting, Planning Consultant
Ryan Coyne, Kellard-Sessions Consulting, Town Consulting Engineer
Bruce Barber, Interim Wetland Inspector
Lawrence Praga, Esq., Planning Board Counsel
Margaret Clark, Esq. Special Counsel
Janet Andersen, CAC Chairwoman
Aimee Hodges, Planning Board Secretary

The Chairman called the meeting to order at 7:30 P.M. and introduced the Board and its consultants.

I. REQUEST FOR EXTENSION OF TIME

Boniello Land & Realty, Ltd., “Falcon Ridge Subdivision” – Cal. #5-01 P.B.

Gus Boniello was present.

Mr. Rossi acknowledged receipt of the March 11, 2009 request of Henry Hocherman for an additional six month extension of time to complete the conditions of the Planning Board’s resolution granting Preliminary Subdivision Plat Approval dated July 10, 2007.

Mr. Boniello advised that a memorandum of agreement from the ACOE has been signed had been sent to the NYSDEC and is now waiting to be signed by an Indian Tribe. He believed that this would finish the process.

Mr. Decaminada expressed concern that six months may not be sufficient given the magnitude of the project and the state of the economy. The Board agreed to grant an extension to December 1, 2009.

On a motion made by Mr. Decaminada, seconded by Mr. Ellrodt the Board granted an extension of time to complete the conditions of the Planning Board’s resolution dated July 10, 2007 to December 1, 2009.

Vote: Yes: Decaminada, Rossi, Ellrodt, Maguire
Abstain: Gusmano

II. PUBLIC HEARING

The Chairman reviewed the public hearing procedures. There were no objection to the time or place of the public hearing and there were requests to have the notices of the public hearing read aloud.

**Terence F. & Cynthia M. McNamara, 59 East Street, South Salem, New York -
Application for Wetland Activity Permit Approval to permit the construction of a two
story addition to an existing single family residence, driveway improvements,**

stormwater improvements, mitigation plantings and associated site improvements within the 150 foot wetland adjacent area – Cal. #33-08 W.P. (Reconvened)

Terence McNamara was present.

Mr. McNamara briefly reviewed the proposal and advised that the NYSDEC Article 24 permit had been received. Mr. McNamara advised that the DEC had approved the exact plan that had been reviewed by this Board.

Mr. Barber noted that receipt of the NYSDEC permit was the only remaining requirement.

On a motion made by Mr. Gusmano, seconded by Ms. Maguire the public hearing was closed.

Vote: Yes: Decaminada, Gusmano, Rossi, Ellrodt, Maguire

Mr. Barber was directed to prepare a resolution for the April 28, 2009 agenda.

Anton Kola, 230 Spring Street, South Salem – Application for Wetland Activity Permit Approval for the renovations and expansions of an existing residence, relocation of the driveway, demolition of an existing accessory building and associated site improvements within the wetland regulated adjacent area – Cal. #40-07 W.P. (Reconvened)

Anton Kola was present with his attorney Michael Sirignano, Esq. and environmental consultant Paul Jaehnig.

Mr. Sirignano advised that after receiving letters from two different departments within the NYCDEP the Board adjourned the public hearing. The NYCDEP reversed their decision with regard to the abandonment of the septic system as evidenced by their March 5, 2009 letter. The plan before the Board this evening incorporated the NYCDEP's comments. The NYCDEP in their April 10, 2009 correspondence indicated that they had no further comments. He advised that he had prepared and submitted a Declaration of Restrictions. In addition, after speaking with the Tax Assessor, Lise Robertson, he has prepared a letter requesting the merger of the tax parcels.

Mr. Jaehnig reviewed the displayed site plan advising that the notes requested by Mr. Barber had been added. The details requested by the NYCDEP have been included as well. The surveyor is preparing a survey with the deed restricted area.

Mr. Coyne reviewed his memo to the Board dated April 9, 2009 and advised that the stormwater calculations were in order. He suggested that the applicant shift a drywell as it is proposed close to an existing tree and appears to be located within the septic expansion area.

Mr. Barber reviewed his memo to the Board dated March 29, 2009 and asked that the Building Inspector review the current set of plans.

Mr. Sirignano advised that the architect had met with the Building Inspector. Mr. Rossi asked for confirmation from the Building Inspector that he had in fact reviewed the current plans.

Mr. Decaminada noted that the applicant was being required to install water saving fixtures and questioned the percentage of savings.

Mr. Barber advised that the fixtures vary in terms of their efficiency in reducing water consumption. The goal for this requirement is reducing the amount of wastewater into the septic system. Although the fixtures may cost more; in the long term they reduce the wear and tear on the septic system.

Noting that the Town has received correspondence from a neighbor with respect to the appearance of the site, Mr. Rossi questioned what could be done at this juncture to alleviate the "eyesore".

Mr. Sirignano advised that Mr. Kola was still operating under a Stop Work Order and would be happy to do some clean up.

Mr. Barber noted that previously the Planning Board had authorized Mr. Kola the ability to clean the site and suggested that he contact Mr. Barber on Friday to confirm what he is able to do.

In response to a question of Mr. Rossi, Mr. Praga advised that the public hearing could be closed without his signing off on his review of the legal documents as there could not be a signature on the plans until the legal documents are approved.

On a motion made by Ms. Maguire, seconded by Mr. Gusmano the public hearing was closed.

Vote: Yes: Decaminada, Gusmano, Rossi, Ellrodt, Maguire

Mr. Barber was asked to prepare a draft resolution for the April 28, 2009 agenda if confirmation is received from the Building Inspector and the legal documents are in proper order to be filed in the Westchester County Clerk's office.

III. SKETCH PLAN REVIEW

Albert & Claudia Boera, 12 Old Oscaleta Road, South Salem – Application for Wetland Activity Permit Approval – Cal. #88-08 W.P.

Albert Boera was present with his engineer, Vincent Massaro, PE.

Mr. Massaro displayed the proposed plan which addressed the comments prepared for the January 28, 2009 agenda. He advised that the accessory apartment addition including the additional parking and driveway increases the impervious surface 1294 SF. The proposed stormwater treatment structures will treat the total impervious surface area of 2350 SF at a three inch rain. He provided his calculations. He advised that all proposed activity is within the wetland buffer.

Mr. Barber reviewed his memo to the Board dated March 29, 2009 and advised that the plans addressed a tremendous number of his previous comments. He noted that he had spoken with the applicant about providing a buffer mitigation plan. He advised that he would like to see an architectural plan set and suggested that the Board consider a site visit.

Mr. Coyne reviewed his memo to the Board dated April 9, 2009 and suggested that the applicant perform soil testing in the proposed infiltrator area. He suggested moving the trench closer to the

road so that the entire driveway surface would be treated. In addition he suggested adding an overflow to the infiltration system.

Ms. Andersen reviewed the April 10, 2009 memo prepared by the Conservation Advisory Council. She suggested that the Planning Board consider the requirement for low flow fixtures given that the proposed septic system is located within the wetland buffer.

Mr. Gusmano questioned why the proposed septic system required bank run.

Mr. Massaro advised that he did not design the septic system but believed that it was required to be filled in.

Mr. Barber advised that typically bank run is required when you encounter ground water or ledge.

Mr. Rossi questioned whether the Board could schedule a site visit for this Saturday. The applicant was asked to stake out the corners of the proposed structure as well as the limits of disturbance.

Mr. Barber advised that either he or the Town Engineer may chose to witness the test holes being dug and requested that Mr. Massaro contact the Planning Board office to advise when this activity would be taking place. He further advised that this activity would require an administrative wetland activity permit.

The Secretary was directed to prepare the public hearing notice for May 12, 2009. If after the site walk it is determined that more information is required the Board can adjourn the public hearing.

IV. DISCUSSION

Thistlewaithe Learning Center, (Salem Properties, Inc., owner of record), 1340 Route 35 (Hayloft Motel), South Salem

Patrick Brennan was present representing the applicant.

Mr. Rossi advised that at the March 10, 2009 meeting the Supervisor had made him aware that he had received a phone call from the owner, Maria Fitzgerald who had some concerns and questions. As a result, the Board discussed the matter and asked that the Town's consultants meet with the representatives of Thistlewaithe to determine what these concerns and questions were. A meeting was held; the purpose of the discussion this evening is to advise the Board as to what is being asked for in terms of modifying the approved site plan.

Mr. Johannessen advised that he along with Mr. Barber met with Mr. Brennan and Ms. Fitzgerald on April 3rd and discussed a number of amendments to the approved plan. A list of these proposed amendments had been sent to the Planning Board office. He advised that the construction sequence had been driven by the NYCDEP and NYSDEC; any changes would require the applicant to receive approval from those agencies as well as the Planning Board. In addition the construction sequence is also a portion of the SWPPP.

In response to a question of Mr. Decaminada, Mr. Coyne advised that typically the construction sequence requires a significant portion of the site work be completed prior to working on the building. Mr. Johannessen advised that it is typical to work on the building and site at the same time.

Mr. Rossi advised that he would not be opposed to any changes given that the applicant has received the approval from the agency that required the sequencing that was approved.

Mr. Barber advised that the NYCDEP likes to see all of the temporary erosion controls installed prior to any disturbance. Mr. Barber advised that the Notice of Intent was approved by the NYSDEC prior to the NYCDEP making changes to the plans. In speaking with both agencies today, the NYSDEC is requesting the applicant to provide a letter indicating the final revision dates of the plans and SWPPP document. The schedule A of the NYCDEP approval cites older revision dates. NYSDEC requests one of two things; an opportunity to review the modifications made to the SWPPP or in lieu of this, the Town signing off on the SWPPP Acceptance Form.

Mr. Rossi advised that the last e-mail he received advised that the applicant is not requesting any changes.

Mr. Brennan advised that the meeting was constructive to help explore ways to decrease the cost of the construction. After the meeting both he and his client were not sure that they wished to pursue any of the changes because of the time and cost involved. At this time, the applicant is not asking for any changes to the approved plan and would like to proceed as approved. He advised that they would like to receive a building permit and advised that he was surprised that anything further was needed to be done with NYSDEC as he believed the planning process had been completed. He noted that there are four conditions within the resolution that need to be met for the issuance of the Building Permit.

Mr. Praga noted that the resolution required that the building permit, wetland activity permit and stormwater permit be issued prior to the commencement of any construction activity. The issuance of the building permit alone would not do anything for the applicant because it is just a piece of paper on its way to expiration without the issuance of the other two permits.

Mr. Brennan advised that the benefit is moving the process through the building and bidding process and reducing some of the risk to the property owner.

Mr. Barber advised that the issuance of the implementation permits is pending all the formalities with respect to the NYCDEP and NYSDEC. He suggested that the Town's consultants provide some further assistance to the applicant's consultants. At this juncture, the best thing for the applicant to do is to contact John Drake of the NYCDEP and Natalie Browne of the NYSDEC. He advised that Tom Altermatt, PE signed off on the SWPPP in December 2008. The easiest path is for the applicant to take care of the needs of the NYCDEP. He advised that he would speak to Tom Altermatt noting that it did not seem on the surface that there would be an aversion on the part of the municipality of signing the acceptance form. He noted that it has been this Board's policy to satisfy all of the other outside agencies.

Mr. Rossi suggested that if the applicant deems that any changes are necessary that a letter is sent immediately to the Planning Board office.

Mr. Brennan advised that the Building Inspector does not want to issue the building permit until someone from the Planning Board advises that the applicant had met all conditions of the Planning Board resolution. It was noted that this is unusual. Mr. Brennan questioned how he would know if the conditions of the resolution had been met.

Mr. Johannessen advised that Mr. Barrett attended the April 3rd meeting; they discussed typical Planning Board resolutions where there are conditions that have to be met prior to the issuance of the building permit, during construction and prior to the issuance of the Certificate of Occupancy. They discussed the outstanding conditions that remained prior to the issuance of the permits. He suggested that we provide a copy of the signed SWPPP Acceptance Form.

It was noted that although the Stormwater Pollution Prevention Plan was signed by Mr. Altermatt, it was not signed by the Chairman or the Secretary. Mr. Rossi indicated that he would sign as soon as possible. It was noted that prior to signing the document that the Town would need verification that the NYSDEC and NYCDEP had signed off on the most recent modifications.

Mr. Rossi advised that ultimately it is the decision of the Building Inspector whether or not to issue the Building Permit. He can if he would like discuss with the Town's consultants whether or not the conditions of the resolution have been met.

Lake Kitchawan Association, P. O. Box 261, South Salem

Paul Gallagher, representing the Lake Kitchawan Association and a member of the Lewisboro Lake Committee and Lake Kitchawan Conservation Committee was present. He advised that the Conservation Committee represented property owners in both Lewisboro and Pound Ridge who have lake rights to Lake Kitchawan.

Mr. Barber advised that he had talked with Mr. Gallagher in early April regarding the request to implement the lake management program by use of aquatic herbicides to control milfoil. To his knowledge and confirmed by Mr. Gallagher, there are zero homes who obtain their drinking water from the lake. Similar to the Lake Waccabuc application, this lake is also located within the oblong and it is not known who owns the lake bottom.

Mr. Gallagher advised that there are 14 adjacent property owners in Lewisboro and approximately 14 in Pound Ridge. He further advised that the Water Control Commission in Pound Ridge is reviewing this application next week.

Mr. Rossi advised that the two processes should be dovetailed. He requested that whatever was received by Pound Ridge be submitted to this Board.

Mr. Gallagher advised that the access they would be using to apply the herbicides would be through property owned by the Lake Kitchawan Association.

Mr. Praga advised that authorization would be required by LKA to access the lake. In addition authorization would be needed from the abutting property owners similar to what was required for the Three Lakes Council.

Mr. Gallagher advised that the LKA Board voted to approve the use of herbicides and a letter had been sent to every homeowner. They have not asked specifically for the permission of every homeowner. Two of the abutting homeowners live in Bishop Park and are not a part of LKA; one is a member of the Lake Kitchawan Conservation Committee. There are also Lewisboro residents on Cross Pond Road, two of which are on the Lake Kitchawan Conservation Committee. The one objection sent to the NYSDEC expressed concern that property taxes would go up. He advised that this process is being funded privately. He advised that the hope was to begin treatment in the end of May.

Mr. Barber questioned whether this application should be handled administratively or by the Planning Board.

The Board discussed that in theory they were okay with an administrative permit. There were concerns with the legal requirements; it was noted that the Board was able to work through all of the concerns that arose with the Three Lakes application. The Board also expressed concern with the ability to notify the public of the application.

Mr. Gallagher advised that he shared the concern that a precedent is being set in that year after year people may wish to treat the lake with herbicides. He advised that it is extremely important that the study is followed which states that this method is only for the initial treatment of the invasives and is not recommended as a long term solution for aquatic plants. He advised that he would provide the study in its entirety to Mr. Barber.

V. TOWN BOARD REFERRAL

Request to examine amendments to Chapter 217 Wetlands & Watercourse Law for recommendation to Town Board

Also present for this discussion were R. E. Hagele and Margaret Clark, Esq. Town Councilman Dan Welsh joined the meeting at 9:30 P.M.

Mr. Rossi read into the record the Town Board's resolution dated February 28, 2008 directing the Planning Board to begin the process of examining amendments to the Town's Wetland Ordinance for recommendation to the Town Board. He advised that the Planning Board created an ad hoc committee to study the issues with the goal to create a committee whose members also represented property owners who had applied to conduct construction projects requiring a wetland activity permit. The ad hoc committee was comprised of the following members: P. J. Rossi, Planning Board, Janet Andersen, CAC Chairwoman, Bruce Barber, Wetland Consultant, Maureen Maguire, Planning Board, Ed Brancati, Town Board Representative, R.E. Hagele, architect, Tim Cronin, PE Cronin Engineering. The Planning Board Secretary was present not as a member but as a professional reference and with historical perspective.

Mr. Barber advised that the goals of the committee were to provide clarification of definitions, provide additional permitting tools to streamline the permitting process while ensuring there was no diminution in the environmental protection that now exists. He reviewed some examples of some of the definition changes. He advised that the permitting aspect had been modified to create tiers or levels of permits based on threshold of activity.

Mr. Rossi advised that the proposed amendments had been reviewed by both Mr. Praga and Ms. Clark. He further advised that these changes were recommendations and a tool to be used in the Planning Board's discussion in developing their recommendations to the Town Board.

Mr. Gusmano questioned why "height" was a consideration for a repair or replacement on an in-kind walkway, terrace, patio, deck, wall, fence, driveway, roadway and docks under the exempted activities category. He advised that frost heaves could affect the height of a terrace. He noted that hand removal of vegetation would be permitted 50 feet from the shoreline and suggested that this activity be permitted from the radius of the swim platform.

Ms. Andersen advised that there had been a debate about this. Mr. Hagele advised that the intent was to ensure that there would be habitat along the shoreline.

Mr. Barber suggested creating a diagram which would be helpful in interpreting the code.

Mr. Gusmano noted that under the waiver section there was to be no removal of more than three trees and questioned at what caliber.

Mr. Barber advised that the typical caliber is 8 dbh. The intent was to allow a resident to take down a few trees within the wetland buffer as maintenance or because of a hazard. Anything over this would require a permit.

Mr. Hagele exited at 9:25.

In response to a question of Mr. Ellrodt, Mr. Barber advised that there is a provision to allow the simple pruning up to a certain percentage of the tree canopy preventing excessive pruning which would affect the viability of the trees.

Mr. Welsh entered the meeting a 9:30 P.M.

Mr. Ellrodt asked for clarification regarding the introduction of chemicals and fertilizers. It was noted that there had been no suggested changes to this particular activity as defined under Regulated Activity or Use.

Mr. Decaminada advised that the authors of the two documents submitted should be identified. He questioned the definition for Agricultural District and disagreed that a horse farm should be included. Mr. Barber advised that this definition was taken from the NYSDEC. Mr. Praga advised that Agriculture and Markets Law defined uses relative to livestock as farms.

Mr. Decaminada suggested amending the definition arborist as a person who holds a valid and current certification. He suggested amending the definition of certified lake manager as an individual who has satisfied the *current* NALMS requirements. It was agreed that the term maximum competence would be struck from the definition of certified lake manager. Mr. Decaminada suggested that under the definition of dead and diseased vegetation that the term "designated representative" be struck. Referring to the definition illicit discharge, he suggested that the relative section of the code be cited.

Mr. Barber advised that he would look at Mr. Decaminada's suggestion to add "with the intent to subsequently build upon" to the definition of land clearing activities noting that not every land clearing activity precluded construction activity.

With respect to the definition of minor pruning, Mr. Decaminada suggested that the limit be raised to 25 percent. He suggested adding animal pen or fences to the definition of structure.

Mr. Praga advised that under the current definition, fencing is considered a structure.

Mr. Decaminada expressed concern with the term "master plan" and was advised that this was not a reference to the Town's Master Plan but rather to any repetitious activity for which a general wetland permit could be granted.

Mr. Rossi requested that the agreed upon changes are reincorporated into the draft. When received, this Board could review it one more time prior to forwarding it to the Town Board. He noted that there were some questions that arose that should be discussed further.

Ms. Andersen advised that she had provided her written comments which could be incorporated. The Board will review and provide any comment.

VI. CORRESPONDENCE & GENERAL BUSINESS

Verizon COW

Mr. Rossi acknowledged receipt of the April 9, 2009 correspondence from Christopher Fisher, Esq. of the law firm Cuddy & Feder requesting collocation on the temporary structure for his client New Cingular Wireless.

Mr. Decaminada expressed concern that this letter was sent to the Planning Board rather than the Town Board as the Planning Board is not a party to the contract the town has with Verizon Wireless. It was his opinion that the Town Board should respond. Additionally, he pointed out the serious allegations in said letter, specifically the allegation of discriminatory actions by the Town and the creation of an alleged franchise by the Town.

The Board discussed the code requirements to collocate. The Secretary was directed to forward Mr. Fisher's letter to the Town Board members.

The Board acknowledged receipt of the April 14, 2009 correspondence from Leslie Snyder, Esq. Mr. Johannessen noted that although this letter acknowledged that those residents who called requesting a photograph is in this letter, it is not included in the methodology. He believed that because this information was included in the notice and her letter that this as well as the three balloon heights, also not included within the methodology the Board's intent would be met. He suggested that there be some assurance that the Board members would have the ability to reach the party photographing the balloon as well.

Mr. Rossi asked that Ms. Clark write a letter to Ms. Snyder advising that the Board would like to meet at the site at 9 AM the morning of the balloon test to work out a game plan.

Mr. Johannessen advised that although the weather report for Saturday looks good, the Board did request that the applicant identify those weather conditions that would prohibit the balloon test from going on as scheduled.

Ms. Clark exited the meeting at 10:10 P.M.

Lake Katonah

Mr. Barber advised that there are two projects being proposed which would not typically be considered a permit that would be issued administratively. The first is for the implementation of a lake buffer planting plan to reduce the erosion and part of the approved plans for the East of Hudson projects. He advised that he had reviewed the plans and has deemed them complete. The second application is for the minor repair of a dam. This application had been referred to Mr. Coyne.

Mr. Coyne advised that the dam is a NYSDEC Class B dam, meaning if it failed it could cause damage to the immediate residences and roads. Although the NYCDEC had requested the work to be done, they do not require a work permit. The plan to remove and replace rip rap is straightforward; the Town did not necessarily have jurisdiction over NYSDEC regulated dams. He described the work as being minor in nature.

The Board agreed to the issuance of the administrative wetland activity permits.

Lake Truesdale

Mr. Barber reviewed the application for annual maintenance to the Lake Truesdale Homeowners Association beach front.

The Board agreed to the issuance of an administrative wetland activity permit.

Oakridge Gardens

Mr. Barber discussed the April 9, 2009 request of James DeLalla, ASLA to clean up the site.

The Board members were encouraged to see that the property owner wished to clean the site of debris and garbage.

Hayes/Stein

The Board authorized the meeting between the applicant's landscape architect and the Town's consultants.

Salem Liquors

The Board acknowledged receipt of an anonymous complaint regarding signage. It was noted that this is not within the purview of this Board. The Board asked the Secretary to confirm whether the Code Enforcement officer acted on the complaint. Mr. Gusmano noted that although it is a policy not to act on anonymous complaints that the Town should have some sort of policy to ensure that the complainant's name is kept confidential.

Mumbach & Pink Shack LLC

The Planning Board acknowledged receipt of the two requests of the ZBA dated March 26, 2009 for the Planning Board's written recommendations concerning the applications from Matthew Mumbach and the Pink Shack, LLC.

The Board directed the Secretary to respond advising that the Planning Board takes no position on either application.

VII. MINUTES OF March 24, 2009

On a motion made by Mr. Ellrodt, seconded by Ms. Maguire the minutes of March 24, 2009 were adopted.

Vote: Yes: Gusmano, Rossi, Ellrodt, Maguire
Abstain: Decaminada

On a motion made by Ms. Maguire, seconded by Mr. Decaminada the meeting was adjourned at 10:27 P.M.

Respectfully submitted,

Aimee M. Hodges
Planning Board Secretary