

Meeting of the Planning Board of the Town of Lewisboro held at the Town House, 11 Main Street, South Salem, New York on Tuesday February 10, 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  
Thomas Altermatt, Town Consulting Engineer (special projects)  
Bruce Barber, Interim Wetland Inspector  
Lawrence Praga, Esq., Planning Board Counsel  
Margaret Clark, Esq., Special Counsel  
Janet Andersen, CAC Chair  
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. PUBLIC HEARINGS**

The Chairman reviewed the public hearing format. There were no objections to the time or place of the public hearings and there were no requests to have the notices of 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.**

Terence McNamara was present.

Mr. McNamara displayed and reviewed the plans for an addition to construct a three bay garage with a family room above to his existing residence. He reviewed the proposed stormwater treatment.

Mr. Decaminada entered the meeting at 7:33 P.M.

Mr. McNamara described the existing property conditions and noted the surrounding properties.

Mr. Coyne reviewed his memo to the Board dated February 5, 2009 and added that the infiltrator was designed to capture and treat runoff up to the ten year storm event prior to discharge. He advised that he had no further engineering issues.

Mr. Barber reviewed his memo to the Board dated February 5, 2009. He advised that he had spoken with the NYSDEC last week who indicated that they would be preparing a notice of complete application shortly but would not issue a permit prior to the issuance of a Negative SEQR Declaration by the Planning Board.

Mr. McNamara distributed and reviewed his responses to the consultant comments dated February 10, 2009.

There were no public comments.

In response to a question of Mr. Gusmano, Mr. Barber advised that at the end of the project there would be better water quality on the site than currently exists.

Mr. Ellrodt understood that previously the applicant had indicated that they would avoid the 24 inch maple tree and now it is being represented that it died.

Mr. McNamara advised that the 24 inch dead cherry tree has now been labeled properly.

At the request of Mr. Decaminada, Mr. Barber reviewed the Westchester County Department of Health's definition of major expansion.

Mr. Coyne advised that given the site constraints and the design of the swale he agreed with the Health Department's determination with regard to the separation distance of the swale and the septic system.

Mr. Rossi commended the applicant for consistently responding to the comments and concerns in a timely manner.

The Board agreed that they would adjourn the hearing this evening and direct Mr. Barber to prepare a Negative SEQR Declaration for the following meeting. Once the NYSDEC permit is received, the Board would close the public hearing and issue their decision.

On a motion made by Mr. Ellrodt, seconded by Ms. Maguire the public hearing was adjourned.

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

**Vista Fire District , 377 Smith Ridge Road, South Salem, New York - Application for Wetland Activity Permit Approval to permit the construction of additions and alterations to an existing fire house and associated site improvements within the 150 foot wetland adjacent area – Cal. #55-08 W.P.**

Duff Price and Steven Woodstead, Commissioners of the Vista Fire District were present with the project architect Peter Helmes.

Mr. Helmes displayed the site plan for the proposed renovation and expansion of the existing 54 year old fire house in need of maintenance, new mechanical systems, fire separations and ADA compliance. He noted that the expansion would be located over an existing paved parking lot. The applicant had taken into consideration the consultant and CAC comments and provided more pervious surfaces, incorporated an infiltration system and CDS Unit to treat the runoff from the existing paved parking lot. In addition 75 percent of the roof area will be collected and diverted into a proposed rain garden. This plan also provides for planting of native wetland species in areas around the wetland

that are not currently densely vegetated. The applicant will replace the existing underground oil tanks with a new state of the art under ground fully monitored oil tank and will install a grease trap and oil/grit separator.

Mr. Barber and Mr. Coyne indicated that they received the applicant's responses to their previous comments today. Mr. Coyne advised that it appeared that this latest submission addressed all of his previous comments. Mr. Barber advised that it appeared that his comments had also been addressed.

There were no public comments.

Mr. Rossi noted that although this was not an application typically referred to ACARC, the Planning Board invited the members of ACARC to attend this meeting to offer them an opportunity to provide comment on the design.

Ciorsdan Conran, ACARC Chairwoman was present and advised that the new design is vastly better than the design of the existing building and made sense.

In response to a question of Mr. Decaminada as to whether he was comfortable with his professional opinion that the concrete curbing on Drawing Sheet Site-3 would provide containment of stormwater Mr. Helmes advised that given the velocity of the slight grade, the stormwater would bypass the unit without the proposed curbing.

Mr. Ellrodt questioned what the plan was for a new sign.

Mr. Helmes advised that the Fire District knew that there is a need for a new sign; it is a matter of economics and would be taken into consideration if the budget allows for it after the bidding process is completed. The utility pole will not move; it was installed as a result of the NYS DOT curb cut improvements when the nursery was developed.

Mr. Rossi questioned whether the consultants were comfortable with the resubmittal given the fact that they had not had the opportunity to review the resubmission prior to the meeting.

Mr. Coyne advised that he had not seen the revised plans until this evening but given his three minor comments he was comfortable.

Mr. Barber advised that he was comfortable with what had been presented but noted that there is a need for a NYSDEC wetland permit.

Mr. Helmes advised that the applicant had already received a Negative SEQR Declaration. It may be a few months before they receive a NYSDEC approval, but expect a notice of complete application shortly. He asked whether the Board would object to him going on record with the NYSDEC advising that the applicant had met on numerous occasions with the Planning Board and Town consultants who are at the point where they are ready to issue a resolution of approval subject to DEC approval.

Mr. Praga objected to the term “subject to” and advised that the Planning Board had no objection and is waiting for the issuance of a permit by the DEC.

The Board agreed to adjourn the public hearing. When the NYSDEC wetland permit is received a decision will be prepared for the same evening the hearing is reconvened.

On a motion made by Mr. Gusmano, seconded by Mr. Ellrodt the public hearing was adjourned.

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

## II. PROJECT REVIEW

**Jeffrey Hubsher, DVM & Arnold Leitner, DVM, 1310 NYS Route 35, South Salem – Applications for Final Subdivision Plat Approval, Lot Line Change Approval with Anthony & Anne Marie Mendola, 3120 NYS Route 35, South Salem & Wetland Activity Permit Approval – Cal. #1-02 P.B.**

Dr. Jeffrey Hubsher was present with his attorney Michael Sirignano, Esq.

The proposed subdivision plat was displayed. Mr. Sirignano advised that the applicant had satisfied all eight conditions of preliminary plat subdivision approval. NYCDEP had written a letter regarding the Stormwater Pollution Prevention Plan, the Board’s attorney had reviewed and signed off on the conservation and temporary construction easements, Mr. Mendola had agreed to eliminate the five year expiration clause. The applicant has reviewed Mr. Johannessen’s memo prepared for this evening and although some of the items were not a condition of the preliminary approval Dr. Hubsher has agreed to show the requested information on the plat. He advised that the NYSDOT permit will not be issued until construction.

Mr. Johannessen reviewed his memo dated February 5, 2009 and advised that the bulk zoning table identified the new lot as being vacant; as there would be a house constructed on the parcel he had requested that the appropriate information be completed. The plat does not show the location of the house, well and septic system but is shown on the construction drawings. He questioned whether the construction plans would be filed in the County Clerk’s office so that the Health Department has an idea of what is being proposed and believed that the plat could not be filed without the well and septic for the lot. He advised that Mr. Praga had advised that the legal documents were acceptable. He questioned whether the NYSDOT permit would need to be issued prior to the signing of the plat.

Mr. Barber reviewed his memo to the Board dated February 4, 2009 and questioned whether the applicant has the WCDOH and NYCDEP septic permits for the new lot.

Dr. Hubsher advised that the Health Department is having difficulty locating the permit.

Mr. Altermatt referred to his memo to the Board dated January 27, 2009 advising that the NYCDEP must sign off on the plans prior to the Westchester County Department of Health signing the plat. The Health Department must sign off on the plans prior to the Chairman signing the plat; this can be a condition of Final Approval and should not hold up the approval. He advised that he had reviewed

the Schedule A's prepared in connection with the legal documents and found one small typographical error. He questioned whether the temporary construction easement should be shown on the plat.

Mr. Praga advised that he did not have a preference; as the easement is temporary it did not need to be shown on the plat.

Mr. Altermatt recommended that the Board waive the final public hearing. Mr. Barber and Mr. Johannessen agreed.

Mr. Altermatt advised that typically the NYSDOT permit is finalized when construction commences as the contractor information is included. The NYSDOT wrote a letter advising that they were okay with the improvements.

Mr. Sirignano submitted a copy of the May 6, 2008 correspondence from Matthew Gianetta, Stormwater Program Manager of the NYCDEP advising that they found the revised plans acceptable.

Ms. Andersen advised that the present CAC members had come into the process late and that the Planning Board members should take their February 4, 2009 comments in that light.

Mr. Rossi noted that the CAC comments would have been taken into consideration prior to the preliminary approval. He further noted that there had not been any comments during the preliminary public hearing and Mr. Altermatt's memo indicating that the current plans are better. As such, he asked the Board whether they would consider waiving the public hearing.

The Board members agreed to waive the final public hearing and directed Mr. Johannessen to prepare a draft resolution for the March 10, 2009 agenda.

Mr. Altermatt exited the meeting at 8:40 P.M.

**Sprint Spectrum, L.P., Routes 35 & 123, South Salem – Renewal of Special Permit – Cal. #7-98 P.B.**

Mr. Johannessen reviewed his memo to the Board dated February 5, 2009 advising that on Wednesday February 4, 2009 he walked the site with Mr. Coyne. In addition, they had been provided with and reviewed the three previous approved plans for this site.

Mr. Praga advised that he did not believe that the Town code permitted barbed wire fencing.

After some discussion relative to the two HVAC units not shown on the signed site plan and the presence of barbed wire fencing, Mr. Rossi requested that Ms. Clark contact the applicant's representative and advise that the Board did not feel that they were in the position to renew the special use permit until they had some understanding relative to the changes. This matter would be placed on a future agenda. Ms. Clark was directed to ask the applicant to attend.

At the completion of her services for the evening, Ms. Clark exited the meeting at 8:30 P.M.

### III. SKETCH PLAN REVIEW

#### **Andrew & Lori Laub, 23 Cornell Drive, Goldens Bridge – Application for Wetland Activity Permit Approval – Cal. #65-08 W.P.**

Tim Lener, architect for the project was present with the applicant's environmental consultant Alan Pilch of Evans Associates.

Mr. Lener advised that because of the Westchester County Department of Health code revisions effective November 2008 pertaining to septic systems that he had gone to the Health Department who advised that they would do some research to determine what the perc was when the original system was approved in 1992. He advised that they may be fortunate in that this system meets today's code. If the perc is insufficient they may have to add some additional footage to the fields; if this is the case they would need some acknowledgement from the Town that they are working within the wetland buffer.

Mr. Pilch displayed the proposed site plan and reviewed the changes. He advised that the rain garden had been modified and a system designed that would capture and treat runoff for one half of the existing house. The rain garden located east of the wetland would treat the runoff prior to being released into the wetland and will hold a maximum of twelve inches of water.

Mr. Barber reviewed his memo to the Board dated February 5, 2009.

Mr. Coyne reviewed his memo to the Board dated February 5, 2009 and noted that he had reviewed the calculations with Mr. Pilch. He advised that his comments were minor and should not significantly change the plans.

At the request of the Board, Mr. Lener advised that he had spoken with the neighbors who advised that they had not been impacted by runoff from the site.

Mr. Rossi noted that the proposed stormwater detention was close to the driveway; during the site walk the Board was concerned that water may run across the neighbor's property. He questioned whether the applicant had submitted an application to the NYSDEC and whether they had discussed the changes relative to the recent Health Department requirements with the Building Inspector.

Mr. Lener advised that he would speak with the Building Department once the Health Department has located the information regarding the perc tests.

Ms. Andersen advised that although the CAC had not prepared a memo for this meeting that the CAC had previously expressed concern with the proposed plantings in the rain garden in that they may be susceptible to deer browse.

### IV. DISCUSSION

#### **Claude & Jennifer Amadeo, Silver Spring Road, Vista**

Alan Densmore, LS was present with Jennifer Amadeo.

Mr. Rossi noted that this discussion was relative to a proposed lot line change on lands in New York and Wilton, Connecticut.

Mr. Densmore displayed the survey of the two lots owned by the Amadeo's. The State line runs through these properties and the Amadeo's wish to enlarge lot four to include lands within Lewisboro. There is no proposal to construct anything on the lands within the Lewisboro.

Mr. Johannessen advised that he had discussed this proposal with Mr. Praga who agreed that this was a lot line change application, not a subdivision. He noted that a similar application for the Breck/Meagher Subdivision included a note on the plat advising that the lot in Lewisboro was not a building lot and could never be built on and would always be tied with the lot in Connecticut.

Mr. Praga indicated that the State line is the lot line but that he had no issue treating this as a lot line change as long as the created portion of this lot was always tied to the Connecticut lot.

The Board agreed that this is a two step process; the property owner should file the Step II and Step III Subdivision applications.

Mr. Coyne suggested that the property owner check with the Health Department to ensure that their requirements are being met.

#### **Steven Kaplan, Smith Ridge Road, Vista**

Steven Kaplan an architect and the owner of a vacant parcel of land located between Eager Beaver and an existing warehouse on Route 123 was present with his environmental consultant Alan Pilch of Evans Associates. Mr. Pilch displayed an aerial plan prepared by Evans Associates. Mr. Kaplan advised that he was present this evening to share with the Board his thinking in regard to the future development of this parcel located within the GB Business District. He noted that there had been some discussions with his engineering firm who had performed some studies. There were some constraints that backed the building into a section of the property. He noted wanted to get the process started but that he did not have any particular use assigned or a tenant for the proposed building.

Mr. Rossi noted that the use of the building would determine what would be required. It will be difficult to review an application without understanding the use of the building.

Mr. Pilch reviewed the plan and noted the NYS D45 Freshwater Wetland to the east of the parcel and advised that the Town Wetland buffer encompassed almost one half of the site. He advised that they had performed six deep hole tests and found bedrock on a portion of the site and none on another portion of the site. On February 22, 2009 they met with the Westchester County Department of Health who were satisfied in general that they would be able to construct a general trenching system. He noted an area to be utilized for the stormwater management between the NYS DEC wetland buffer and the Town of Lewisboro wetland buffer.

Mr. Kaplan advised that he as well as some prospective purchasers had met preliminarily with the Town's planning and engineering consultant and Building Inspector.

Mr. Barber advised that this was the first time he had seen the plans for this parcel. He advised that they would need a current wetland delineation as well as NYSDEC approval and validation on the plans.

Mr. Pilch advised that his office did perform the wetland delineation over a year ago but was not sure whether the NYSDEC formally accepted their wetland boundary.

Mr. Rossi noted that ACARC approval would be required given that it would be a commercial use. He added that economically it would be better if the property owner refined their plans sooner rather than later. He noted that CAC would be involved; traffic would be an important aspect and NYSDOT would be involved.

Mr. Johannessen advised that several prospective tenants were present at the meeting he had with the property owner, Town Engineer and Building Inspector. Many of the proposed uses he did not believe were compatible with the site and led the property owner in the direction of a generic site plan approval. Some of the permitted uses would require a special use permit and advised that the Board could not issue a generic special use permit which would limit the property owner in terms of use.

Mr. Kaplan advised that he would be making a decision as to whether he would pursue a building to be utilized for offices or retail.

Mr. Ellrodt advised that he believed there was a contaminated well on the Eager Beaver parcel which may affect his decision relative to uses.

Ms. Maguire advised that this is an interesting part of Vista that could use something to help the image of the hamlet.

Mr. Rossi suggested that the property owner review the Lewisboro Garden Center file noting that it was the last major commercial project approved by this Board. In addition, they should also review the Eager Beaver and Pound Ridge Stone files.

### **Christopher Zaia**

Mr. Barber advised that he is reviewing a residential application for Wetland Activity Permit approval where the property is almost entirely located within the Town wetland buffer. The applicant has endeavored to keep the project below the square foot threshold and land disturbance threshold. They are removing asphalt driveway surface from within 50 feet of the wetland, and removing debris and restoring the buffer area. They are unable to place two retaining walls which are necessary to move the driveway further away from the wetland outside of the 50 foot buffer. He questioned whether the Board wished to retain the approval authority or whether they would consider granting him the ability to review this project administratively. He questioned whether they would entertain conducting a site visit.

Prior to making a decision, the Board elected to schedule a site visit for Saturday February 14<sup>th</sup> at 7:30 AM.

### **Curra**

Mr. Barber advised that he met with the Building Inspector and Peter Gregory, PE to discuss this project. There are two issues the first being that there are two parcels under the same name but in different blocks; the Tax Assessor believes that because the two lots are not within the same block that there is not automatic merging of the two lots. The Building Inspector had determined that there is insufficient buildable area.

### **V. TOWN BOARD REFERRAL**

#### **Proposed Zoning Ordinance Text Amendment – Addition of new article entitled “Cluster Development” to Chapter 220**

Mr. Rossi noted that the Town Board has scheduled a public hearing for February 5, 2009.

Mr. Johannessen provided an overview of the proposed legislation.

Mr. Barber advised that the Board would require the documentation needed to prove out the lot count that is sustainable for a conventional subdivision.

Mr. Decaminada expressed his concern with the ambiguity with the law which would allow the Board to determine the number of lots.

Mr. Rossi advised that the Board now determined the number of lots permitted for a conventional subdivision based on the constraints of the parcel and the requirements within the subdivision regulations.

Mr. Barber advised that when writing the proposed legislation that both he and Mr. Johannessen looked at similar regulations in the surrounding municipalities. Some of the municipalities required a minimum preservation area to be retained as open space and both he and Mr. Johannessen felt that this may be too restrictive on some parcels where the Board would want to consider a cluster subdivision. In response to a question of Mr. Rossi, Mr. Barber reviewed the municipalities that they had looked at and gave a brief synopsis of their regulations.

Mr. Johannessen advised that the various municipalities had basically two ways to determine the lot count: submit a conventional plan similar to the law presented this evening or utilizing a formula without a plan and subtracting out constrained land from the gross parcel area. With the second option there is no analysis as to whether the proposal would work on the land.

Mr. Rossi noted that the previous cluster ordinance had been rescinded because of a law suit relative to recreation fees and questioned how this law would tie into recreation fees.

Mr. Praga advised that New York State Law provided for either a set aside of land or a fee in lieu of if there are no set appropriate lands to be set aside.

Mr. Decaminada questioned whether the Chapel Hill subdivision had been properly approved given that the Town had rescinded the cluster regulations prior to this subdivision approval.

Mr. Praga advised that at the time the Town Board granted the Planning Board the authority to approve a cluster subdivision for the Chapel Hills Subdivision, New York State Town Law permitted the Town Board to approve the cluster subdivision by simple resolution. The New York State Town Law has since been changed; Towns are now required to adopt a cluster ordinance.

Ms. Maguire reviewed her comments relative to this proposed ordinance. With regard to Section 220-86A she advised that the Planning Board was not being given any guidance in terms of benefiting the Town.

Mr. Praga advised that the clustering would only occur if both the Planning Board and applicant agreed so that there is no controversy. If the applicant does not agree to a cluster subdivision it is the Town Board who must determine the benefit.

Ms. Maguire noted some additional edits.

Mr. Johannessen advised that he would provide a redline version to the Town Board.

There were no further substantive comments; the Board was encouraged to provide any additional comments to Mr. Johannessen prior to the response to the Town Board.

## **VI. CORRESPONDENCE & GENERAL BUSINESS**

### **Three Lakes Council**

Mr. Rossi advised that a public hearing has been scheduled for the wetland activity permit application submitted for the eradication of the invasive species Brazilian elodea. He further advised that the owner of the lake bottom is unknown and questioned how this would affect the Board's ability to open the public hearing.

Mr. Praga advised that he did not know how to direct the Board as it has been the policy to have the owner's consent to an application or the State of New York who did not object. In this instance, New York State has indicated that they do not own the property. He advised that he had done some research on the Oblong Patent which goes back to the 1600's when there was a lot line adjustment between New York State and Connecticut. There is no original royal grant.

Mr. Rossi noted that they were trying to address the eradication of a weed which could have a very negative impact on the lake and potentially could overrun the lake. The public hearing has been scheduled, but expressed concern as the Board may not be able to go through with it without knowing who the owner of the lake bottom is.

Mr. Gusmano questioned whether the Board could have some flexibility if this could be considered an emergency situation or a safety issue.

Mr. Decaminada questioned whether by implication that the surrounding landowners owned the lake.

Mr. Praga reiterated that to the best of his knowledge that the practice of this Board has always required a signed affidavit of ownership. The applicant should indicate why they have the ability to pursue this application. If the Board wished to entertain the application he did not believe there would be any implications to the Board in terms of liability.

Ms. Andersen advised that the Three Lakes Council is working hard to address this situation and asked that the public hearing not be cancelled noting there is a public need to go forward. In addition, the NYSDEC has advised that they could go forward with their application as the operator. If the deeds are silent and the most probable owners are the adjacent property owners, she advised that they are notifying them and questioned whether they should receive a written agreement.

Mr. Praga advised that a knowledgeable partner in his firm who specializes in titles advised that this particular title search would take an enormous amount of time and money.

Mr. Rossi advised that they would move forward with the scheduling of the Public Hearing and hoped that there would be a better understanding of the options within the next four weeks when the hearing is opened.

### **Twin Lakes**

The Board directed the Secretary to schedule the public hearing for the wetland activity permit application for the installation of the generator.

### **Levy Preserve**

Mr. Gusmano noted that the Board had recently received some correspondence regarding the use of ATV's on the preserve property and questioned whether this would be addressed.

Ms. Andersen advised that there was a need for people to call the police when they observe this activity on the preserve.

## **VII. MINUTES OF January 27 & January 29, 2009**

On a motion made by Ms. Maguire, seconded by Mr. Gusmano the minutes of January 27, 2009 were adopted.

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

On a motion made by Ms. Maguire, seconded by Mr. Gusmano the minutes of January 29, 2009 were adopted.

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

On a motion made by Mr. Ellrodt, seconded by Mr. Decaminada the meeting was adjourned at 10:15 P.M.

Respectfully submitted,

Aimee M. Hodges  
Planning Board Secretary