

Meeting of the Planning Board of the Town of Lewisboro held at the Town House, 11 Main Street, South Salem, New York on Tuesday January 12, 2010 at 7:30 P.M.

Present: Jerome Kerner, Chairman
Joseph Decaminada (arrived at 7:35)
John Gusmano
Richard Ellrodt
Maureen Maguire
Jan Johannessen, Kellard Sessions Consulting, Planning Consultant
Ryan Coyne, PE, Kellard Sessions Consulting, Consulting Engineer
Bruce Barber, Interim Wetland Inspector
Lawrence Praga, Esq., Planning Board Counsel
Janet Andersen, CAC Chairwoman
Aimee Hodges, Planning Board Secretary

The Chairman called the meeting to order at 7:30 P.M. Mr. Kerner recognized the work of the past Planning Board Chairman P.J. Rossi.

I. PUBLIC HEARING

Lake Kitchawan Conservation Committee, P. O. Box 261, South Salem, New York - Application for Wetland Activity Permit Approval from to permit an aquatic herbicide treatment program to selectively control invasive Eurasian Milfoil consistent with the Lake/Lagoon & Watershed Management Plan for Lake Kitchawan – Pound Ridge, N.Y. prepared by ENSR Corporation dated March 2008. - Cal. #63-09 W.P. (Reconvened)

There were no objections to the time or place of the public hearing and there were no requests to have the notice of public hearing read aloud.

Paul Gallagher was present representing the applicant.

Mr. Gallagher advised that approximately eight years ago some of the Pound Ridge lake front property owners had looked to chemically treat the lake. As a result two lake studies were done; through the Town of Lewisboro and through private donations. These studies recommended that there be chemical treatment to address the invasive species only. The application being considered by this Board is for the eradication of the invasive Eurasian Milfoil as an initial fix; currently this species covers 70% of the lake. The Lake Kitchawan Association voted in favor of this proposal at their annual meeting. Certified letters seeking authorization for this application were then sent to every lakefront property owner as it is unclear who owns the lake. In addition certified letters notifying them of this public hearing were sent. He noted that there has been no negative response. In addition a NYSDEC Wetland Activity permit had been obtained as well as approval from the Town of Pound Ridge.

Mr. Barber reviewed his memo to the Board dated January 8, 2010. He noted that the December 7, 2009 memo prepared by Marc Bellaud, Senior Biologist satisfied his previous comments. In addition he advised that he spoke with Mr. Bellaud in great length with regard to the application and notification process as well as with Heather Gierloff of the NYSDEC. He advised that he had no additional comments but strongly suggested that the Planning Board require that the applicant provide

all base line water sampling results, baseline photographs, monitoring reports, annual reports and application time frames. This will ensure that there is an ability to modify the application of the herbicides if necessary. He advised that there are a lot of fail safes and that he was comfortable with what had been presented.

Ms. Andersen reviewed the January 8, 2010 memo prepared by the CAC.

There were no public comments.

In response to a question of Mr. Gusmano, Mr. Gallagher advised that there are no households who obtain drinking water from the lake. In addition, they are aware for the potential of algae blooms and is the reason why the process has been proposed in stages over a two to three year process.

Mr. Barber advised that he spoke with the applicator about the concerns with algae blooms and is the reason why they are two different release methods of the herbicide.

In response to Mr. Ellrodt's question as to whether the NYCDEP's recommendation that a number of "turbidity/herbicide application curtains" with boom attachments be considered, Mr. Barber advised that it was not because treatment would not occur within 100 feet of the DEC wetlands, a very low concentration of the herbicide would be applied over a large surface area and that baselines would be taken to ensure that this herbicide did not travel away from the area where it is being applied. He advised that the boom is not feasible due to the concentration levels and size of the operation and advised that there will probably be some travel but the retention is nominal. The concerns are with a large rain event but the monitoring system has been set up and that there is a lot of lake being treated. He advised that this is an effective treatment for milfoil in low concentrations.

Mr. Gusmano advised that Lake Truesdale an 83 acre lake has successfully utilized this treatment.

In response to Mr. Decaminada's question with respect to side affects Mr. Barber explained that if the concentration of the herbicide is too high that it would also affect the native vegetation. They do not want to remove more than 30% of the vegetation at any one time. He advised that the lake management report included a vegetation map which would be utilized as a part of the baseline study to ensure that species that are to stay stay. In addition the herbicide will not be applied too close to the shoreline so that the breeding grounds are not affected.

Mr. Gallagher advised that for years they had been harvesting. This practice has made the milfoil worse because the fragments not removed from the lake reproduces and replants itself. The study notes that the highest concentration of milfoil is found in the beach area where the harvesting had occurred. The plan is to eradicate the milfoil and then continue the practicing of harvesting the native vegetation. The beach area must be cleared for safety reasons.

Mr. Decaminada questioned whether the manufacturer guaranteed that this would work as intended.

Mr. Barber advised that there is a label within the packaging of the herbicide but they will be working with the open moving water and events outside of their control i.e. rain. The intent is to try to increase

the opportunities that this will work; there is not a 100% assurance that this method will work to achieve the goal.

Mr. Gallagher and Mr. Barber indicated that this particular applicator had worked previously with this herbicide. Mr. Gallagher advised that the initial treatment will cost \$33,000 and is being funded through private donations and is one of the reasons why they cannot do this every year. The projected time frame for this project is for early May or late April. Mr. Gallagher noted that the label indicates that you could swim immediately after application but the NYSDEC requires that you allow one day after application. The swimming area and lake front will be posted prior to the application. In response to a concern of Mr. Kerner, Mr. Gallagher indicated that he would oversee the delivery of the chemicals.

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

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

Mr. Barber was directed to prepare a draft resolution for the January 26, 2010 agenda.

II. PROJECT REVIEW

Richard & I. Eve Syms, 221 North Salem Road (NYS Route 121), Cross River – Application for 2 Lot Subdivision – Cal. #4-09 P.B.

Michael Sirignano, Esq. and James DeLalla, ASLA were present representing the applicants.

Mr. DeLalla displayed and reviewed the existing site condition map noting that currently there is one existing house as well the presence of NYSDEC wetlands off site on the northwest corner. Mr. DeLalla displayed the proposed plan for a two lot subdivision. He advised that they had received Westchester County Department of Health approval for the septic system. He reviewed the major changes to the plan since it had last been reviewed by the Planning Board: two bump outs along the 12 foot driveway to allow cars to pass, additional drainage, infiltrators for the proposed residence, more detail for the driveway drainage and treatment of all runoff from the existing residence. Mr. DeLalla advised that the NYSDEC confirmed the wetland limits. The applicant has provided a response memo to the previous comments; the comments from the South Salem Fire Department have not yet been addressed.

Mr. Gusmano questioned whether the Fire Department had an issue with the driveway remaining 12 feet wide.

Mr. Johannessen indicated that he had walked away from the site walk with the Fire Department with the sense that they preferred that the driveway be widened.

Mr. DeLalla disagreed and believed that their concern was with the width of the access.

Mr. Coyne advised that given the length of the driveway and that it served two homes he believed that at minimum the driveway width should be 14 feet. There had been a question as to whether it should

be increased to 16 feet or remain at 14 feet with pull off areas and stabilized shoulders. It was noted that widening the driveway would impact the wetland areas but there was agreement that safety should be a concern over the proposed impacts.

In response to Mr. Sirignano's concern over the cost to his client to widen the driveway as well as move the stone pillars and gate at the entrance it was noted that the gate and pillars were not on the approved subdivision plans. Mr. Johannessen advised that the driveway location differed from what had be shown on the approved subdivision drawings.

Mr. Ellrodt noted that the Fire Department had clearly recommended that the driveway be widened and the stone pillars be pulled back.

As it was not clear whether the Fire Department had wanted both the gate and stone pillars to be pulled back as well as the driveway to be widened the Board directed Mr. Coyne to contact the Chief for clarification.

In response to a comment of Mr. Decaminada the Board discussed the removal of pavement that had been a condition of the original subdivision approval. Mr. Barber advised that his current memo made some recommendations and noted that the pavement had been degraded over time allowing vegetation to grow. The pavement is not desirable in a wetland environment but digging could create a habitat for non-native vegetation to grow and change the hydrology. A reasonable approach would be to remove the material that they could by hand.

Mr. Coyne reviewed his comments within the Kellard Sessions memo to the Board dated January 8, 2010 and noted that the EAF had indicated that there might be blasting. He questioned whether a blasting protocol is warranted as the applicant had indicated that this was not their intention to blast but to utilize mechanical methods.

Mr. DeLalla noted that although Part 1 of the EAF indicated that there would be blasting, Part 2 referred to the activity as rock removal. A Part 3 response had been prepared; they had inadvertently not changed the Part 1 response to indicate that there would be mechanical rock removal but no blasting. He advised that they would revise the EAF accordingly.

In response to Mr. Decaminada's request that the applicant identify the mitigation measures for the disturbances, Mr. DeLalla indicated that only minor areas of the steep slopes had been impacted.

Mr. Johannessen indicated that they were looking for an evaluation of the impacts and description of the mitigation measures associated with the wetland buffer disturbances.

Mr. Barber noted that the wetland buffer would be impacted by the widening of the driveway. In addition there is a wetland across the street which is hydrologically connected to the onsite wetlands and asked Mr. DeLalla to look at this as well in terms of activity within the buffer associated with these wetlands. He explained that the concerns with impervious surfaces with a wetland such as this are hydrological and thermal changes. The code provided that they not only look at mitigation for the disturbances but that there are no post construction changes to the wetland in terms of stormwater.

Mr. DeLalla indicated that a weir had been designed for stormwater detention during the subdivision approval. This proposal will remove more pollutants than what currently occurs. He indicated that no NYSDEC approval was received for the installation of the weir.

In response to a question of Mr. Johannessen, Mr. DeLalla advised that as the pillars and gates are outside of the NYSDOT right of way, no permit is required.

Mr. Barber advised that during the site walk they had noted some erosion coming off the steep slopes and that Mr. DeLalla's response memo advised that this had been addressed. He asked that Mr. DeLalla briefly discuss what this entailed.

Mr. DeLalla advised that although they walked the site in July that it was Mr. Barber's October memo that had alerted them to the erosion. He indicated that he walked the site again and was not able to find the areas where the erosion occurred.

Mr. Barber noted that this had been indicated on prior memos and recalled a discussion on site with respect to the deep rills and erosion in the proposed house location. He advised that the site had been altered and that the Board had expressed concern with the prior activities that had occurred. He indicated that there was active erosion at the time of the site walk. He asked that the applicant's representative explain one more time for the record what had occurred and what methodology was utilized to determine that no permits were needed for this activity.

Mr. DeLalla advised that over a period of a year a storm event knocked down trees. The property owner then created a level area for his children to ride their ATV's. The property owner had expanded the level area in the center to create more level area for the proposed house. Given that the area disturbed was less than one acre, a stormwater permit was not required and that there were no wetlands in the area. He advised that the area was seeded and erosion controls were in place at the time of grading.

In response to a question of Mr. Decaminada Mr. DeLalla advised that the NYSDEC website identified two endangered species within this wetland. He noted that most of this wetland is across the street and these species preferred wet areas. He advised that he had walked the property several times and did not find these species. He did not receive a letter from the Natural Heritage Center confirming this.

Mr. Barber advised that he would be looking for this letter from Natural Heritage.

Ms. Andersen advised that most of the concerns of the CAC had been addressed. She noted that there are some existing pipes that drain above the wetland area. It appears though that the runoff will be treated prior to exiting the pipes.

In response to Mr. Johannessen's suggestion for a technical meeting Mr. DeLalla advised that the written comments were clear.

With respect to the removal of the existing asphalt it was agreed that those areas to be removed by hand would be identified at the direction and supervision of the wetland inspector.

A public hearing could be scheduled upon the submission of the revised application materials.

**Oakridge Common Shopping Center (Smith Ridge Associates, LLC, owner of record),
NYS Route 123, Vista – Application for Waiver of Site Development Plan Procedures –
Cal. #1-10 PB**

James DeLalla, ASLA was present representing the applicant.

Mr. Decaminada referred to the January 11, 2010 memo from Kellard Sessions acknowledging that their firm was the design engineer for the Oakridge Gardens project. Mr. Johannessen advised that he personally had no involvement in this project.

Mr. DeLalla displayed the site plan and reviewed the application which would take 200 s.f. from the existing pizza space attaching it to the space currently leased by the veterinarian office. The applicant is asking for a change of use for the remaining 1600 s.f. to be classified as either retail, personal service business, professional office or limited service carry-out restaurant. All physical work is internal.

Mr. Johannessen reviewed the Kellard Sessions memo to the Board dated January 8, 2010. He reviewed the parking requirements and noted that the parking requirements for any of the proposed uses were less than the currently approved restaurant use. This application meets the criteria for Waiver of Site Development Plan Procedures.

On a motion made by Mr. Ellrodt, seconded by Mr. Decaminada the Board waived the public hearing.

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

Mr. Johannessen was directed to prepare a draft resolution for the January 26, 2010 agenda.

III. SKETCH PLAN REVIEW

**Edward & Mary Dardani, 6 Post Office Road, Waccabuc – Application for Wetland
Activity Permit Approval – Cal. # 1-10 WP**

Mary Dardani was present with project architect Steven Helmes, AIA.

Mr. Helmes displayed photos of the site as well as the proposed site plan to construct additions to the existing single family residence. He advised that this property backed up to the Waccabuc Country Club and that the structure would remain a two bedroom residence. He noted the 150 foot wetland buffer associated with an offsite pond. The proposed garage and breezeway both fall within the wetland buffer. The applicant is also proposing a second story gable and addition over the existing footprint. A breezeway connecting the garage and residence has been proposed to maintain the vista looking over the golf course. The wetlands were delineated by Paul Jaehnig in 2008, an updated survey was prepared to indicate the flagging and Bibbo Associates was engaged to perform some testing with respect to a septic expansion. The proposed work within the wetland buffer falls below

the 600 s.f. threshold. He noted the locations of the existing well and septic system. He advised that he had met with Mr. Barber twice and that he had reviewed the plans with Peter Barrett.

Mr. Barber reviewed his memo to the Board dated January 8, 2010 and advised that he had confirmed the wetland boundaries and found them to be accurate. The NYSDEC does not have jurisdiction and no wetland permit is required by their agency; the pond is not a NYSDEC wetland but the watercourse is a Class C watercourse.

In response to Mr. Barber's questions regarding the proposed license agreement with the Waccabuc Country Club to accommodate a portion of the existing septic system Mrs. Dardani advised that a license agreement has been in affect for 20 years which allows them to use a very small section of land for leaching areas. It was her belief that the septic system was installed when the house was moved to its present location in the 1930's.

Mr. Praga expressed surprise that there was a license agreement which is revocable rather than an easement.

Mr. Barber suggested that the applicant provide the document for the review of the Planning Board's legal counsel. He further noted that this project is slightly over the permitting threshold requirements and that the buffer area is now maintained as lawn surface and questioned whether the Planning Board would consider giving him the authority to review and issue to review and issue the permit administratively.

Mr. Kerner advised that he would agree to this request given that the wetland buffer is already disturbed and maintained as lawn. He noted though that there had been a request to look at other alternatives.

Mr. Helmes advised that they had looked at pushing the garage to the north of the site but this would prohibit the utilization of one of the entrances in the existing semicircle driveway. He advised that this application had received an approval from ACARC and believed that the application as proposed kept the scale down.

In response to Mr. Kerner's inquiry as to how to best weigh the wetland protection versus aesthetics Mr. Barber reviewed the wetland areas. He noted that the outlet stream from the dam structure is defined as it is lined with stone and is not a diverse or dispersed wetland and was purposely done as an outlet to the pond. He noted the existing landscape of the site as being lightly wooded with ornamental plantings and lawn surface closer to the house. He advised that Class C Wetlands by NYSDEC standards are that although there are no permitting requirements there cannot be any turbidity or erosion introduced during a construction project. He advised that the impacts associated with this project are minimal. In addition there are some excellent opportunities for mitigation as there is a fair amount of untreated road surface piped directly into the watercourse.

Ms. Andersen reviewed the January 8, 2010 memo to the Board prepared by the CAC and noted that there was a great deal of interest with this project as the brook flows directly into Lake Waccabuc which is a drinking water source for some of the lake homes. She noted that some of their comments

had been addressed i.e. the square footage of the renovation and the alternative location consideration for the garage.

In response to a question with respect to the property contours, Mr. Helmes advised that there is a gentle slope down towards the pond.

Ms. Andersen recommended that a site walk be scheduled.

The Board agreed to the scheduling of a site walk prior to determining whether this project is to be reviewed further administratively. The applicant was advised that a rain garden would be preferable. The Secretary will let the applicant's representative know when the site walk had been scheduled.

IV. DISCUSSION

Thistlewaithe Learning Center (Lilypond Lane, LLC, owner of record), 1340 NYS Route 35, South Salem – Request for return of escrow as per 9/26/09 agreement – Cal. #2-07 P.B.

Maria Fitzgerald was present.

The January 9, 2010 memo from Cornerstone Associates and January 11, 2010 memo from Altermatt Engineering both advised that the work had been completed and suggested that the Board release the escrow funds being held.

On a motion made by Ms. Maguire, seconded by Mr. Gusmano the Planning Board released the funds being held in escrow to ensure the completion of the conditions of the September 26, 2009 signed agreement.

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

Elmwood Homes, LLC, 180 Elmwood Road, Lewisboro – Request for return of escrow as per 12/16/08 agreement – Cal. #2-08 W.V.

Eric Moss was present.

Mr. Barber reviewed his January 9, 2010 memo verifying that the satisfactory completion of the conditions and that he had no objections to release of the funds being held in escrow.

On a motion made by Mr. Gusmano, seconded by Mr. Ellrodt the Planning Board released the funds being held in escrow to ensure the completion of the conditions of the December 16, 2008 signed agreement.

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

**Cross River Shopping Plaza (EK Cross River, LLC, owner of record), NYS Route 121,
Cross River – proposed site work**

Frank Giuliano, Landscape Architect was present.

Mr. Giuliano displayed a preliminary drawing for Phase I upgrades to the center, which he described as a scaled back version of what had been presented to the Board previously. He advised that the property owner would like to upgrade all of the hardscapes and landscape now. The façades have all been resurfaced and they would like to redo the existing tower with a feature such as a clock tower that would connect the two existing buildings. In addition this section would be planted with large trees; benches would be installed as well as a low stonewall with low plantings. The parking lot will be repaved, restriped and would become more formalized with actual landscaped islands. The applicant would like to formalize crosswalks by installing eight foot wide strips of pavers with the hope that this will also slow down traffic. He advised that new lighting would be installed. New landscaping will be installed along the road. Grass pavers are being proposed in the rear where the stores take deliveries. There is no proposal at this time for any work in the rear of D'Agostino's.

Mr. Gusmano suggested that the delivery area be expanded to the entire length of the building.

In response to Mr. Kerner's concern about circulation and lack of directional signage, Mr. Giuliano advised that the signage will be added.

Mr. Gusmano expressed concern with the removal of the signage under the overhang over the stores and the fact that customers would have to not only be watching for vehicles pulling out while looking for a particular store but with the proposed trees in front of the bank further obstructing the line of sight.

Mr. Giuliano advised that snow would be piled on the islands when plowing. The bump outs along the side walk will be removed. In response to a concern with trash and upkeep he advised that two full time maintenance workers have been employed.

Ms. Maguire questioned whether the shopping carts, wooden pallets and other debris would be removed from the stream.

Ms. Andersen questioned whether there had been any thought to utilizing the islands to create some type of stormwater treatment.

In response to a question of Ms. Maguire, Mr. Giuliano advised that they are proposing some sort of small benches and bistro tables. Ms. Maguire advised that she would not be in favor of a clock tower as they typically stop working.

Mr. Barber suggested the installation of some sort of decorative fencing or natural vegetation along the brook to prevent any further debris going down into it. Ms. Andersen suggested installing a paver strip across the top of the entrance to the rear of the market.

Rudolph Petruccelli, Oscaleta Road, South Salem – Wetland Activity Permit Application for deep test pits

Ken Murphy was present.

Mr. Murphy displayed the proposed plan to dig three test pits for the proposed septic system and noted that this area is within the NYSDEC Wetland regulated buffer area. He also noted a Town of Lewisboro regulated wetland in the center of the site. The test pits will determine the size of the septic system for a home being proposed on this site.

Mr. Praga noted that he was under the impression that this lot had not been legally subdivided and requested that the applicant present whatever evidence they had that this lot was created by a legal subdivision not by deed.

In response to Mr. Murphy's statement that this had been addressed, Mr. Barber advised that there is nothing in the Town records which verified that this lot had been created by subdivision. He advised that the Town Assessor reviewed the chain of title and deeds; there is no record of this lot being subdivided. The NYSDEC predicated their permit based on the fact that this lot had been created by subdivision. He further advised that this project is before the Planning Board as the Town's code would allow him to issue an administrative wetland permit for repairs to septic systems but does not state that he could issue a permit for the testing and construction of a septic system. He advised that this is within the NYC watershed so the NYCDEP would have co-jurisdiction with the Westchester County Department of Health.

In response to a question of Mr. Kerner, Mr. Murphy noted the residence is being proposed within the flagged Town of Lewisboro wetland regulated area. Mr. Murphy stated that it was their belief that this wetland had been created by a pipe coming off of the neighbor's property.

It was agreed that the applicant would need to provide proof that this lot had been created by legal subdivision prior to moving forward with this application.

Mr. Kerner expressed concern with the fact that although this application was simply for digging test holes, the test holes were being dug for a septic system being designed for the construction of a house being proposed within the Town of Lewisboro wetland.

In response to a question of Ms. Andersen, Mr. Murphy advised that the property is two thirds of an acre.

Mr. Gusmano advised that there would be a lot of work to be done for a lot with so many constraints.

Mr. Barber noted that if it came to be that this lot had to be legally subdivided that the Town Board recently adopted regulations with respect to contiguous buildable area requirements for lots being created by subdivision.

V. REQUEST FOR EXTENSION OF TIME

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

Dr. Jeffrey Hubsher was present.

The Board acknowledged the December 7, 2009 request of Michael Sirignano, Esq. for an additional 90-day extension of time to comply with the conditions of the Planning Board resolution dated March 10, 2009.

Dr. Hubsher explained that the Health Department had taken a tremendous amount of time reviewing the plans. In addition they switched engineering firms; Ed Delaney of Bibbo Associates is now working on the project. He advised Mr. Delaney had a meeting on Thursday with the Health Department. It was his understanding that there were minor issues that were now being addressed.

On a motion made by Mr. Ellrodt, seconded by Mr. Gusmano the Planning Board granted a 90-day extension of time to comply with the conditions of the resolution granting Final Subdivision Plat Approval, Lot Line Change, Wetland Activity Permit Approval and Stormwater Permit Approval dated March 10, 2009.

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

VI. CORRESPONDENCE & GENERAL BUSINESS

Bedford Audubon Society

The Planning Board directed the Secretary to schedule the Public Hearing for February 9, 2010. Mr. Johannessen was directed to prepare a draft resolution for the Board’s consideration.

Site Walks

The Board set a tentative date for January 30, 2010 subject to change and will be discussed further at the January 26th meeting.

VII. MINUTES OF December 8 & December 15, 2009

On a motion made by Mr. Ellrodt, seconded by Mr. Gusmano the minutes of December 8, 2009 were adopted.

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

On a motion made by Mr. Ellrodt, seconded by Mr. Gusmano the minutes of December 15, 2009 were adopted.

Vote: Yes: Decaminada, Gusmano, Ellrodt, Maguire

Abstain: Kerner

On a motion made by Mr. Gusmano, seconded by Mr. Ellrodt the meeting was adjourned at 10:08 P.M.

Respectfully submitted,

Aimee M. Hodges
Planning Board Secretary