

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, March 17, 2015 at 7:30 p.m.

Present: Jerome Kerner, Chairman  
Robert Goett  
Gregory LaSorsa (arrived at 7:35)  
John O'Donnell  
Ron Tetelman  
Judson Siebert, Esq., Keane & Beane P.C., Planning Board Counsel  
Greg Monteleone,, Esq., Special Counsel  
Jan Johannessen, AICP, Kellard Sessions Consulting, Town Planner/Wetland Consultant  
Joseph Cermele, PE, Kellard Sessions Consulting, Town Engineer  
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 exit.

## I. PUBLIC HEARING

### **J2 Boniello Builders – Property fronting Bouton Road – Applications for Wetland Activity Permit Approval and Stormwater Permit Approval to construct a single family residence serviced by a septic system and drilled well – Cal# 39-14WP, Cal# 15-14SW**

The Chairman announced the commencement of the public hearing. There were no objections to the time, place or advertisement of the public hearing.

Jesse and Jared Boniello, owners, were present. Tim Allen, Bibbo Associates, and Beth Evans, Evans Associates, were present on behalf of the applicants.

Ms. Evans reviewed the project and property.

Ms. Evans addressed the questions that had been raised at a previous meeting regarding the conservation easement. Ms. Evans stated that the property was originally subdivided in the 1980's. A note on the plat stated that a portion of the property on the east side of the Waccabuc River, adjacent to Bouton Road, should be preserved and not touched. Ms. Evans was not aware of this when preparing the original mitigation calculations. The note did allow for driveway access to the lot. The conservation area has been expanded to include the area where the applicant has proposed mitigation plantings and restoration of the woodlands adjacent to the stream. As a result, approximately one acre of wetland mitigation is being proposed by the applicant.

In response to concerns of the CAC, Ms. Evans stated that approximately one-half of the house, and two-thirds of the septic are outside of the 150-foot buffer. What remains inside the major area of disturbance is the driveway. The disturbance also includes two stormwater management areas, which are required as part of the State Pollution Discharge Elimination System (SPEDES) general permit.

The applicant is proposing to remove invasive species in the conservation area and replace them with native trees and shrubs to enhance the wooded buffer that will remain between the developed portion of the site and the Waccabuc River.

As previously requested, monuments along the edge of the conservation easement area have been shown to ensure that this area is clearly defined. Future homeowners will be aware that their ability to use their land for anything other than passive recreation enjoyment stops at the base of the berm, walk, and driveway.

Ms. Evans acknowledged receipt of the comments submitted by Mr. Nordgren (Attachment A) and Mr. Griffin (Attachment B).

In response to Mr. Tetelman, Ms. Evans reviewed the resources/criteria she used to identify wetlands: certified soil scientists; her staff; vegetation; professional wetland scientists; hydrology; and groundwater and surface water presence. Ms. Evans showed the flagged area on the plan displayed.

Mr. Tetelman asked if the grassy area that had been mowed would ever be considered a wetland. Ms. Evans responded that when the original delineation was done, the area was meadow; it had not been mowed. It had been subsequently mowed to provide easier access for the Planning Board when they had visited the site. Although the soils are disturbed, they have been in place for over a decade, which in Ms. Evans opinion is more than enough time for wetland characteristics to develop. Based on soils and vegetation, Ms. Evans stated her opinion that there were no hydric soils and the vegetation was not indicative of previously disturbed wetlands.

With regard to endangered species, the applicant had reached out to the New York State Department of Environmental Conservation (DEC). A response from the DEC was received in September, 2014, identifying the mocha emerald dragonfly and Kentucky warbler as species likely to occur in the river corridor.

The distance of the access road to Route 35 was discussed. Mr. Tetelman stated that the Board had previously encouraged the applicant to use the disturbed access road, rather than creating a new road.

Mr. Allen stated that he had met with Kellard Sessions on March 16, 2015 to discuss the flood zone. The flood plan and stormwater calculations were discussed. Mr. Allen stated that the applicant will provide a narrative regarding a 100-year storm.

Mr. Johannessen reviewed the Kellard Sessions memo dated January 21, 2015. Mr. Johannessen stated that he has had a discussion with Ms. Evans, and is waiting for a formal response.

Mr. Johannessen stated that Kellard Sessions has confirmed the wetland delineation line. Kellard Sessions has been to the site several times and observed the pockets of hydrophytic vegetation which exists on the upland slope. As a result, at the request of Kellard Sessions, Evans Associates performed soil sampling in those locations which was witnessed by Kellard Sessions. The results did not show hydric soils. Kellard Sessions is in agreement with the wetland delineation line shown.

Mr. Cermele stated that a full SWPPP has been prepared. All comments have been, or will be, addressed. As previously stated, supporting documentation will be provided by the applicant. From an engineering standpoint, Kellard Sessions is in agreement with the concept proposed.

SWPPP requirements were discussed.

Ms. Andersen stated that the CAC had no new comments regarding the project.

Jim Nordgren, 38 Bouton Road, South Salem, reviewed his letter submitted to the Planning Board, dated March 16, 2015 (Attachment A).

Mr. Nordgren stressed his desire that the Planning Board require the applicant to hire a third party to delineate the wetland, stating that the Lewisboro wetland law requires that wetlands be delineated by hydric soils and/or vegetation. Mr. Nordgren stated that he observed facultative and obligate plant species over an area broader than that which was delineated. Mr. Nordgren stated that facultative plants indicate a wetland only two thirds of the time. However, obligate plants indicate a wetland 99% of the time. Based on this, Mr. Nordgren stated that he is 99% certain that the wetland is larger than delineated. Mr. Nordgren stated his credentials which he believes, by Lewisboro law, qualify him to delineate wetlands: for over two years, Mr. Nordgren has delineated wetlands as a qualified forester for the Watershed Agricultural Council (WAC); he has done dozens of plant inventories for the WAC; he has a Forestry Degree and other academic credits required by Lewisboro Law. Mr. Nordgren stated that, technically, he is an expert.

Receipt of the email (letter) submitted by Grif Griffin, 3 Apple Court, South Salem, dated March 17, 2015 (Attachment B), was acknowledged by the Planning Board.

Ms. Evans addressed Mr. Nordgren's comments regarding the existence of facultative and obligate plants outside of the wetland (as delineated by Ms. Evans). Ms. Evans disputed Mr. Nordgren's statement regarding facultative plants, stating that facultative plants occur 50% of the time within wetlands and 50% of the time outside of the wetlands. Most of the plants listed by Mr. Nordgren are facultative plants, and are equally likely to occur in the wetlands as not. Ms. Evans stated it is possible for obligate plants to grow outside of wetlands if their seeds have been blown and landed in an area where the plant was able to survive and compete; not because the area is a wetland.

Mr. Nordgren stated that he had misspoken regarding facultative plants.

Mr. Tetelman stated that based on the criteria used by Ms. Evans (as previously stated), and the agreement with her findings by Kellard Sessions, he is comfortable with the current delineation of the wetland.

Discussion of the delineation of the wetland by a third party took place.

Mr. LaSorsa stated that he is opposed to the involvement of a third party to delineate the wetland.

In response to Mr. O'Donnell, Mr. Nordgren declined to answer when the last time he walked the property had been. Mr. Nordgren stated that he used GPS to assess the property.

Ed Verbeke, 5 Waccabuc River Lane, South Salem addressed the Board. Mr. Verbeke is an adjacent property owner. Mr. Verbeke expressed his concern regarding the potential for increased traffic due to construction of the house, and traffic safety at the intersection of Route 35.

There was no further comment from the public.

Mr. Allen stated that he objects to the delineation of the wetland by a third party and that he is in agreement to the wetland line as delineated.

Because there are outstanding items to be addressed by the applicant, the Board determined that the public hearing will remain open. The Board agreed that they would like to hear directly from Mr. Sessions regarding the delineation of the wetland. Mr. Sessions was not in attendance at the March 17, 2015 Planning Board meeting.

Ms. Evans stated that subsequent submissions will be based on the wetland as currently delineated.

In response to Mr. Kerner, Ms. Evans stated that based on the comments made by Mr. Nordgren this evening, she finds no basis to revise the wetland delineation.

Mr. Kerner asked that Mr. Nordgren explain to the Board how he was able to document the species existing on the property. Mr. Nordgren stated that he had been on the property in the past year.

The applicant was given a deadline of April 2, 2015 to resubmit for the April 21, 2015 public hearing.

## **II. SKETCH PLAN REVIEW**

**NY SMSA Limited Partnership d/b/a Verizon Wireless, applicant (Town of Lewisboro, owner of record), Lewisboro Town Park, 1065 Route 35, South Salem – Application for Special Use Permit Approval for work associated with antenna upgrade – Sketch Plan Review – Cal# 2-15PB**

Michael Sheridan, Esq., Snyder & Snyder, represented the applicant.

Mr. Sheridan acknowledged receipt of the Kellard Sessions memo dated March 10, 2015. A response to comments will be submitted for the April 21, 2015 meeting.

Mr. Johannessen reviewed the March 10, 2015 Kellard Sessions memo.

There were no comments by the CAC.

In response to Ms. Andersen, Mr. Sheridan stated that the increased bulk of the proposed antennas will not prohibit other carriers from co-locating on the tower.

The Planning Board Secretary confirmed that the materials submitted had been mailed to the Antenna Advisory Board.

A public hearing was scheduled for April 21, 2015. Because the property is adjacent to Ward Pound Ridge Reservation, the applicant was requested to send a public hearing notice and copy of the application to the Westchester County Department of Parks and Recreation; Mr. Sheridan agreed.

The Board determined that submission requirements for the application would be waived.

**Copia Garden Center, 475 Smith Ridge Road - owner of record: Organic Choice, Inc. (Block 09834, Lots 035 & 048, Sheet 0053) & Peter and Jennifer Cipriano, 5 East Street (Block 09834, Lot 036, Sheet 0053) - Application for Sketch Plan Review/Site Development Plan for improvements to the existing Copia Garden Center including modification to curb cuts along East Street and expansion of the existing use onto adjacent tax parcel 09834-036-0053 – Cal# 1-15PB**

Peter Cipriano, owner, was present. David Coffin, AIA, was present on behalf of the applicant.

Mr. Coffin stated that he had met with Kellard Sessions and agreement on a circulation plan was reached. At this meeting, it was identified that the scale of the plan was misrepresented.

Mr. Coffin reviewed the Revised Sketch Plan Review Narrative for "Copia Garden Center – Amend Site Plan", and Revised Site Plan Drawing dated February 26, 2015.

Mr. Coffin stated that because it is being proposed that lots 35 and 48 be combined with lot 36, the applicant would like to request that a license be obtained from the Town to allow the five parking spaces shown on the plan to extend into the Town right-of-way. Mr. Sirignano, Esq., attorney for the applicant, has approached the Town Supervisor regarding this proposal.

Mr. Johannessen clarified that this issue has not yet been brought before Town Board. The Supervisor has spoken with Mr. Johannessen regarding this issue, and may look to the Planning Board for an opinion. Mr. Johannessen stated his opinion that the parking spaces can be on the property and that a licensing agreement is not necessary; it is a bad precedent to allow parking in the Town right-of-way.

Mr. Coffin informed the Board that one of the greenhouses located on the property collapsed under the weight of the snow.

Mr. Coffin provided 13x19 revised site plan which showed the old and new property line, as well as the proposed greenhouse. Mr. Coffin displayed the plan. Mr. Coffin confirmed that the plan shows additional parking in the Town right-of-way.

Mr. Tetelman stated that he agrees with Mr. Johannessen; parking should remain on the applicant's property.

Parking on the site was discussed.

The applicant was asked to consider a license agreement for a strip of landscaping, rather than for parking in the right-of-way. The Board agreed that this would be a better option for the neighborhood.

The size of the curb cuts and turning radiuses were discussed.

Mr. Coffin confirmed that the new storage building and greenhouse were reflected in the calculations.

Mr. Coffin submitted a photo of hex web fencing, in response to a previous request made by the Board.

A site walk was scheduled for Sunday, March 22, 2015, at 8:30 a.m. The applicant was instructed to have a copy of the 1985 site plan available at this time.

Mr. O'Donnell reminded the applicant that the Board had requested that a plan of operation be submitted.

The applicant was informed that the submission deadline for the April 21, 2105 meeting is April 2, 2015.

Mr. Johannessen suggested that the next submission include a separate plan depicting turning radiuses.

There were no comments from the CAC.

### **III. PROJECT REVIEW**

#### **New York American Water/Wild Oaks Water System – Nash Road – Application for Wetland Activity Permit to convert previously drilled groundwater test wells into active supply wells and tying them into the currently existing pump house via cut and cover trenching – Cal# 6-15WP**

Kristin Barrett, Esq., and Ross Diamond, Esq., Hazen and Sawyer, represented the applicant. Richard Ruge, New York American Water, was present.

Ms. Barrett reviewed the project.

The location of the pipe within the wetland was discussed. Mr. Johannessen stated that he is in agreement with the location of the pipe, but asked that the applicant provide a written narrative addressing the issue.

Mr. Johannessen reviewed the Kellard Sessions memo dated March 10, 2015. Site Development Plan and Wetland Activity Permit approvals are required.

A public hearing was scheduled for May 19, 2015, pending submission.

Approval from the Westchester County Department of Health is required.

The CAC had no comments on this application.

Mr. O'Donnell questioned the tire ruts shown in Photos 1 & 2. Mr. Ruge stated that the applicant does not own the driveway. Mr. Ruge confirmed that the pipes will not be damaged by vehicles driving on the driveway.

### **VI. WETLAND VIOLATION**

#### **Ryan and Patricia Caban, 31 South Shore Drive, South Salem – Cal# 5-14WV**

Mr. Monteleone stated that the homeowner had called and emailed the Planning Board Secretary asking that the Board be informed that the homeowners were unable to attend the meeting.

There was no discussion.

### **V. DISCUSSION**

#### **Septic Compliance Administration**

The Board reviewed the recommendation prepared by Kellard Sessions dated December 10, 2014.

The Board instructed Mr. Monteleone to review and revise the recommendations made by Kellard Sessions for discussion/acceptance at the April 21, 2015 meeting.

### **Stormwater Management and Erosion and Sediment Control**

Mr. Siebert agreed to finalize the Stormwater amendment to Section 189-5 of the Town Code for review/recommendation to the Town Board at the April 21, 2015 Planning Board meeting.

Mr. Tetelman agreed to provide the draft to the Stormwater Committee. A copy of the draft was given to Ms. Andersen.

### **VII. GENERAL BUSINESS**

The Board was in agreement to the making (blank) Planning Board applications available online.

Mr. Johannessen suggested, and the Board agreed, that a universal application form be developed. Mr. Johannessen will work with the Planning Board Secretary to develop the application form.

### **VI. MINUTES OF FEBRUARY 17, 2014**

On a motion made by Mr. O'Donnell, seconded by Mr. Goett, the minutes of February 17, 2015 were adopted.

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

### **VIII. EXECUTIVE SESSION AND ADJOURNMENT**

On a motion made by Mr. O'Donnell, seconded by Mr. Tetelman, the Board entered into Executive Session at 9:37 p.m. for attorney/client privilege discussions.

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

On a motion made by Mr. Tetelman, seconded by Mr. LaSorsa, the Board exited Executive Session at 9:49 p.m.

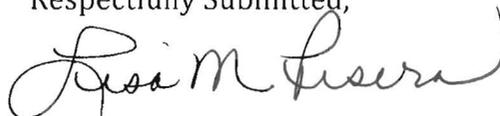
In favor: Mr. Goett, Mr. Kerner, Mr. LaSorsa, Mr. O'Donnell, Mr. Tetelman.

The Board returned to Public Session.

On a motion made by Mr. Tetelman, seconded by Mr. LaSorsa, the meeting was adjourned at 9:49 p.m.

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

Respectfully Submitted,



Lisa M. Pisera  
Planning Board Secretary