

Meeting of the Planning Board of the Town of Lewisboro held at the Town Offices at Orchard Square, 20 Cross River Plaza, Lower Level, Cross River, New York on Tuesday October 23, 2012 at 7:30 P.M.

Present: Jerome Kerner, Chairman  
Ronald Tetelman  
John Gusmano  
John O'Donnell  
Jan Johannessen, Kellard Sessions Consulting, Planning/Wetland Consultant  
David Sessions, Kellard Session Consulting, Planning/Wetland Consultant  
Joseph Cermele, PE, Kellard Sessions Consulting, Town Consulting Engineer  
Margaret Clark, Esq., Special Counsel  
Janet Andersen, CAC Chairwoman  
Aimee Hodges, Planning Board Secretary

Absent: Robert Goett

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

## I. PUBLIC HEARING

**Homeland Towers, LLC, and New Cingular Wireless, PCS, LLC (AT&T), applicants (Francis Coyle, Jr., and Ash Tree Development, LLC, owners of record) 117 Waccabuc Road, NYS Route 138, Goldens Bridge -Applications for Special Use Permit Approval and Wetland Activity Permit Approval pertaining to communication facilities pursuant to Sections 220-32 and 220-41.1 of the Lewisboro Zoning Ordinance to construct a 154-foot tower situated within a 3,500 S.F., fenced-enclosed compound area. The proposed tower and compound area are designed to accommodate up to six (6) wireless service providers. AT&T Wireless plans to install an antenna array on the proposed tower at a centerline height of 147 feet AGL and place a 12-foot by 20-foot equipment shelter within the proposed compound area. Access to the proposed site would follow an existing gravel driveway. The entire proposed disturbance area is located within the Town of Lewisboro wetland buffer and the applicant is proposing three wetland crossings. Proposed mitigation includes a wetland creation area, substantial wetland and wetland buffer plantings, removal of invasive plant species and improvements to site drainage - Cal. #5-12 P.B. (Reconvened)**

Manuel Vicente, principal of Homeland Towers was present with Christopher Fisher, Esq., Scott Chasse, PE and Stephane Guillabert RF Engineer.

Mr. Fisher advised that the applicant had submitted additional information and was present this evening to answer any additional questions.

Mr. Johannessen, Mr. Cermele and Ms. Andersen advised that they had no additional comments.

Mr. Kerner advised that there were some questions that arose at the initial hearing. The first being the management of the propane associated with a generator and the effects of any spills on the wetland.

Mr. Fisher advised that AT&T is not proposing a generator with this application. He noted that another carrier, Verizon, utilizes either diesel or propane whichever is appropriate for the particular circumstances. Both are appropriate choices. Verizon has opted to utilize propane in environmentally sensitive areas. This is a condition the applicant is willing to comply with. He advised that fuel storage tanks are regulated by the State Fire Code.

Mr. Kerner advised that there had been a question regarding the potential gaps of transmission. One resident noted that the location of the tower is close to a wetland. Mr. Kerner questioned whether the applicant had any descriptive material that would indicate the relationship of the tower and surrounding environment.

Mr. Fisher advised that this comment had been made earlier in the review as well as at the Zoning Board of Appeals hearing. The applicant had supplied detailed information and an entire report addressing this exact question.

Mr. Vicente noted that it is not uncommon to find wetlands in high areas where rocks and geography trap water in high altitudes.

Mr. Guillabert advised that the tower sits between two major hills, 100 feet higher than ground elevation. The 150 foot tower is designed to compensate and will provide coverage along Route 138 and Route 121. The height of the tower is driven by two main factors, tree heights and to cope with the surrounding terrain to the east and to the west.

Mr. O'Donnell noted that most of the presentation focused on coverage gaps along Route 138; a lot of the material submitted also addressed increasing coverage along Route 138 to Route 22, south of Route 138 and Indian Hills. He asked that the applicant provide comment regarding coverage not on Route 138, but in other areas of Town.

Mr. Vicente advised that they are trying to maximize the coverage as much as possible. This tower will not just cover Route 138; a lot of the coverage will reach residences to the north and south, areas now not covered much at all. One of the benefits is that this tower will also cover the travelled ways to the south. In dealing with issues like terrain, the signal does try to overcome obstacles. In particular the signal very often goes over rolling hills. He advised that they have spent a lot of time with the Planning Board and Zoning Board of Appeals explaining the limited availability, and how lucky they are to find a location that gives them what is needed. He agreed with the analogy that radio signals flow in a similar fashion as a water flow.

Mr. O'Donnell noted that last November there had been a question as to whether this tower would serve areas in Town not otherwise covered. There had been a discussion as to whether this particular tower would be high enough and that although some might argue that this tower was not high enough, Mr. Vicente explained why a higher tower would not be appropriate for this site.

Mr. Vicente advised that if additional height would provide something, they would build it higher, but if the height would not provide improved service signal, building the tower higher would not provide any appreciable benefit and would add to the potential aesthetic impacts.

Mr. Kerner questioned whether the effective height would be sufficient for three carriers.

Mr. Vicente advised that they have been negotiating with Verizon who accepts this site at this height. They have demonstrated that this site works for co-location. They could design the tower so that it could be expanded if it became necessary, which would require the carrier to make a subsequent application before this Board.

Mr. Kerner noted that the issue for an alternative site has come up, specifically as to whether the Brownell Preserve could be considered. The Planning Board has done some research on their own, and asked counsel, Margaret Clark, Esq. to review the materials.

Ms. Clark advised that the Brownell Preserve had been under consideration for some time with more than one administration. The Town Attorney and counsel for the applicant had both looked at this option. There are covenants and restrictions that are on this parcel, which remain on this land despite the ownership of this land. In 1968 there was an agreement that there would only be one family dwellings on the parcel. In 1973 when the parcel was given to the Town of Lewisboro from Mr. Brownell, it was conditioned four ways; it had to be forever open and free of all buildings, trees and plants could be removed only for trails and paths, no part of it was to be used for conducting business and no gravel or topsoil is to be excavated or removed. These conditions were reconvenanted by the Town of Lewisboro in 1984 when they were given some easements to make paths and horseback riding trails. Because of all of these covenants and restrictions and any potential rights of adjacent landowners, and in light of a very recent case relating the Town of Lewisboro that spoke directly to this concept of covenants and restrictions being maintained, there has been a consistent consensus that this parcel is not appropriate for a tower. Ms. Clark advised that she had done her own independent reading and research of the actual deeds, covenants and restrictions. She noted that there had also been other title searches independently by the Town. In response to a question of Mr. O'Donnell, Ms. Clark advised that this had been researched by the current Town Attorney. She indicated that she had reviewed the Town Attorney's opinion as well.

Mr. O'Donnell noted that it had been represented that three different attorneys had reviewed these documents and asked who these attorneys were.

Mr. Fisher advised that he had reviewed the documents.

Mr. Vicente advised that counsel for Homeland Towers had reviewed the documents and that the third reference was the Town Attorney.

Mr. O'Donnell questioned whether this issue had come up at the Zoning Board of Appeals hearing and whether there were any conclusions by the ZBA.

Mr. Fisher advised that the Town Attorney was present at the ZBA hearings and he reconfirmed what has been stated by Ms. Clark.

Alan Cole from the Antenna Advisory Board advised that he was present at the Town Board meeting when the Town Attorney, Jennifer Herodes, Esq. gave her opinion. He advised that Ms. Herodes was very blunt and advised that if they attempted to utilize this property for a cell site that anyone who has

any objection at all or if the Town attempted to break the deed or the restraints that the Town would lose.

Mr. Kerner noted that there had been comments relative to the impact on real estate values. Mr. Fisher submitted a report and he asked that Mr. Fisher review the findings.

Mr. Fisher advised that the information supplied to this Board was information that was prepared for other proceedings involving other applications in other communities. There are a number of different reports submitted.

Mr. Kerner referred to the results of the study done in Harrison, which was repeated time after time in the other locations where the conclusion was that each of the sales reveal that homes with a view of the monopole sold at higher prices than those without such a view and in the same neighborhood.

Mr. Fisher noted that the reports included sales analysis done before and after the development of the cell towers. He noted that the towers are in different environments, some more suburban. He referenced a 140' tower built behind a church in Danbury, Connecticut, 40 to 50 feet from the property line and within 200 feet of a home.

Mr. O'Donnell noted that the results seemed to be counter intuitive. He took a particular interest in the prepared sales for Pound Ridge, New York and near the upscale homes in Alpine, New Jersey. He noted though that this data takes into consideration neighborhoods and questioned whether there is any data for sales of homes in close proximity to a tower.

Mr. Fisher referred to the Danbury site noting that there were some similarities to this site. The tower in Danbury though is not in a wooded area and is closer to homes.

Mr. Fisher advised that the applicant had also looked at possible sites east across Route 121 into the Waccabuc community to include in their analysis as to why going lower would lose coverage. With respect to the NYSDEC process, the application has been submitted and is pending. The staff analyst has not yet gotten back to them and because of the passage of time, the application is deemed complete.

Robert Tissot, 101 Waccabuc Road, stated that although he could not cite a direct quote in common literature, it is the general thought that 20% of the value of the property within 500 feet is a reasonable assessment. That the idea that people are inviting cell towers is beyond belief. He estimated 12 to 15 homeowners would share a 2.5 to 3 million dollar loss to their property values averaging \$200,000 per residence. He didn't believe that this would be the end of it, and questioned what would happen after the tower goes through. He suggested that they look for another site as the inadequacies of this site are manifest. It is quite logical to him that the first thing to do is to look for a second site and believed that the Planning Board is open to this idea or a booster that would not ravage the area. If you put Goldens Bridge in this situation, and two or three years go by, all of these people are at risk that their properties would not sell. He questioned who would purchase their homes with the tower when there are 100 other houses on the market. Goldens Bridge itself is now open for another site and who knows where that will be. Mr. Tissot advised that in travelling around the country that he had not seen a single cell tower in a residential area, they are all in highway dumps, along the highways, everywhere

but in a private residential area. He stated that they are putting Goldens Bridge at risk and that everyone will be on the other side of the tracks. This shows that they are not considered affluent enough, smart enough or influential enough.

Mr. Kerner noted that there are other towers in Town and noted the tower in Vista in particular.

Mr. Tissot advised that Mr. Sohonyay and his committee did a good job and deserves direct contact with representatives from companies manufacturing small cells. The details are so numerous and are a worldwide phenomenon. Palo Alto, California is involved in small cells and is not acquiescing to this type of thing. Goldens Bridge will get the name of being literally on the wrong side of the tracks. The Planning Board should follow up with the Antenna Advisory Board and have a real sophisticated person follow up and do this in an orderly way and go through the half a dozen companies that are involved in small cell technology. There is plenty of literature out there showing that the cell tower is over and noted that there is a statement which states that 90% of cell towers in this area will be small cells by 2015. He stated that he was sorry that these folks had gone to an awful lot of time and trouble but they are asking a big amount from a small number of people which does not sound equitable to him. There should be one good, creative person, maybe Mr. Sohonyay, to go the companies and be creative and start something to be the beginning of something, not the last of the old.

Mr. Gusmano stated that this is not the first cell tower in Town. The Planning Board has done a lot of homework on the different technologies with the expertise of the people around over a number of years.

Mr. O'Donnell noted that the Planning Board had received correspondence on September 6, 2012 from Mr. Tissot dated September 8, 2012. He further noted that on September 6, 2012, the Board received a response from the Chairman of the Antenna Advisory Board responding to Mr. Tissot's points. Mr. O'Donnell thought perhaps that Mr. Cole could address Mr. Tissot's concerns.

Mr. Vicente advised that this has been a very difficult process adding that it took two to three years prior to submitting an application. As a business, he would not have put the time, effort or money into this project if they thought that this technology was obsolete. AT & T is one of the largest companies in this business and would not have designed the network improperly or committed their resources in this project if they did not believe that this was the best way to get their signal to the area in the long term. Verizon is following suit, so this tells you something about the realities of this project. If DAS technology, microcells, small cells or femtocells worked better, they would be talking about them right now. They are not the best solution to the problem here to provide service to this area. He advised that these are the best facts that he could give to this Board in addition to everything else that has already been provided.

Mr. Fisher noted that since the Town of Lewisboro looked at developing regulations in the early 1990's the industry has a different perspective. The technology and need for towers in Lewisboro has been known for 20 years. This Board has looked at several different applications. This particular area of the community has been identified by every single carrier that has come before this Board as an area where they would need coverage. The notion that this application has been fast and quick is

completely misplaced. The time has come for the carriers to move forward with this application given that there have been no alternatives identified at all.

Al Cava, 111 Waccabuc Road asked to address Mr. Fisher concerning the correspondence submitted regarding the negative impact to property values. He advised that most of the data presented predated the housing collapse. There are now many more options for prospective home buyers than there were in 2002 and 2001. The correspondence basically consisted of four documents; a memo from Lane Appraisers to the Town of Crawford regarding a cell tower in a business park, a memo from Lane Appraisers to the City of Danbury regarding a tower on a church property, a memo from Lane Appraisers to the Town of Orangetown Planning Board regarding a tower on Town property and a memo to the Town of LaGrange Planning Board regarding a tower for a proposal on property owned by American Concrete. There are no memos to the Town of Lewisboro Planning Board regarding Town of Lewisboro properties and there was no analysis on property values in the vicinity of this tower. There were four properties listed in Westchester County; Heritage Hills in Somers which is a massive condominium complex and is totally apples and oranges to what is being presented here. The Harrison proposal is located within the I95 corridor at a DPW facility, a high density area, again apples and oranges. This is the same for the City of New Rochelle location where a tower was proposed in a shopping center. The data for the Pound Ridge site actually suggested that there was not sufficient data or drew any conclusion on property values. Of all the data attached to the studies, seven of the sites were actually located on Town property noting that he raised this because some issue came up at the last public hearing regarding alternate sites and a policy issue of placing the towers on public property rather than private property. He noted that if there were six vendors and each paid \$40,000 annually the Town could potentially receive \$200,000 per year.

Mr. Gusmano questioned whether there were any town properties identified besides the property that had been ruled out.

Mr. Fisher advised that approximately nine separate parcels were identified; town roads or small ¼ acre parcels. None were appropriate.

Mr. Vicente advised that Fox Valley Park was also identified but was rejected because of the low elevation and it is adjacent to the Increase Miller Elementary School.

Joseph Decaminada, 11 Wild Oaks Road, Goldens Bridge asked that the Planning Board approve this application as there is a need in Goldens Bridge for a cell tower. He believed that there is a need for cell service within the proximity of the Increase Miller School. He advised that he resides in Goldens Bridge and that he does not have cell service when driving to the train station. He advised that there is a need for the tower and that it appears from the documents attached to the agenda on the website that the Planning Board has done their research and the Board should think about the silent majority of the residents of Lewisboro who are not present this evening.

Mr. Kerner noted that a petition containing approximately 150 names had been previously submitted sharing the same sentiments as Mr. Decaminada.

With respect to the statements made regarding AT&T and Verizon not being in this if there were something new on the horizon, Mr. Tissot stated that he was afraid these organizations would not

produce the new but continue with the natural bureaucratic tendencies that exist because they found their niche and they are going to stay with it. He stated that the tower business would be put out by the small cells. There is an awful lot of smoke and mirrors. The new technology companies are interested in doing something new and the least the Town could do have someone knowledgeable seek them out, not the AT&T's but the manufacturers of these technologies. He did not think it would take long, maybe a couple of months.

Mr. Vicente noted that one of the companies Mr. Tissot referred to, Alcatel manufactures technology for AT&T.

Mr. Kerner noted that there have been a number of intelligent well qualified people who have provided the Planning Board with their input including the Antenna Advisory Board. They have utilized everyone who is at their disposal and there is no higher authority telling the Board anything different with respect to small cell technology or new technologies on the horizon. This is the best information this Board has in the year 2012.

Philip Eifert, 100 Waccabuc Road asked whether an explanation had been provided with respect to Brownell Preserve and was advised that this site had been addressed earlier but that the site had been ruled out for legal reasons by the Town Attorney and Planning Board Attorney. It was suggested that he read the minutes of the meeting once they are approved.

Debra Eifert questioned whether there was documentation regarding Fox Valley and was advised that the documentation is within the Planning Board file. She was encouraged to review the file. Mr. Kerner noted that the elevation was so low creating the need for a significantly higher tower. Mr. Vicente advised that it was also rejected because of the proximity to the school and the fact that the property is heavily utilized. The site is part of the records as part of the alternative analysis. He advised that when he first started this process, the very first thing they did was speak to the Town with respect to the Brownell Preserve. He advised that his firm also ran their own title report to determine if this was a possibility before looking at any other location.

Mr. Eifert noted that service along Route 121 is spotty and questioned whether this had been solved.

Mr. Vicente advised that there are some geographic hills close to Route 121 that will have some effect on coverage, so the coverage will not be perfect but it will be much better.

Mr. Cole asked to give the AAB position regarding the DAS technology. He advised that DAS stands for Distributive Antenna Systems. He referred to the cell tower on I684 and noted that everything is in plain view. DAS technology distributes the antennas so either, instead of or in addition to the antennas at the top of the tower, you scatter lower powered antennas throughout the region to get broader coverage. The problem is that each of those antennas has to be connected to the same base station at the tower and is normally done with fiber optic cable which is really suitable for indoor venues or dense urban areas. He gave examples from the literature of one manufacturer stating that this technology is suitable for densely populated urban areas, colleges and universities, high end exclusive communities, hotels, resorts, convention centers, venues including stadiums, convention centers, theme parks, hospitals and medical centers. None of these sound like less urban areas like Lewisboro.

It is the opinion of the Antenna Advisory Board including its Chairman, Ted Sohonyay, that this technology is not suitable at this time for Lewisboro because of these factors.

Mr. Tetelman advised that he had four comments. He questioned whether the Planning Board could restrict the height of the tower to 150 feet so that it could never be extended further. He advised that the real estate report was not relevant and should have never been submitted to this Board; he agreed with Mr. Cava that this was prepared in a better real estate time and not relevant in 2012. He noted that when he first was appointed to the Board he had a question about cell towers being placed on private land and was advised that more than 50% of them were on private land rather than public land. He advised that he was disappointed that the Brownell Preserve was unavailable, but he understood why. He is of the opinion that the studies done by all of the attorneys were complete and accurate.

On a motion made by Mr. O'Donnell, seconded by Mr. Gusmano, the public hearing was closed.

Vote: In favor: Tetelman, Gusmano, Kerner, O'Donnell  
Absent: Goett

Mr. Johannessen asked that the Board identify the exact colors selected for the resolution. Mr. Vicente brought in samples of the colors and noted that the colors selected worked well on the Vista tower noting that someone asked a few weeks after it was constructed when it would be built. He referred to a tower in Amawalk where they utilized a color that matched the bark on a tree. The Board chose "white smoke" for the top and "shadow beige" for the bottom. The color swatches were sent to the Board in an e-mail by Mr. Fisher on October 3, 2012.

The Board directed Mr. Johannessen to prepare a resolution for the November 27, 2012 meeting. It was noted that any significant change made by the NYSDEC would require the reopening of the public hearing.

There followed a brief discussion regarding the Board's desire to go into an executive session on another matter.

The Board took a break at 8:37 P.M. and reconvened the meeting at 8:42 P.M.

Ms. Clark advised that the Board would need to provide some direction to Mr. Johannessen with the nature of the resolution they have asked him to prepare or if there was any further discussion that the Board wished to have regarding the writing of the resolution.

Mr. Tetelman withdrew his previous comment and stated that restricting the tower height would restrict co-location possibilities.

Mr. O'Donnell noted that any requests to increase the height would require the proper variances from the ZBA as well as a public hearing before this Board.

On a motion made by Mr. Gusmano, seconded by Mr. Tetelman the Board entered into Executive Session for deliberations with counsel at 8:43 P.M.

Vote: In Favor: Tetelman, Gusmano, Kerner, O'Donnell  
Absent: Goett

On a motion made by Mr. O'Donnell, seconded by Mr. Tetelman, the Board exited the Executive Session at 8:58 P.M.

Vote: In Favor: Tetelman, Gusmano, Kerner, O'Donnell  
Absent: Goett

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

## II. PROJECT REVIEW

### **Rudolph Petruccelli, Oscaleta Road, South Salem – Applications for Final Subdivision Plat Approval & Wetland Activity Permit Approval to construct a single-family residence – Cal. #'s 8-12 P.B. & 61-09 W.P.**

Mr. Tetelman advised that he is a neighboring property owner and recused himself. Ms. Andersen advised that she is President of Three Lakes Council who owns the abutting parcel and recused herself in the capacity of CAC Chairwoman.

Rudolph Petruccelli was present.

Mr. Petruccelli displayed the subdivision plat. He advised that the larger parcel was divided by Anthony Cuoco in 1972 who sold one parcel off and kept the other. Mr. Petruccelli advised that he purchased his parcel in 1982. This subdivision is before the Board to theoretically legalize a subdivision that was done by metes and bounds. He believed that it was legal then and that it is still legal now but to clear up this matter he has submitted the application. In response to a question of Mr. Kerner, Mr. Petruccelli advised that the subdivision was done by deed.

Mr. Johannessen advised that his office raised the question as to whether the lot would need to comply with the current zoning regulations pertaining to the contiguous buildable area. The .69 acre lot is located within the R-1/2A Residential District and meets the gross area requirements but given the wetlands on the property, it does not meet the requirements with respect to contiguous buildable area of 20,000 s.f. He noted that he spoke with Planning Board counsel and asked the Building Inspector for an interpretation as to whether this lot would need to comply. In an e-mail, Mr. Barrett determined that "the lot does not need to comply with today's code because it is not a new lot and the Planning Board is now legalizing the lot". Mr. Johannessen advised that it was the opinion of counsel that lot 1 did not need to be a co-applicant. He advised that the subdivision and wetland activity permit applications should run simultaneously; public hearings for both should be held at the same time.

Mr. Petruccelli displayed the proposed site plan for the wetland application submitted to construct a one family residence. He advised that he believed that he had responded to all previous comments; the house was moved back out of the wetlands as much as possible, the driveway was reversed and placed on the south side of the house, the infiltrators were eliminated and he is now proposing a bio-retention

system. A row of trees has been proposed to provide privacy for the neighboring deck to the north. The septic system has been reduced by a third and the house has been reduced from a four to a three bedroom residence.

Mr. Johannessen reviewed the Kellard Sessions memo dated October 19, 2012. He noted that the applicant has advised that the Army Corps will be issuing a jurisdictional determination that an ACOE permit will not be required. He stressed that their main comment was with respect to mitigation and noted that the wetland regulations stresses a no-net-loss of wetlands and wetland buffer and strives for a 1:1 mitigation ratio for all disturbances to the wetland proper and wetland buffer. He believed that there is approximately 25,000 s.f. of disturbance proposed and according to the Town's regulations they are striving for 25,000 s.f. of mitigation. This property is somewhat constrained and is just over ½ acre with a large part proposed to be developed. He advised that he would like to see some proposed mitigation in the sloped area between the NYSDEC and Town regulated wetlands. Although stormwater improvements have been proposed as mitigation, it is also something that is typically seen on any application and is required whether there is a wetland or not. There is a need for additional mitigation. Recognizing that this lot is somewhat constrained, the applicant may wish to consider looking for off site mitigation possibilities. He advised that the code contemplates off site mitigation only when onsite mitigation is not feasible and when the applicant controls the off site property. He does not know whether there is any flexibility and would like an interpretation from counsel to determine whether this is possible. His office has recommended a pervious driveway surface.

Mr. Kerner advised that the one larger overarching issue is the relationship of the water table and the lake elevation; they do not seem to tie together. It appeared that they are working with some abstract numbers rather than working with the USGS.

Mr. Petruccelli advised that the maps were prepared and certified by H. Stanley Johnson's office as being USGS.

Mr. Kerner asked that this be verified. He noted that there are some comments in the October 18, 2012 correspondence from the Three Lakes Council that were very relevant because of the fact that the water in Lake Waccabuc serves as a water source and the flooding of that septic system could cause contamination.

Mr. Petruccelli advised that the septic system is much higher than the lake.

Mr. Kerner advised that this is not known.

Mr. Sessions advised that the discrepancy might be that there are two different datasets.

Mr. Kerner advised that this should be coordinated. It appeared that the elevation of the fields appear to be below the groundwater table. The report he saw specified less than five feet.

Mr. Petruccelli advised that there was one hole where they found water at five feet. He noted the locations of the test pits where they dug eight feet and did not find water. He added that Kellard Sessions's office reviewed these test holes. The Health Department is not requiring fill over the

systems. He advised that the septic area is all bank run and stated that the bank run trapped the water coming from the pipe on his neighbor's property and created the wetland.

Mr. Kerner referred to page 3 in the EAF and noted that item 8 asks what the depth of the water table is and the answer given is less than five feet.

Mr. Petruccelli advised that this was probably taken from the Westchester County Soils Maps.

Mr. Sessions advised that it has to be less than five feet in the wetland area. Clearly that wetland has hydric soil, hydrophytic vegetation, and there is evidence of wetland hydrology which means that that water table is within 20± inches of the surface within the wetland proper.

Mr. Kerner advised that there are a lot of concerns with contamination. He referred to the garage elevation and noted that any spills in that garage could flow out. They are placing a residence with all its housekeeping issues, automobiles, etc. in an area where if they were placing a mechanic's garage, they would look for all sorts of protective containment measures. As they get further into this they will have to be very specific about those issues. He believed that the fence line shown is too far to the west; it should be on the other side of the septic field.

Mr. Johannessen advised that the fence is the edge of the limits of disturbance required by the NYSDEC and a demarcation.

When asked by Mr. Kerner why it couldn't be moved further to the east, he was advised by Mr. Johannessen and Mr. Petruccelli that the septic system is to the east of the fence; this area would be disturbed.

Mr. Gusmano noted that the expansion area is further away from the lake and questioned why the septic was not placed there.

Mr. Petruccelli advised that the location chosen for the primary system is where the bank run had been placed. The NYSDEC has approved this location.

Mr. Kerner questioned why the fence could not be placed further east to prevent the area over the septic system from being mowed. This would protect the area from being lawn area; the Board does not want it maintained as lawn.

In response to a question of Mr. Gusmano, Mr. Petruccelli advised that the bank run goes down around eight feet. It was brought in and the area filled by a prior property owner.

Mr. Kerner questioned whether it was being represented that the berm of gravel created the local wetlands.

Mr. Petruccelli represented that it did.

Mr. Sessions stated that he was not on the site 30 years ago, but this is a historic low point. He can almost guarantee that it is now and was always a wetland, although a broader system. He advised that

he could not imagine that this wetland was created as a result of bringing the berm in or as a result of any offsite residential stormwater discharge. Historically, it was a low lying area. It was probable that the wetland was squeezed and more channelized by the fill.

Mr. Kerner stated that this Board is being asked to approve the placement of fill and the construction of a house within the wetland, not the wetland buffer.

Mr. Petruccelli reviewed a survey prepared by H. Stanley Johnson when he purchased the property. He noted a wetland strip in 1982, which he stated was created by a pipe. He advised that since then it grew from a strip to what it is today over the course of 30 years. It is a wetland that is trapped because of the bank run that was brought in when Cuoco owned the property probably to build the septic system because it is a low area. He stated that the report prepared by Mary Jaehnig supports this.

Mr. Sessions questioned who delineated the wetland in 1982. He questioned whether the surveyor put the wetland on the map and whether it was legitimately delineated. He noted the valley and the slope coming down to a low point. He would imagine that the contours that wrap around the berm would just continue where you see a wetland. The entire area was probably a low lying wetland.

Mr. Petruccelli disagreed and stated that they also brought in fill to build up the slope and maintained that the wetland was created this when they put the berm in. He advised that they did the tests.

Mr. O'Donnell stated that there had been some suggestion that the area now described as wetland is due to a pipe to the north. In looking at the property, it would not surprise him that there is a flow across the street irrespective of this property.

Mr. Sessions did not disagree with this. It is his professional opinion that he did not see how this pipe and discharge could have created this wetland system and the hydric soils. Could it have exacerbated the moisture condition to a very limited degree, yes possibly, but he did not agree that it could have created it. He advised that this is not a marginal wetland. The soil is saturated and the root system is buttressed. This is a wetland, not a NYSDEC wetland; but it is a significant enough wetland. The soils are saturated enough that it is not due to a pipe but due to an existing low lying historic wetland.

Mr. O'Donnell questioned whether it could be determined whether it is a seasonal wetland.

Mr. Sessions advised that there is evidence of all three parameters of a wetland. If the soils were not saturated long enough during the growing season they would not exhibit hydric characteristics. There is dark soil color, evidence of wetland hydrology, buttress tree trunks, and water stained leaves. This wetland has all of the characteristics.

Mr. O'Donnell questioned whether there was anything on this property that Mr. Petruccelli could do that would constitute mitigation.

Mr. Sessions stated that even if every spare square footage of the property that is not being developed were to go to mitigation, you could still not come close to 1:1. Is it possible that certain areas of the site could be expanded; maybe the bio-filter could be redesigned to incorporate a pocket wetland. Certain

proposals could be enhanced, but it would not come close to adequate mitigation as far as the numbers are concerned.

Mr. O'Donnell questioned whether the parking area could be reduced. He noted that there are homes in the area that do not have driveways but have a small parking space.

Mr. Petruccelli stated that he did not want to do this. He was planning on utilizing pervious pavers.

Mr. Kerner advised that he cannot make it look like there is a flat green area as it is being shown on the map; it is a very constrained site. He suggested that maybe the house had to be reconfigured and pushed closer to the road to get it outside of the wetland area itself. He provided an overlay of an alternative house footprint. He stated that it could be considered a unique site with wetlands. He did not believe that the parcel could support a standard three bedroom house.

Mr. Gusmano expressed concern setting a precedent.

Mr. Kerner stated that there must be some way to minimize the impacts.

Mr. O'Donnell questioned whether the applicant had any contact with the neighbors to determine if there was any possibility of creating off-site mitigation.

Mr. Petruccelli advised that the only contact he had was sending a certified letter two years ago asking that the neighbor remove the pipe. The neighbor stated that whatever was needed, that he would help him out and that he wanted him to build a house.

Mr. O'Donnell questioned whether he had any conversations with the Three Lakes Council.

Mr. Petruccelli advised that they sent him a letter asking him to donate the property. He advised that he has owned the property for 30 years, there were no wetlands at that time, he has been paying taxes and he expected to reap the benefits. When advised by Mr. O'Donnell that the Town has wetland regulations, Mr. Petruccelli stated that he understood that, but his rights were more important than the rights of the wetlands because they were created by a pipe that should have never gone on his property and stated that his soil scientist agreed.

Mr. Kerner advised that the consensus is that the applicant must go the extra mile to look at some other options. The bio-filtration appears to be the only mitigation proposed; more is needed.

Mr. Gusmano advised that he would like to see a rough house design that would pull the house back a little. This is an unusual property.

Mr. O'Donnell questioned whether the septic system could be located elsewhere on the property and noted that the datum still needed to be worked out.

Mr. Sessions advised that the septic location could not be moved. The area to the west is a very steep slope created by the fill, so that is out of the question. Anything to the east is in the wetland proper.

The fill was brought in and the disturbance was created 30 – 40 years ago, it is there. Relocating the septic system would create more disturbance.

Mr. Kerner asked for suggestions to reconfigure the house and to enhance the wetland area.

Mr. Sessions advised that it would be up to Mr. Petrucci if he wanted to go back to the drawing board to relocate the house, because if the house has been pushed further to north there would be more opportunities to mitigate. The only thing is that you are mitigating in the wetland already. Can the wetland be enhanced, be planted and be more robust provides better filtration, possibly. He noted that there might be mitigation possibilities on the adjacent properties. Often times they look for invasive species removal. He advised that he had not walked the other property to determine whether there are any invasives on it. He advised that as the industry evolves the thought is that less creation and disturbance of wetlands and more management and improvement of existing systems is better. There might be an opportunity to do some mitigation off site if Mr. Petrucci is willing.

It was noted that the property to the west of this parcel may present an opportunity as well given that it is owned by the Town of Lewisboro and lies between the subject property and the lake.

Mr. Kerner noted that there are other ways to design the house without a garage. If it could be moved outside of the wetland, it should be. He provided the applicant with a copy of the Three Lakes Council correspondence noting that it had many considerations. The data regarding the lake elevations must be updated as well.

Mr. Petrucci maintained that the data was correct.

It was noted that the benchmark at 200 at one corner of the property looked as though it was taken from an older survey.

### **III. SKETCH PLAN REVIEW**

#### **Todd Management, LLC & JVF Management, LLC, 251 & 263 Todd Road, Cross River – Application for Subdivision**

Paul Pelusio, PE of J. Robert Folchetti Engineering was present representing the applicant.

Mr. Pelusio displayed the proposed plan to subdivide two tax parcels totaling ±27.93 acres into four building lots.

In response to a question of Mr. O'Donnell, Mr. Pelusio advised that the Friedlander's were not associated with this project in any way.

Mr. Pelusio advised that that previously they had proposed a 20' wide private road, which extended into an area that had been identified last fall by the Town's wetland consultants as a wetland area. They have since been working on layouts that would allow them to avoid the wetland area and believe they have come up with one that minimized the impacts. He reviewed the proposal that included two wetland crossings. He advised that this layout conformed to the zoning requirements; the septic area

has been tested. He advised that they would like to schedule a site visit. They will have the roads staked and the corners of the proposed residences staked.

Mr. Sessions noted that this is watershed property and was not sure that the NYCDEP would approve more than one wetland crossing.

Mr. Pelusio advised that they had met with the NYCDEP who advised that they would treat the first crossing as the access to the property. Any other crossings to get to the individual residences would be treated as a residential stormwater property but would be enveloped into the SWPPP document because it is not a major subdivision. He advised that if after the site visit that the Board is okay with what is being proposed they will schedule another meeting with the NYCDEP.

Mr. O'Donnell noted that this parcel abuts the Arbor Hills Subdivision, which has a privately owned water system. He would like future submissions to identify the properties directly abutting this parcel to better orient this parcels proximity to the water system.

Mr. Gusmano asked that the applicant get input from the Fire Department early on, expressing concern with the length of the proposed driveway and the turn around.

Mr. Kerner questioned whether a conservation subdivision could be considered.

Mr. Johannessen noted that there is a lot of wetland buffer disturbance and that they are looking for significant mitigation some of which would be conservation easements.

Ms. Andersen reviewed the October 17, 2012 CAC memo to the Board.

In response to the CAC question as to whether a cluster subdivision could be considered, Mr. Johannessen advised that the house sites must go where they have been proposed. He did not see the advantage of the cluster in this instance. The applicant is proposing large lots with conservation easements.

Mr. Pelusio advised that they had looked into gaining access from the Arbor Hills subdivision but there is a restrictive covenant.

Mr. Johannessen asked that the applicant provide documentation regarding the restrictive covenant.

The site walk was tentatively scheduled for Saturday November 17<sup>th</sup>.

#### **IV. CORRESPONDENCE & GENERAL BUSINESS**

##### **DeCandia, 14 Cove Road**

Mr. Johannessen reviewed a proposal to rebuild an existing garage within 50 feet of the wetland.

Mr. DeCandia advised that water is flowing through the garage over the slab, the sill has collapsed. The intention is to reconstruct the building on a wall to wall basis. The footprint will not be

increased. He will need to create a form and prop up the building around the perimeter. He indicated that he did not store any chemicals in the building.

The Board authorized the wetland inspector to issue the wetland permit administratively.

**Grace Farms**

This is a wetland application in New Canaan, Connecticut regarding the construction of a church. This matter was referred to the Town Board; Supervisor Parsons has asked for comment. Mr. Johannessen reviewed the location and advised that from a wetland/stormwater perspective everything drains to a wetland towards Norwalk, Connecticut. There is no impact to Town of Lewisboro adjoining wetlands. He noted that it is a sizeable project and will give Mr. Parsons a report of his findings.

**Fortune Home Builders**

Mr. Sessions advised that his office has received a questionnaire and plan for a project on Duffy's Bridge Road. He advised that his firm has worked for the applicant and therefore has a conflict.

Mr. Kerner advised that Keane & Beane has also worked for the applicant and therefore Mr. Praga has recused himself as well. He indicated that he has discussed this matter with Margaret Clark who indicated her willingness to represent the Town. In addition, he has reached out to Will Agresta to determine if his firm had the ability and was interested in representing the Town. He will contact the Town Board for the proper authorization.

**Grissini Restaurant**

Mr. O'Donnell acknowledged receipt of the affidavit of knowledge of the conditions in the resolution. He suggested that this affidavit be utilized as the format in the future.

**Training Requirements**

The consultants were asked to come up with proposals for the four hour requirement for annual training.

**V. MINUTES OF October 9, 2012**

On a motion made by Mr. Tetelman, seconded by Mr. O'Donnell, the minutes of October 9, 2012 were adopted.

Vote: In favor: Tetelman, Gusmano, Kerner, O'Donnell  
Absent: Goett

On a motion made by Mr. Tetelman, seconded by Mr. O'Donnell, the meeting was adjourned at 10:20 P.M.

Respectfully submitted,

Aimee M. Hodges  
Planning Board Secretary