

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 7, 2014 at 7:30 p.m.

Present: Jerome Kerner, Chairman
Robert Goett
Gregory LaSorsa
John O'Donnell
Ron Tetelman
Judson Siebert, Esq., Keane & Beane P.C., Planning Board Counsel
Greg Monteleone, Esq., Special Counsel
David Sessions, RLA, AICP, Kellard Sessions Consulting, Wetland Inspector
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 exits.

I. DISCUSSION

Rudolph C. Petruccelli, Oscaleta Road, South Salem, New York - Application for Subdivision Plat Approval and Wetland Activity Permit Approval to permit the construction of a three bedroom, single-family residence and associated deck, porch, driveway, walkway, landscaping, septic system, potable well, fencing and stormwater facilities - Cal# 8-12PB and Cal# 61-09 WP

Mr. Tetelman recused himself and stepped down from the podium.

Mr. Kerner provided a brief history. The application that first appeared before the Planning Board in January 2010 was an application for Wetland Activity Permit Approval for test holes. In July 2012, an application was submitted for the construction of a four-bedroom, single-family residence. The applicant appeared before the Board numerous times. The applicant also had numerous plan reviews with the Planning Board Consultants, Kellard Sessions. There were extended public hearings with written summations, as well as over 1,200 pages of documents, including minutes and correspondence. During the review process, the Planning Board has been guided by their consultants, who have applied the latest wetland practices and engineering in their review of the project.

Mr. Kerner stated that there are two parts to this application: subdivision of the tax lot from the abutting lot owned by the Three Lakes Council; and the application for a Wetland Activity Permit to construct a single-family residence.

With regard to the subdivision, the parcel became a separate lot in 1972 and has been under the present ownership since 1982. The Town has recognized the parcel as a separate lot, and it has been taxed accordingly.

Mr. Kerner opened discussion of the subdivision application to the Board.

Mr. LaSorsa stated that he is satisfied with the subdivision application.

Mr. Goett was in favor of approving the subdivision application.

Mr. O'Donnell addressed Mr. Siebert. Mr. O'Donnell questioned the significance of the Town Board's waiver of fees, and the significance of the payment of taxes. Mr. Siebert responded that applications to the Planning Board require the payment of fees. Subdivision applications require the payment of a recreation fee. The Town Code contains a provision in the subdivision regulations allowing an applicant to go to the Town Board to request that this fee be waived. The Town Board decision to waive the fee does not have a bearing on the Planning Board's determination to grant or deny the subdivision application; it is recognition by the Town Board, that under the circumstances presented, payment of the fee would be inequitable, and the imposition of the fee on the applicant would be a hardship. Mr. Siebert stated the payment of taxes is not a dispositive factor. It is an equitable consideration and not in and of itself determinative of whether the application should be granted or denied.

Mr. O'Donnell questioned whether the Town Code provides flexibility to view an application from an equitable standpoint rather than a legal standpoint. Mr. Siebert responded that §195-7 allows for adjustment to the subdivision regulations under special circumstances.

Mr. O'Donnell asked, that in Mr. Siebert's legal opinion, does §195-7 apply to the circumstances presented by Mr. Petruccelli. Mr. Siebert responded that this application presents a number of special circumstances, in the sense that the parcel is a lot that was created over 40 years ago, and has been treated by the Town as an extant tax lot for 40 years. Mr. Siebert stated that the Building Inspector has determined the lot is deemed not to be subject to current code, and is to be treated as a buildable lot. Mr. Siebert stated that this determination was the subject of an unsuccessful appeal to the Zoning Board of Appeals (ZBA). Mr. Siebert stated that with regard to the subdivision application, an approval by the Planning Board would permit the lot line to exist on a plat as it exists on its metes and bounds description. Any other action on the lot would require Wetland Activity Permit Approval from the Planning Board.

It was the consensus of the Board that the subdivision application be approved. A resolution to be voted on by the Board will be prepared by Keane & Beane for the October 21, 2014 Board meeting.

Mr. Sessions pointed out that the latest subdivision plat does not contain a Zoning Tabulation Chart or the local wetland boundary. A previously submitted plat did include these items. Mr. Sessions confirmed that a prior iteration did contain the Zoning Tabulation Chart and local wetland boundary. Mr. Siebert stated that the proper steps would be taken to ensure that the drawing to be acted on would be the correct drawing.

The Board discussed the application for Wetland Activity Permit Approval to construct a single-family residence. Mr. Kerner stated that in its deliberation the Planning Board was guided by §217-1 and §217-8 which lay out the decision-making process. Mr. Kerner summarized these sections of the code.

Mr. LaSorsa stated that he has not seen any evidence to support that there are major negative effects on any area surrounding the premises that would have an impact on the wetland.

Mr. LaSorsa addressed Mr. Siebert, asking whether stormwater and septic approvals were obtained for the originally proposed four-bedroom residence. Mr. Siebert responded that the initial application for a four-bedroom house came before the Board in 2012. As a result of memos from Kellard Sessions and comments from the Board, the immediate reaction was that the application was aggressive in terms of site constraints, wetland and wetland buffer disturbance, and the proposal of a four-bedroom house. No permits were pulled at that time. Field testing for stormwater management and infiltration measures on the property was done as per the plan originally submitted. As the application changed, the location of

those measures changed. The last few comment memos submitted by Kellard Sessions raised the issue of the absence of any test pit work done based on the current proposed location of the stormwater infiltration practice, for which the applicant is seeking approval. Kellard Sessions has not witnessed any test pits in the currently proposed location. Test pits were done in the originally proposed location.

Mr. LaSorsa expressed concern of holding Mr. Petruccelli to a standard of not obtaining testing approval for septic and stormwater drainage under the circumstances of having already done so. Mr. LaSorsa stated that he may be more comfortable conditioning an approval upon results of approvals from the Westchester County Health Department (WCHD) and New York City Department of Environmental Protection (DEP)

Mr. LaSorsa questioned what, if any, difference there would be in the requirements of the Planning Board versus the WCHD or DEP with regard to evaluation/approval of the application. In response to Mr. LaSorsa, Mr. Sessions stated that there would be no difference. Mr. Sessions stated that all applicants are required to test for stormwater. Testing was done in the original location; however, the applicant has refused to do testing in the new location. The reason that testing cannot be a condition of approval is because if the field testing is done and there is ground water, the infiltrators must be placed somewhere else on the site, causing a domino effect in terms of the location of the septic and well. Mr. Siebert stated that, from a legal perspective, the code provision being acted upon requires that two functions be undertaken: 1) evaluation of impacts and; 2) determination as to whether the impacts are necessary, unavoidable, minimized, and mitigated. The issue is that the Board cannot fulfill the evaluation phase to its full extent when the stormwater issue remains open due to the lack of stormwater soil testing.

Mr. Kerner stated that the application can only be evaluated on the information submitted. The Board has asked for additional information which the applicant did not provide. There have been changes to the site which have not been reviewed by the WCHD or DEP to determine if the site plan complies with current regulations. Mr. Kerner stated that there have been numerous memos, dating back to February 2013, pointing out certain deficiencies in the plan to which the applicant has not adequately responded.

Mr. LaSorsa stated his belief that that the applicant is willing to do a number of stipulations and conditions in order to take away any concerns of the Board.

Mr. LaSorsa stated that the proposed mitigation plan is approximately nine square feet short of the required 1:1 mitigation ratio. Mr. LaSorsa stated that he is agreeable to the mitigation ratio proposed.

Mr. Goett stated that the lack of soil testing is a critical point in the evaluation of this application. Mr. Goett stated that accurate data that is current and applicable to plan proposed is required in order to make an informed decision. With regard to mitigation, Mr. Goett stated that the law and policy of the Town is to strive for 1:1 mitigation. Given this particular case, Mr. Goett is compelled to hold to the 1:1 mitigation.

Mr. Kerner stated that the applicant has not responded to repeated requests for certain information. The request for resubmission of the plan to the WCDH and DEP went unheeded. Mr. Kerner stated his opinion that there has not been maximum effort on behalf of the applicant to minimize impact on the wetland. With regard to mitigation, there have been a number of memos stating that the type of mitigation offered is not appropriate. Satisfying what is required by the New York State Department of Conservation (DEC) does not qualify as mitigation on the lot. The decision to pursue a three bedroom, rather than a four bedroom residence is not a mitigation measure. This step was one taken to minimize

impacts, as opposed to forming part of a proposed mitigation once impacts have been minimized as required. There are inconsistencies that still exist in the EAF. Mr. Kerner stated that he is inclined to deny the application.

Mr. O'Donnell stated his belief that the applicant has the burden of proof with regard to the application. Mr. O'Donnell stated that from his point of view, there are certain threshold issues with this application, the existence of a wetland being one issue. Mr. O'Donnell stated that there is agreement that a wetland exists on the property. Mr. Petruccelli and Mr. Marino, his wetland inspector, agree that a wetland exists. The level of function of the wetland has been questioned, but because the wetland exists, it is entitled to protection under the Town Code. Mr. O'Donnell stated he is not persuaded that one house will have a substantial impact on Lake Waccabuc. Mr. O'Donnell stated his belief that there will be impacts to the wetland on the property from what is being proposed. Filling a wetland or a portion of a wetland and developing almost the entire property which is entirely wetland or wetland buffer indicates that there will be substantial impact as a result of the proposed development.

Mr. O'Donnell echoed Mr. Kerner's opinion that satisfying what is required by the New York State Department of Conservation (DEC) does not qualify as mitigation on the lot. Mr. O'Donnell stated his belief that it would be difficult to successfully mitigate on the site considering the scale of the project proposed. Proposals for offsite mitigation were not diligently pursued by the applicant. The material supplied to the Board suggested a pro forma attempt to comply with the mitigation requirement.

Mr. O'Donnell stated his agreement with fellow Board members that the application is difficult to evaluate due to the refusal to provide certain information requested.

Mr. O'Donnell noted that the applicant first appeared before the Board in January 2010 (prior to Mr. O'Donnell's appointment). At that time, Mr. Kerner, and former Board member, Mr. Gusmano, observed that the site would be difficult to develop. The applicant's next appearance before the Board was in July of 2012; although the applicant has stated that he has been before the Board for four years, there have been periods of time when he has requested adjournments.

Mr. O'Donnell pointed out that as early as July 2012, it was acknowledged that wetlands run through the site, and that wetlands would be filled. It was asserted by the applicant that a "hidden" pipe was the cause of the wetland; however, on site walks by the Planning Board, the pipe was clearly seen.

Mr. O'Donnell stated that offsite mitigation was first discussed with the applicant in August 2012, and mentioned again on several occasions, however, the first offering by the applicant of offsite mitigation was in 2014. In 2012 and 2013, discussions took place regarding whether stormwater improvements could be considered as mitigation, and how these would be computed. Specific mitigation proposals that were suggested to the applicant, which were not acted on, included: no driveway, a small parking space, monitoring to protect an adjacent property and the lake, and use of a White Knight septic system. As recently as January, 2014, the applicant and his attorney both stated that no further mitigation would be proposed.

In response to a question from Mr. O'Donnell, Mr. Sessions stated the applicant ultimately submitted an offsite drainage analysis in 2014 that was considered adequate.

Based on the lack of a spirit of being forthcoming with the Board, and an incomplete application, Mr. O'Donnell stated that he is inclined to deny the application. The applicant has not met the burden of proof that is required of an applicant appearing before the Planning Board.

A show of hands indicated three Board members to deny the application, one Board member to approve the application.

Mr. Siebert stated that resolutions would be prepared for the October 21, 2014 meeting.

Mr. Tetelman returned to the podium.

Homeland Towers, LLC, applicant (Sprint/Nextel/AT&T, co-applicants), 377 Smith Ridge Road, Vista, (Vista Fire District, owner of record), Cal# 3-09PB – Release of Landscaping Bond

An email request from the applicant was shared with the Board.

Mr. Sessions reviewed the Kellard Sessions memo dated September 23, 2014.

On a motion made by Mr. Goett, seconded by Mr. Tetelman, the Board determined that a recommendation would be made to the Town Board for release of the landscaping bond.

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

**RESOLUTION ADOPTED BY THE PLANNING BOARD
OF THE TOWN OF LEWISBORO
AT A MEETING HELD ON OCTOBER 7, 2014**

WHEREAS, Condition #11 of the Planning Board resolution dated December 15, 2009 required the posting of a bond in the amount of \$24,130 to cover the cost of plant material associated with landscaping and screening; and

WHEREAS, in a memo dated September 23, 2014, Kellard Sessions had no objection to the release of the landscaping and screening bond.

BE IT RESOLVED that at the Town of Lewisboro Planning Board hereby recommends to the Town of Lewisboro Town Board the release of the Hanover Insurance Company (Allmerica Financial Citizens Insurance) Performance bond, number BLQ8046849, in the amount of \$24,130, submitted by Homeland Towers, LLC, as security for the completion of landscape plantings at the location of 377 Smith Ridge Road, South Salem, New York.

ADOPTION OF RESOLUTION

WHEREUPON, the Resolution herein was declared adopted by the Planning Board of the Town of Lewisboro as follows:

The motion was moved by: Mr. Goett
 The motion was seconded by: Mr. Tetelman
 The vote was as follows:

JEROME KERNER	Aye
ROBERT GOETT	Aye

GREG LASORSA **Aye**
JOHN O'DONNELL **Aye**
RON TETELMAN **Aye**

South Salem Fire Department, Dry Hydrant, 25 Boway Road, South Salem, (Michael and Colleen McLafferty, owner of record) – Application for Wetland Activity Permit Approval to install a dry hydrant - Cal# 71-14WP

Mike Lombardi was present on behalf of the applicant.

Ms. Andersen stated that the CAC would like the applicant to ensure that any runoff that occurs does not go into the pond. Mr. Lombardi responded that there is a stone wall on the site that is in bad shape. The proposal includes the rebuilding of the stone wall.

Mr. Sessions stated that the wall can be built up; it could be enclosed by a silt fence while being constructed. The area could be heavily vegetated and monitored so that any runoff from future rain events could be dealt with .

The Board determined that the proposed action would be handled administratively following legal review and approval by Mr. Siebert.

Mr. Lombardi confirmed that the South Salem Fire District bears the cost of these types of projects. Tax payers benefit.

Mr. Kerner suggested that in the future, a GIS map be provided to the Board (in order to see topography). It was suggested that Mr. Lombardi work with Kellard Sessions to obtain this information. Mr. Lombardi agreed.

Ms. Andersen stated her gratitude to Mr. Lombard and the South Salem Fire District for their hard work.

VII. CORRESPONDENCE AND GENERAL BUSINESS

Mr. Kerner stated that correspondence regarding the Westchester Municipal Planning Federation meeting at the end of October had been received. Mr. Kerner noted that this is an opportunity to obtain hours toward fulfilling the training requirement of the Planning Board members.

VIII. MINUTES OF SEPTEMBER 11, 2014 and SEPTEMBER 16, 2014

On a motion made by Mr. O'Donnell, seconded by Mr. Goett, the minutes of September 16, 2014 were adopted.

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

On a motion made by Mr. Goett, seconded by Mr. O'Donnell, the minutes of September 11, 2014 were adopted.

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

Abstain: Mr. Tetelman

IX. ADJOURNMENT

On a motion made by Mr. Tetelman, seconded by Mr. Goett, the meeting was adjourned at 8:24 p.m.

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

Respectfully Submitted,

A handwritten signature in black ink that reads "Lisa M. Pisera". The signature is written in a cursive style with a large initial "L" and "P".

Lisa M. Pisera
Planning Board Secretary