

Meeting of the Planning Board of the Town of Lewisboro held at the Town House, 11 Main Street on Tuesday February 24, 2009 at 7:30 P.M.

Present: P. J. Rossi, Chairman
John Gusmano
Richard Ellrodt
Ryan Coyne, Kellard Sessions Consulting, Town Consulting Engineer
Bruce Barber, Interim Wetland Inspector
Margaret Clark, Esq., Special Counsel
Janet Andersen, CAC Chairwoman
Alan Cole, Antenna Advisory Board
Aimee Hodges, Planning Board Secretary

Absent: Joseph Decaminada
Maureen Maguire
Jan Johannessen, Kellard Sessions Consulting, Planning Consultant

The Chairman called the meeting to order at 7:30, introduced the Board and its consultants and noted the emergency exits.

I. DECISIONS

Patrick & Marianne Croke, 53 Smith Ridge Road, South Salem –Amendment to previous Wetland Activity Permit Approval -Cal. #38-07 W.P.

Patrick Croke was present.

Mr. Barber reviewed the draft resolution he prepared amending the original resolution bifurcating the reconstruction of the barn from the construction relative to the existing residence. This will allow the Certificate of Occupancy for the house to be issued once the appropriate mitigation is completed. He noted that the majority of the removal of the invasive species had been completed with the exception of some debris and stumps which can be removed once the ground thaws. This resolution allows for these items to be removed 60 days subsequent to the issuance of the Certificate of Occupancy.

The Board discussed Mr. Gusmano's concern as to whether 60 days from the date of this resolution would allow sufficient time to complete the mitigation once the ground thaws. It was agreed to amend the resolution to allow for 90 days.

In response to a question of Mr. Croke, it was noted that any maintenance outside of the maintenance plan that was approved would require a new wetland activity permit.

On a motion made by Mr. Ellrodt, seconded by Mr. Gusmano the resolution Patrick Croke, Wetland Activity Permit Approval was adopted as amended.

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

**Terence F. & Cynthia M. McNamara, 59 East Street, South Salem, New York –
Application for Wetland Activity Permit Approval – SEQR Determination -Cal. #33-08
W.P.**

Terence McNamara was present.

Mr. Barber reviewed the draft resolution he prepared for the Board's consideration.

On a motion made by Mr. Gusmano, seconded by Mr. Ellrodt the resolution Terence F. & Cynthia M. McNamara, Negative Declaration was adopted.

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

II. WETLAND VIOLATION

Cross River Westchester Associates, 890 Route 35, Cross River – Cal. #3-08 W.V.

John Kalin, PE of Design Concepts Engineering and John Cano the property manager were present representing the property owner.

Mr. Kalin apologized for missing the last meeting and advised that a lot of work had been done with the NYCDEP and the Westchester County Department of Health in addressing the septic failure. He acknowledged receipt of the memos prepared by Cornerstone Associates and Kellard Sessions Consulting.

Ms. Clark advised that this was the first appearance from the property owner's representative since an admission was made to the wetland violation on May 27, 2008 for the discharge of septic into the wetland protected area. The Board had been waiting for the owner or their representatives to return advising what they were proposing in terms of mitigation measures as well as what activities had been taken place to date. The Board had not entered into an Executive Session as they wished to give the owner an opportunity to come back before them.

Mr. Kalin advised that he was retained in March 2008 to investigate a septic failure after his client received a notice of violation from the NYCDEP. This notice was copied to the Westchester County Department of Health and triggered their filing a similar violation. An investigation of the site revealed that the septic system had been repaired once before and that it was failing miserably. The nature of the soil and the improper installation of the second repair created a conduit to the curtain drains. The Health Department performed a dye test and it was just a matter of hours before the dye made it to the wetlands. They immediately began pumping the septic system every three days while investigating their options with the NYCDEP. There had been regular correspondence with the NYCDEP during the process all of which was copied to the Health Department. An advance treatment system was agreed upon and the soil testing supported the method. They identified the location of the curtain drain and severed the connection with a clay barrier. The NYCDEP approved the plan and allowed them to install the replacement system in December; the system was brought on line just prior to Christmas. As-built drawings were prepared and submitted to the NYCDEP with a

letter of certification. Mr. Kalin believed that the Town had received the document from the NYCDEP advising that the violation had been released. He advised that the contractor had some minor work to be completed this spring. He submitted a copy of the engineering report dated June 2008 and last revised August 2008 which he believed would answer most of Mr. Barber's questions.

Mr. Barber reviewed his memo to the Board dated January 20, 2009.

Mr. Coyne reviewed his memo to the Board dated February 19, 2009 and advised that whatever as-built had been submitted to the Westchester County Department of Health should be submitted to the Town of Lewisboro as well.

In response to Mr. Kalin's statement that he did not believe that there was anything further the property owner could do in terms of mitigation; Mr. Barber suggested that it would be reasonable for the Board to consider some sort of stormwater treatment for the existing runoff from the parking lot currently directed to the wetlands.

In response to a concern of Mr. Ellrodt, Mr. Kalin advised that the work done was considered a repair by Westchester County and as such he designed the system utilizing the meter readings. Essentially the system is the same as if this was new construction and he believed it was 25% larger than what would be required. The treatment units are NSF certified for 1000 gallons per day which puts them in the treatment range of 2000 gallons per day based on discharging into the ground.

Mr. Rossi noted that typically at this juncture this Board would deliberate as to what would be considered in terms of a civil penalty. He suggested that Mr. Kalin consider speaking with his client to determine whether or not they would be amicable to any mitigation. If his client is not amicable, Mr. Rossi asked that Mr. Kalin send a letter to Ms. Clark advising her of this and the process would go forward.

Mr. Kalin advised that he would speak with his client the next day.

Mr. Rossi asked that this be done as soon as possible. If the answer is no, he advised that he would like to enter into an executive session at the next meeting. If the answer is yes, he would like to have something to review so that this matter could be closed.

III. SKETCH PLAN REVIEW

Randolph Scully & Meredith McGraime, 508 Mount Holly Road, Katonah – Application for Wetland Activity Permit Approval – Cal. #75-08 W.P.

Beth Evans of Evans Associates was present representing the applicant.

Ms. Evans displayed the proposed site plan and noted that this was an application for about 930 SF of building improvements and additions within the 150 foot wetland buffer; all disturbance is proposed around the existing building. The existing asphalt tennis court will be resurfaced in kind. Ms. Evans discussed the proposed improvements outside of the 150 foot wetland buffer. A building permit has been issued for the renovations to the cottage; they are reducing the bedroom count from three to two.

There is no increase required for the existing septic system for the cottage or for the main house. She noted the location of the well on the Scully property which serves the main residence and cottage as well as a residence on the adjacent property to the north. Ms. Evans noted the location of the proposed infiltration system and acknowledged that soil testing will be done once the ground thaws. She believed that this testing will determine that the soils are appropriate. The stormwater improvements within the wetland buffer will be treated by a rain garden.

Mr. Barber reviewed his memo to the Board dated February 19, 2009 and questioned how Evans Associates calculated the proposed land disturbance activity below the 5000 SF threshold. He also asked for an update with regard to any permitting from the NYCDEP and/or NYSDEC permitting relative to the Phragmites treatment. Noting that Ms. Evans had indicated that there would be no activity within the wetland itself he advised that there would be no requirement for an ACOE permit.

Ms. Evans advised that the 2916 SF area of disturbance had been calculated by taking into consideration the infiltration area, driveway, new garage as well as the new disturbance around the house. She will provide the calculations prepared by her landscape engineer to Mr. Coyne and Mr. Barber.

Mr. Barber believed that the work described relative to the tennis court would also meet the definition of erodible and land disturbance.

Ms. Evans reviewed the proposed temporary surface road to be utilized as the access for the work to the tennis court. There is no intention to expose the soil surface relative to the Phragmites removal noting that to date it had been done by hand. It was cut originally in the spring and treated then re-cut in the fall but not retreated. There are no plans to grub the area to remove the roots. The plant material was left in place; some of the taller prongs were left on the tennis court. They will assess the need for further treatment in the spring. She advised that she would get the name of the applicator and copies of the permits.

Mr. Coyne reviewed his memo to the Board dated February 19, 2009.

Ms. Evans advised that preliminary soil testing had been done in the proposed infiltration area a number of years ago when the Scully's purchased the property to determine a location for the septic expansion area. The soils in this area are better than what the Westchester County soils map indicate; they will verify the results. She advised that there is plenty of room on this property to address stormwater.

Ms. Andersen referred to the CAC memo dated February 19, 2009 and questioned whether the second septic system is shown. She noted that this memo also asked that the Board consider requesting that the applicant consider some type of restricted area on the back of the property given the high density in the developed area of the site.

Ms. Evans advised that a second septic system is not shown. In response to a question of Mr. Rossi, Ms. Evans advised that there was adequate room to comply with the separation distance requirements with regard to the infiltrator. The Scully's are discussing the possibility of some sort of deed restriction with their attorney.

Mr. Rossi acknowledged receipt of the February 24, 2009 correspondence from Deputy Building Inspector Paul Bauer advising that the proposal met the town's zoning requirements.

The Board agreed that a public hearing could be scheduled upon receipt of the next submission if all outstanding comments have been addressed.

Town of Lewisboro, Fox Valley Park, Indian Hill Road, Goldens Bridge – Site Plan

Dana Mayclim, Superintendent of Recreation was present with Randy Price, Parks Foreman.

The proposed site plan was displayed. Ms. Mayclim advised that the structure had been moved down which saved trees. At the suggestion of the Board they have added some fencing and will install electricity.

Mr. Rossi advised that the applicant had done what had been discussed at the site walk keeping in mind what ACARC had approved, the needs of the Park and Recreation Department while removing as few trees as possible. He wanted to ensure that this structure not only met the needs of the applicant but met all of the safety requirements.

Mr. Coyne advised that he had reviewed the plans which had been designed by a structural engineer and agreed that they were acceptable. The ACARC approval required that the ridgeline of the proposed pavilion matched the ridgeline of the existing building so they could not turn the structure. This proposal shifted the pavilion down saving some trees but noted that three trees and potentially a fourth small tree would need to be removed. A fence is proposed at the top of a slope to address safety concerns. The roof leaders will be tied into the existing catch basin at the corner of the access drive. The drainage was also designed to take some runoff into gravel so that it will infiltrate some before being discharged into the catch basin.

Mr. Barber believed that Ms. Maguire had suggested a small opening in the stone wall for access.

Mr. Coyne advised that a walkway had been added between the existing handicap spaces and the pavilion.

The Board agreed to the scheduling of a public hearing for the March 10, 2009 agenda.

Ms. Mayclim advised that the Lions Club is anxious to begin construction as soon as possible. In addition, her department has suffered large budget cuts and the only time they will have the staff to construct it is in April.

The Board agreed with Mr. Rossi's suggestion that if there are no public comments to be addressed that a draft resolution would be prepared and considered at the March 10 meeting.

Ms. Andersen expressed concern with the protection around the well if there is a path between the stone wall and the pavilion.

“Cross River Cell on Wheels”, New York SMSA Limited Partnership d/b/a Verizon Wireless, applicant (Town of Lewisboro, owner of record) – Town of Lewisboro, 1065 Route 35, South Salem – Application for Special Use Permit

Keith Betensky, Esq. of Snyder & Snyder was present with project engineer John Watson, PE of Insite Engineering.

The proposed plan to place a temporary cell on wheels in the central portion of a six acre densely wooded area on a parcel owned by the Town of Lewisboro located behind the Lewisboro Town Park was displayed. The temporary facility is approximately 600 SF and has been located on an existing dirt road accessed from the Town Park. Mr. Betensky requested that this facility be exempted from the Town’s wireless law as it met the criteria for a two way radio for emergency services and because it is temporary. If the Board would not exempt this application he advised that he would be requesting certain waivers under the law in order to expedite the process.

Mr. Rossi questioned whether Ms. Clark had an opportunity to review the lease with the Town. In addition, he asked for the definition of temporary.

Ms. Clark indicated that she reviewed the lease agreement which will allow this structure to remain until such time a permanent tower is constructed and is operational.

Mr. Rossi advised that it appeared that the structure was being considered temporary because it is on wheels, but believed in reality that it could be there for a long time.

Mr. Betensky advised that this COW was being proposed as there had been a serious car accident on Route 35 in front of the Town Park as well as an incident at a nearby school where a child was injured at a sports event. In addition, a petition had been signed by 30 residents demanding a solution to the problem that there is essentially no wireless service in the area. This is an interim measure which they hoped would provide enough coverage until such time that the permanent site is operational.

Mr. Coyne reviewed the comments prepared by Mr. Johannessen in the Kellard Sessions memo to the Board dated February 19, 2009. He noted that Mr. Johannessen was under the opinion that this application would not be exempt under the zoning ordinance and would require a special use permit and would need to comply with the requirements under the code.

Ms. Clark agreed that there should not be any exemption or waivers unless something was submitted in the future that would seem appropriate to the Board.

Mr. Rossi advised that Peter Barrett, Building Inspector had indicated that this COW was not exempt from any of the zoning regulations; regardless of whether this is on wheels it would still be considered a structure.

Mr. Betensky asked for the basis of the Board’s decision if it were their determination that this temporary facility was not exempt from the wireless law.

Ms. Clark advised that it is the Board's position that this is not exempt from the wireless law; it is a communication facility and is subject to the terms of the law.

Mr. Coyne continued to review the planning consultant's comments and noted that if the Board wished to require the visual impact analysis for the tower that they consider not only an 80 foot tower but possibly the permanent tower at the same time. The methodology should be submitted for approval.

Mr. Coyne reviewed his engineering comments contained within the February 19, 2009 Kellard Sessions Consulting memo noting that there was more detail to be submitted other than the proposed location.

Mr. Rossi advised that typically this Board scheduled crane tests when there were no leaves on the trees. The Board would like to see the crane or balloon at not only the 80 foot height but also at higher elevations. Mr. Rossi hoped to get something scheduled this evening.

Mr. Barber reviewed his memo to the Board dated February 19, 2009.

Mr. Cole advised that the Antenna Advisory Board had not formally met since receipt of this application but would submit their comments after discussing it.

Mr. Rossi noted that if this project disturbed 2 ½ acres or more that it would be considered a Type I action and would meet the requirements for a coordinated review. Given this, he would like to understand the calculations determining the areas to be disturbed.

Mr. Coyne advised that the SEQR threshold of 10 acres of disturbance is reduced when the project is adjacent to or located within a park to a quarter. Therefore, if the disturbance is 2 ½ acres or any other threshold found in SEQR it would be a Type I action. He further advised that the Town has a Type I action which is somewhat more restrictive and the same rule applies with regard to parkland.

Mr. Rossi stated that his research revealed that if this land is considered a town park he believed that it would require a State legislature permit as well.

Mr. Coyne advised that the applicant would need to verify this. It was his belief that the Town Park is dedicated park land. He believed though that this may be a separate parcel adjacent to the Town Park.

Ms. Clark noted that although she had a copy of a deed which indicated that this is a segregated parcel, she agreed that this should be researched further.

In response to Mr. Ellrodt's inquiry as to why an 80 foot tower was being considered, Mr. Betensky advised that applicant's engineers determined that 80 feet is just above the height of the trees and would allow for the signal to propagate to the surrounding areas. Anything lower would be ineffective. He further advised that cells on wheels are prefabricated and was not sure whether they were available at a higher elevation. Eighty feet is insufficient in the long term; the permanent tower would be higher. He agreed with the Chairman's suggestion to do the visuals at higher elevations in anticipation of the permanent site.

Mr. Rossi noted that this Board would look for direction from the Town's Antenna Advisory Board in terms of what heights should be included in the visual assessment. He requested that the applicant submit copies of the propagation maps which would be helpful for this Board to understand what the best temporary solution is. He further questioned whether this tower would allow for collocation.

Mr. Betensky advised that Verizon Wireless had no objection to collocation as long as it structurally sound; the height of the tower may prevent the ability for other carriers. The Town may install a whip antenna at the top of the tower for emergency purposes.

Mr. Gusmano expressed concern that it appeared that because this tower was being presented as temporary that this Board was being asked to forgo the normal requirements and concerns for any other cell tower application: how it affects the neighborhood, preparation of visuals, screening, collocation and access. Given that there is no time limit, in his opinion, this structure is not temporary. He questioned whether there is an agreement between the Town and Verizon to build a permanent site at this location.

Mr. Betensky advised that they were in the process of finalizing that agreement.

Mr. Rossi noted that if the permanent and temporary structures were going to be in the same location that most of the review being done now for the temporary could also be done for the permanent site as well. He stressed that it may behoove the applicant and the Town to perform the crane test for both structures if the permanent site is in close proximity of the COW so that it would not be necessary to do it again. He further stressed that this Board's preference was to do the crane tests when the leaves were off the trees.

Mr. Betensky advised that they hoped that the lease agreement would be finalized within the next few weeks. He noted that there would be substantially more work to be done to approve and construct the permanent site.

Mr. Rossi advised that this town is definitely in need of cellular service and that this Board has worked diligently with the AAB and the town to come up with a solution. He did not believe that the public hearing could be waived; the neighbors should be afforded the opportunity to comment on this application. This Board will wait for the applicant to come up with a Saturday date for the crane test. The Zoning Board of Appeals, AAB, ACARC and neighbors within a 500 foot radius will be notified.

Mr. Betensky requested a waiver from the requirement to demonstrate the need for the facility as well as providing a list of complaints levied against the FCC.

Ms. Clark advised that it is not good policy for this Board to consider waivers without a complete submission. She did not believe that this was a difficult requirement to fulfill and encouraged the applicant to make a complete submission. The approach of this particular Board was that every applicant submits the materials as required in the Town's ordinance giving each one equal footing.

It was Mr. Betensky's opinion that the Town amended their wireless laws to include a provision for waivers for precisely this reason.

Mr. Rossi noted that the Board had previously considered a waiver for emergency antennas on an existing structure where there were no negative visual impacts. This Board would not agree to any waivers this evening and asked that the applicant submit what was being required. In addition, he would like the input of the AAB before considering any waivers.

At the completion of her services for the evening, Ms. Clark exited the meeting at 9:00 P.M.

IV. SITE WALK REPORT

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Mr. Rossi advised that on Saturday February 14, 2009 at 7:30 AM, the five Planning Board members and Bruce Barber met at the site to determine whether or not the Planning Board wished to retain approval authority for an application submitted for wetland activity permit approval. He noted that the area where the deck is proposed is disturbed; there are holes and a drain.

Mr. Gusmano noted that what was being proposed is an improvement with minimal impact.

Mr. Ellrodt agreed noting that the existing driveway is disastrous; the proposal is an improvement.

Mr. Rossi stated that after seeing the site that he would rather Mr. Barber handle this permit administratively with the caveat that if there are any changes that this application must come back to the Planning Board. He suggested this requirement as technically this permit met the threshold for Planning Board review and any increase would further push this project over the threshold.

Mr. Gusmano and Mr. Ellrodt agreed with this condition.

V. CORRESPONDENCE & GENERAL BUSINESS

The Meadows at Cross River – Request to Remove Fencing

Mr. Rossi noted the memo prepared by Mr. Johannessen dated February 23, 2009. The Secretary was directed to respond to the January 20, 2009 request of Katonah Management Group advising them that further Planning Board review was not required.

Three Lakes Council – Weed Eradication

Mr. Rossi noted that Mr. Praga had reviewed the February 20, 2009 letter from the Three Lakes Council and opined that it did not provide the authorization needed by this Board. It was suggested to Janet Andersen that she obtain written authorization from the adjacent property owners around the cove rather than attempting to determine the property owner of the lake bottom via title search. If New York State does not own the land, the most likely owners are the adjacent property owners. Contrary to what was stated in this letter, it is the opinion of Planning Board counsel that this activity is in fact a regulated activity. It was suggested that the applicant include any additional hand harvesting in their maintenance plan.

Simpson

It was noted that the applicant's representative had sent correspondence indicating that the well component had been withdrawn. The Planning Board granted Mr. Barber the authority to issue the wetland permit to finish the wetland mitigation required in the original approval along with the sea wall repair and walkway.

VI. MINUTES OF February 10, 2009

On a motion made by Mr. Gusmano, seconded by Mr. Ellrodt the minutes of February 10, 2009 were adopted.

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

On a motion made by Mr. Ellrodt, seconded by Mr. Gusmano the meeting was adjourned at 9:15 P.M.

Respectfully submitted,

Aimee M. Hodges
Planning Board Secretary