

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, July 16, 2013 at 7:30 p.m.

Present: Jerome Kerner, Chairman
Ronald Tetelman
Gregory LaSorsa
Robert Goett
John O'Donnell
David Sessions, RLA, AICP, Kellard Sessions Consulting, Wetland Inspector
Lawrence Praga, Esq., Planning Board Counsel
Margaret Clark, Esq., Special Counsel
Lisa Pisera, Planning Board Secretary

Also in Attendance: Janet Andersen, Conservation Advisory Council (CAC)

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

I. PUBLIC HEARING

New York SMSA Limited Partnership d/b/a Verizon Wireless, applicant (Ash Tree Development, owner of record), 117 Waccabuc Road, Goldens Bridge – co-location – Applications for Special Use Permit & Wetland Activity Permit Approvals to co-locate 12 panel antennas and four (4) GPS antennas at 137'-9" AGL and a 12' x 20' equipment shelter, a 50kw diesel generator, and related equipment within the approved compound area, Cal# 1-13-PB

Michael Sheridan, Esq., Snyder & Snyder, represented the applicant. Mr. Sheridan asked that the Board close the Public Hearing and approve the Verizon Wireless application.

Mr. Sheridan stated that at the last meeting there were questions about the ability of Verizon Wireless to use fuel cells at the site. Mr. Sheridan distributed to the Board, Mr. Sessions, Ms. Clark, Mr. Praga, and the Planning Board secretary a letter dated July 15, 2013 from Antonio Gualtieri, PE, Sr. Vice President, Tectonic Engineering.

Mr. Gualtieri stated in his letter that it was his opinion that fuel cells would not be a viable option at this site as they do not provide enough power for Verizon's required backup.

Mr. Kerner commented that he was surprised by the total load, the largest portion being attributed to the rectifiers.

Mr. O'Donnell requested time to read the letter.

It was the consensus of the Board, that because they had not had time to previously review Mr. Gualtieri's letter, the Board was not in a position to make a judgment at this time.

Mr. Kerner read a portion of a memo written by Tibor Sohonyay, Chairman, Antenna Advisory Board (AAB), which stated that if the system was designed for full backup at maximum capacity and maximum duration, (typically 72 hours of fuel cells), there would be different fuel cell arrays sized than if the site was designed for 50% capacity (24 hour duration). The number of hydrogen tanks on the premises for this site could result in a significant amount of real estate. Mr. Sohonyay's memo also stated that a diesel generator, which could handle power surges, could be equipped with a fuel tank to supply a full load for seven to ten days. The diesel generator could be easily sized. Noise considerations could easily be addressed with cabinets. Mr. Kerner

acknowledged that the communication was not advice from the AAB, but rather a personal communication between Mr. Sohony and Mr. Kerner.

Mr. Kerner shared a communication from Wido Westbroek, Vice President, Hydrogenics Corporation. Hydrogenics has provided hydrogen cell backup to several Verizon facilities as well as to other providers. From discussion, it appeared that the issue is not the manufacturer or supplier, but the distribution of hydrogen and where the sources are located.

Mr. Sheridan stated that the generator is a better supplier of power for this site because of the site size. Verizon has strict regulations to keep the site functioning during a power outage and to keep the equipment safe from the elements. Mr. O'Donnell requested that the engineer for the applicant address these issues with the Board.

Anthony Botta, Tectonic Engineering, stated that smaller sites use hydrogen cell backup and that he has not seen any shelter sites that use hydrogen cell backup.

Mr. Sessions stated that he would like more time to review the letter and that he would also like to share it with his partner. He had no questions at this time.

Mr. Tetelman acknowledged that the letter from Mr. Gualtieri required additional time to be reviewed. He stated that this particular application had already been approved. It would not be fair to the applicant to ask them to change their site plan at this point in order to reconfigure the storage cell to incorporate hydrogen cell technology. Going forward if cell tower applications are received, the applicants would be asked to provide a hydrogen cell solution for backup power.

Mr. Kerner stated that the applicant was initially asked to compare diesel and propane systems. It was the consensus of the Board that the diesel system recommended by the applicant seems to have adequate containment and protection. Mr. Kerner stated that, at this point, the choice is between hydrogen cell and diesel. The Board would like a second opinion on the confirmation of the quantity of cells required and what that means in terms of the size of the containers required.

Mr. Kerner pointed out that the last paragraph of Mr. Gualtieri's letter addressed the accessibility of refueling. Mr. Sheridan responded that in the event of a prolonged power outage, the site would need to be refueled in order to stay on air. Diesel would be readily available in the area, whereas hydrogen tanks would not; transportation restrictions may also apply to hydrogen tanks.

Mr. LaSorsa asked for clarification as to when the two Heating, Ventilation and Air Conditioning (HVAC) units would be used. Mr. Botta responded that the second HVAC unit would be used in extreme heat. Most likely, the second unit would not be used in the winter.

There were no questions or comments from the audience.

On a motion made by Mr. Tetelman, seconded by Mr. LaSorsa, the Public Hearing of New York SMSA Limited Partnership d/b/a Verizon Wireless, applicant (Ash Tree Development, owner of record), 117 Waccabuc Road, Goldens Bridge – co-location – Applications for Special Use Permit & Wetland Activity Permit Approvals to co-locate 12 panel antennas and four (4) GPS antennas at 137'-9" AGL and a 12' x 20' equipment shelter, a 50kw diesel generator, and related equipment within the approved compound area, Cal# 1-13-PB was closed.

Vote In Favor: Mr. Kerner, Mr. Goett, Mr. O'Donnell, Mr. LaSorsa, Mr. Tetelman.

II. DISCUSSION

Rudolph Petruccelli, Oscaleta Road, South Salem – Application for Wetland Activity Permit Approval to construct a single-family residence – Cal #8-12PB and Cal #61-09 WP – Review of site visit access requirements

Mr. Tetelman recused himself.

Mr. Petruccelli stated that the site walk would be open to the Planning Board, CAC, and consultants. Mr. Petruccelli acknowledged receipt of letters from neighbors regarding the project and requested that the public not be present on the site walk.

After discussion, it was the consensus of the Board that the site walk be open to the Board, CAC, and consultants.

Deborah Baker, 28 Cove Road, asked if the public would be aware of the date and time of the site walk in the event that an individual would want to stand on the road during the site walk.

The site walk was scheduled for August 6, 2013 at 6:30. Ms. Baker and other individuals were present in the audience when the date was announced.

Mr. Petruccelli confirmed that the property would be staked.

Mr. O'Donnell requested that Mr. Petruccelli send to the Planning Board secretary correspondence between Mr. Petruccelli and the New York State Department of Environmental Conservation (NYS DEC), Army Corps of Engineers (ACOE), New York City Department of Environmental Protection (NYC DEP), and the Westchester County Department of Health (WCDH). Mr. O'Donnell requested that this information be sent via email. Mr. Petruccelli agreed to Mr. O'Donnell's request.

III. WETLAND PERMIT REVIEW

Tracey B. Weisberg, 25 Benedict Road, South Salem, Application for Wetland Permit Approval to replace wood dam with stone and concrete dam at same elevation; remove invasive plants and re-plant with native plant species; refurbish wood bridge – Cal #56-13WP

Bill Meyer, John Jay Landscaping Development, was present on behalf of the applicant.

Mr. Meyer reviewed the project with the Board and distributed photos to the Board, CAC, consultant and Planning Board secretary.

Mr. O'Donnell requested that Mr. Meyer provide the history of the work road and wire fence in the wetland that appear on the survey. Mr. Meyer responded that he had no knowledge of the history or origin of the work road or wire fence.

Mr. O'Donnell expressed concern regarding additional road construction that would be required in order to access the site and how it would be done in an environmentally friendly manner. Mr. Meyer responded that rather than constructing a new road, the existing access way would be used in order not to create impact on the area.

Mr. Kerner questioned the total area of disturbance. Mr. Meyer responded that the area is 4,800 square feet which includes all of the invasive species, but does not include the access way for the construction entrance.

Mr. Praga confirmed that wetland permits require a Public Hearing.

Mr. Meyer spoke with Mr. Sessions.

In response to Mr. Sessions' question regarding the timing of the project, Mr. Meyer stated that he would like to start in the fall; if a fall start is not possible, Mr. Meyer stated that rainfall would have to be considered and that he would like to start in the spring provided that the area is dry. Mr. Sessions and Ms. Andersen felt that the invasive species on the property would be able to be removed in the winter.

Ms. Andersen reviewed the CAC memo dated July 12, 2013 addressing the concern of invasive plants and animals remaining in the root balls of the invasive species being removed. Mr. Meyer responded that the invasives would be removed by hand and monthly maintenance would be conducted.

At the suggestion of Mr. O'Donnell, Mr. Meyer agreed that his client would provide a friendly notification to neighbors to satisfy any concerns they may have.

A site walk was scheduled for August 6, 2013 at 7:30. The client is not required to be present.

Mr. Meyer was instructed to speak with his client and confirm the site walk with the Planning Board Secretary.

IV. WETLAND VIOLATION UPDATE

Rui Ferreira Oliveira, 8 Brookside Trail, South Salem – Application for Wetland Activity Permit Approval to install retaining wall, landscaping walls and drywell – Cal. #'s 25-12 WP/1-10 WV

Mr. Oliveira distributed one set of photos to the Planning Board. Mr. Sessions approached the table to view the photos.

The Board reviewed plans dated April 12, 2013.

Mr. Oliveira stated that the grading is not completed, and that the bottom wall is constructed.

Ms. Clark referred to the resolution dated November 15, 2011. Ms. Clark stated that there were various extensions granted along the way, the last extension due to expire on August 1, 2013. Mr. Oliveira had previously been instructed to come before the Planning Board on or before June 4, 2013 to provide the Board with an update on his project. Prior communication from Mr. Oliveira indicated that Mr. Oliveira intended to be finished with the project by September 2013 at the latest. Mr. O'Donnell believed that Mr. Oliveira had also made verbal statement on March 12, 2013 stating the same.

Mr. Kerner asked if a November 1, 2013 completion date was possible. Mr. Oliveira responded that he would try, however he indicated that he was experiencing financial stress and stated that he believed that his neighbors were no longer affected by the water on his property.

Mr. O'Donnell asked Mr. Oliveira to inform the Board what progress had been made since March 12, 2013. There was no response from Mr. Oliveira.

Mr. Kerner stated that the overriding concern is the protection of the neighbors and remediating the drainage condition that would occur after the removal of the retaining wall. At the suggestion of Mr. Kerner, Mr. Sessions stated that he would visit the site during the week of July 21, 2013. Mr. Oliveira stated that he would like to be present.

Mr. Goett informed Mr. Oliveira that he is required to send an email to the Board by September 10, 2013 indicating what remained to be completed on the project. Mr. O'Donnell stated that prior to the September 17, 2013 meeting, Mr. Sessions would go to the site to verify the information that Mr. Oliveira provides in his memo.

Mr. Sessions confirmed that he will go to the site.

On a motion made by Mr. Tetelman, seconded by Mr. Goett a 90-day extension to October 30, 2013 was granted to Rui Ferreira Oliveira, 8 Brookside Trail, South Salem – Application for Wetland Activity Permit Approval to install retaining wall, landscaping walls and drywell – Cal. #'s 25-12 WP/1-10 WV to comply with the resolution dated November 15, 2011.

Vote In favor: Mr. Kerner, Mr. LaSorsa, Mr. O'Donnell, Mr. Tetelman, Mr. Goett.

V. DISCUSSION

Oakridge Gardens (Smith Ridge Housing, LLC, owner of record), NYS Route 123, Vista – Applications for Waiver of Site Development Procedures & Wetland Activity Permit Approval - Cal. #6-02 PB – Request to modify condition SP43(c) of the approval dated June 12, 2012, last amended September 24, 2012

Phil Pine, Owner Smith Ridge Housing/Oakridge Gardens was present.

The Board reviewed Mr. Pine's request dated June 12, 2013.

RESOLUTION

BE IT RESOLVED, that condition SP43(c) of the resolution approved by the Planning Board on June 12, 2012, last amended September 24, 2012, be revised to show Arons & Neary as the escrow fund holder for Oakridge Gardens (Smith Ridge Housing, LLC, owner of record) in the place of Hocherman Tortorella & Wekstein.

On a motion made by Mr. O'Donnell, seconded by Mr. LaSorsa, the Board adopted the above resolution.

Vote In favor: Mr. Kerner, Mr. Tetelman, Mr. Goett, Mr. LaSorsa, Mr. O'Donnell.

Cross River Plaza (EK Cross River, LLC, owner of record), NYS Route 121, Cross River – Request to modify conditions of approval – Cal. #6-10 PB – Request for release of escrow being held for landscaping

Michael Fuller Sirignano, Esq., was present on behalf of the applicant.

Mr. Sessions confirmed the inspection as stated in the Kellard Sessions memo dated May 20, 2013.

RESOLUTION

BE IT RESOLVED, that the replacement security in the amount of \$2,000 submitted to guarantee completion of the landscaping required by the Board's February 14, 2012 resolution of approval is approved to be released less any additional amounts due

On a motion made by Mr. Goett, seconded by Mr. LaSorsa the Board adopted the above resolution.

Vote In favor: Mr. Kerner, Mr. Tetelman, Mr. O'Donnell, Mr. LaSorsa, Mr. Goett.

VI. REQUEST FOR EXTENSION OF TIME**Cross River Plaza (EK Cross River, LLC, owner of record), NYS Route 121, Cross River – Request to modify conditions of approval – Cal. #6-10 PB**

Michael Fuller Sirignano was present on behalf of the applicant.

On a motion made by Mr. Tetelman, seconded by Mr. Goett, a 90-day extension to October 14, 2013 was granted to Cross River Plaza (EK Cross River, LLC, owner of record), NYS Route 121, Cross River, Cal. #6-10 PB to apply for a building permit for the remaining vacant space approved by resolution granting Amended Site Development Plan approval dated February 14, 2013.

Vote In favor: Mr. Kerner, Mr. LaSorsa, Mr. O'Donnell, Mr. Goett, Mr. Tetelman.

Barry Nesson, 228 Smith Ridge Road, South Salem /Thomas J. & Nancy Torti, 3 Beaver Pond Lane, South Salem – Applications for Lot Line Change and Wetland Activity Permit Approval – Cal. #13-10 PB

Michael Fuller Sirignano was present on behalf of the applicant.

On a motion made by Mr. Tetelman, seconded by Mr. LaSorsa, a 90-day extension to October 31, 2013 was granted to Barry Nesson, 228 Smith Ridge Road, South Salem /Thomas J. & Nancy Torti, 3 Beaver Pond Lane, South Salem, Cal. #13-10 PB to comply with the resolution granting Final Subdivision Plat Approval and Wetland Activity Permit Approval dated August 9, 2011.

In favor: Mr. Kerner, Mr. Goett, Mr. O'Donnell, Mr. LaSorsa, Mr. Tetelman.

Lewisboro Library Association, 15 Main Street, South Salem – Applications for Special Use Permit Approval and Wetland Activity Permit Approval – Cal. #7-12 PB

Mary Shah was present on behalf of the applicant.

Mr. Praga stated that he was not clear as to the reason for the request.

Mr. Praga recommended that the Board give a conditional 90-day extension if required and that a call be made to John Watson, Insite Engineering, author of the letter requesting extension of time for clarification of the request.

On a motion by Mr. O'Donnell, seconded by Mr. Tetelman, a 90-day extension to October 6, 2013 was granted to Lewisboro Library Association, 15 Main Street, South Salem, Cal. #7-12 PB to comply with the conditions of approval stated in the resolution dated January 8, 2013.

In favor: Mr. Kerner, Mr. LaSorsa, Mr. Goett, Mr. Tetelman, Mr. O'Donnell.

At this time, the Board also discussed the letter from Gary Page, President, Lewisboro Library, Board of Trustees, dated July 5, 2013 requesting that the Planning Board waive the inspection fees for the Library's building renovation and expansion project.

Mr. Praga stated that if the applicant does not have to pay the fees, it is the responsibility of the town to pay the fees.

Mr. Kerner asked that Mr. Praga respond to Gary Page recommending that he make application to the Town Board. Mr. Praga agreed to do so.

Pasquale Popoli & Angelo Sicuranza, 1437 Route 35, South Salem – Applications for Final Subdivision Plat Approval, Wetland Activity Permit Approval and Stormwater Permit Approval – Cal. #8-02 PB

Mr. Sessions stated that it had been 1 ½ - 2 years since he had been to the site. He stated that the wetland permit is valid until September 2014. It was determined that the extension of time requested is for the Subdivision application.

Mr. O'Donnell noted that the wetland permit is being handled administratively. The wetland permit expiration is September 26, 2014.

Mr. O'Donnell recommended that Mr. Sessions visit the location.

Mr. Kerner instructed that the applicant be notified that a status update is required and that the applicant or applicant's representative is requested to attend the August meeting. The Planning Board secretary was instructed to provide notification.

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 - Cal. #5-12 PB

Ray Vergati was present on behalf of the applicants.

On a motion made by Mr. Tetelman, seconded by Mr. Goett, a 90-day extension to September 9, 2013 was granted to 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, Cal. #5-12 PB to satisfy the remaining conditions of the Special Use and Wetland Activity Permit Approvals as stated in the resolution dated December 11, 2012.

Vote In favor: Mr. Kerner, Mr. Tetelman, Mr. O'Donnell, Mr. Goett, Mr. LaSorsa.

VII. SEPTIC VIOLATIONS

The septic system installation on the property of John Gallagher was discussed.

Mr. Sessions informed the Board that Mr. Gallagher is not in violation. The Westchester County Health Department (WCHD) received a call from Mr. Gallagher, owner of the property, notifying them of a failure of the existing system. The WCDH went to the property and deemed the system in imminent failure. The WCDH instructed the owners to oversize the system for the two bedroom house and deemed the new system an improvement on the previous system on the property.

Mr. Sessions referenced Town Code Section 217-5B(4) which states that in an order by the County Health Department, no action is required by the Planning Board.

The Board resumed discussion on the topic of Septic Violation which had been discussed at the June 11, 2013 meeting.

Ms. Clark stated that the list of people who had not reported back to the Planning Board that their systems had been pumped according to their underlying permits was sent to Kellard Sessions along with a draft of a Notice to Remedy. The Notice to Remedy would have to be signed by the Wetlands Inspector who has the ability to enforce the conditions of the code. After the 30 day period, violations could be filed if there is no response.

It is a concern of the Board as to who has the responsibility for tracking compliance.

Ms. Clark suggested that the process be institutionalized. Mr. O'Donnell stated that he does not believe it is the function of the Planning Board to institutionalize the process, although the issues may come before the Planning Board if a violation is issued by the wetland inspector.

Ms. Clark reviewed the process. If the Planning Board does not have evidence from the property owner that their system has been pumped: a letter is sent from Ms. Clark, which in most cases triggers compliance; if there is no compliance or if the letter is ignored, the next step is issuance of a Notice to Remedy by the Wetland Inspector which gives the violator a 30-day period to comply; the last step would be to file a violation, which would require the violator to appear before the Planning Board.

Mr. Kerner asked if the violations could be handled in civil court. Ms. Clark responded that the violations could be filed with the justice court, or with the Planning Board. Mr. Kerner stated that he believes the Planning Board should be involved with remediation but not necessarily in adjudication or determination of fines.

Ms. Clark stated that she would follow up with Mr. Kerner.

Ms. Clark exited at 9:15 p.m.

Todd Management, LLC, - Location of proposed activity: 251 and 263 Todd Road, Katonah

Mr. Kerner stated that the concerns regarding Sublot 2 were resolved.

Mr. O'Donnell summarized the site walk: All members of the Planning Board, with the exception of Mr. Tetelman were present for the site walk. Mr. Tetelman had previously walked the site. Ms. Andersen was present on behalf of the CAC for a portion of the walk. Joseph Tansey, CAC, was present for another portion

of the walk. Mr. Robert Sullivan, CAC, was also present. Joseph Cermele, PE, Kellard Sessions Consulting, Town Engineer, was present. Paul Pelusio was present on behalf of the applicant.

The crossing near the split was discussed and there was consideration of moving it to the east because that would lessen the amount of fill that would be required. One of the recommendations to the applicant was that they contact the Fire Department because they are getting close to a plan.

Ms. Anderson stated the concerns of the CAC involving the area around the split and the amount of fill and the flow of the water.

Mr. O'Donnell stated that the applicant has been responsive to the concerns of the Board.

VIII. CORRESPONDENCE AND GENERAL BUSINESS

Estate Motors will be on the August agenda.

IX. MINUTES OF June 11, 2013

On a motion made by Mr. LaSorsa, seconded by Mr. Goett the minutes of June 11, 2013 were adopted.

Vote In Favor: Mr. Kerner, Mr. Tetelman, Mr. O'Donnell, Mr. LaSorsa, Mr. Goett.

X. ADJOURNMENT

On a motion made by Mr. Tetelman, seconded by Mr. LaSorsa the meeting was adjourned at 9:20 p.m..

Vote In Favor: Mr. Kerner, Mr. Goett, Mr. O'Donnell, Mr. Tetelman, Mr. LaSorsa.

Respectfully submitted,



Lisa M. Pisera
Planning Board Secretary