

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 18, 2014 at 7:30 p.m.

Present: Jerome Kerner, Chairman  
Robert Goett  
Gregory LaSorsa  
John O'Donnell  
Ronald 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  
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 - ADJOURNED**

**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. Kerner announced that the continuation of the public hearing would be held over until the April 22, 2014 Planning Board meeting.

## **II. DECISION**

**Rice/Arfa, Ridgefield Avenue, South Salem, – Application for Lot Line Change from Brian Rice, 159 Ridgefield Avenue, South Salem, and Jonathan Arfa and Barbara Bernstein, 149 Ridgefield Avenue, South Salem, New York. Cal # 10-13 PB**

Mr. Johannessen reviewed the proposed resolution.

The Board acknowledged receipt of the resolution. There was no discussion.

On a motion made by Mr. Goett, seconded by Mr. LaSorsa, the Negative Declaration and Resolution dated March 18, 2014 granting Final Subdivision Plat Approval Lot Line Change to Brian and Heather Rice, 159 Ridgefield Avenue, South Salem/Jonathan Arfa and Barbara Bernstein, 149 Ridgefield Avenue, South Salem, were adopted.

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

**Christopher & Sandra Ramsay, 14 Benedict Road, South Salem – Cal# 9-11WV & Cal# 61-12WP**

The Board acknowledged receipt of the resolution.

On a motion made by Mr. O'Donnell, seconded by Mr. Tetelman, the resolution Violation and Wetland Watercourse Law, Christopher and Sandra Ramsay, Cal# 9-11WV, dated March 18, 2014 was adopted.

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

There was no discussion.

**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**

The Board acknowledged receipt of the resolution.

On a motion made by Mr. LaSorsa, seconded by Mr. Goett, the resolution Violation of Wetland Watercourse Law, Rui Ferreira Oliveira, 18 Grandview Road, South Salem, Cal# 1-10WV, dated March 18, 2014 was adopted.

In favor: Mr. Goett, Mr. Kerner, Mr. LaSorsa, Mr. Tetelman.

Abstain: Mr. O'Donnell.

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

**Pinheiro Subdivision, 930 Old Post Road (Route 35), Cross River – Application for Sketch Plan Review of a two lot subdivision - Cal # 1-14PB**

Krista Yacavone, Esq., Zarin & Steinmetz, and Keith Staudohar, Cronin Engineering, represented the applicant. Fernando Pinheiro, owner, was also present.

The CAC memo that had been prepared for the project and submitted to the Planning Board Secretary had not yet been sent to the Board or the applicant .

Ms. Yacavone reviewed the application. Ms. Yacavone stated that the applicant is presenting two sketches, looking to get the Board's feedback on the two sketches presented.

Mr. Staudohar reviewed the project and sketches submitted.

Mr. Staudohar stated the site is on the north side of the road. Located on the property are the existing residence, attached garage, and above-ground pool with deck surround. Mr. Staudohar stated that the site slopes down from the southwest corner to the northeast corner. The site is bounded on the inside by a wetland line which is regulated by the New York State Department of Environmental Conservation (NYS DEC). The wetland was flagged by the applicant's wetland consultant, Steve Cronin. A survey was located and updated. Improvements are proposed within the Town's 150-foot wetland buffer.

The applicant reviewed the two sketches submitted.

Mr. Staudohar stated that Sketch 1 shows the proposed house partially within the Lewisboro wetland buffer, and the majority of the septic within the Town of Lewisboro buffer, but outside of the NYS DEC wetland.

Sketch 2 shows the primary septic outside of the wetland buffer. Portions of the expansion area are in the Town of Lewisboro buffer. The applicant stated that there would be no fill or removal of vegetation in the expansion area or septic area.

Mr. Johannessen reviewed the Kellard Sessions memo dated March 11, 2014, summarizing comments that are applicable to choosing an alternative.

Mr. Johannessen stated that both alternatives had been reviewed, and that the plan that locates the primary septic system outside of the wetland buffer is the preferred alternative. Mr. Johannessen reiterated the wetlands law, stating that the Board can only approve a septic system within the buffer when all other alternatives have been exhausted.

Mr. Johannessen stated that locating the house in the buffer is more easily mitigated than locating the septic system in the buffer. As included in the Kellard Sessions memo, Mr. Johannessen stated that there are modifications to Sketch 2 that could reduce the extent of improvements proposed within the buffer. The Board could consider reducing the footprint size, and reducing the number of bedrooms from four to three. A reduction in bedrooms would reduce the size of the septic system. The house could be reoriented more toward facing the southwest, providing for a larger rear yard located outside of the 100 foot buffer. The applicant should consider trying to relocate the common property line closer to Route 35, which would increase the size of Lot 2, perhaps enabling the improvements to be outside of the wetland buffer. Mr. Johannessen stated that the applicant should consider relocating the proposed lot line in a southerly direction to increase the size of Lot 2 and allow the house and septic to be pushed further away from the wetland.

Mr. Johannessen stated that there are some limitations to the septic system on Lot 1. The primary septic system and proposed expansion area in the rear of Lot 1 would be a factor in locating the lot line. The driveway surface should be considered, whether it will be asphalt or gravel. The applicant also did a tree survey. Consideration should be given to the placement of the driveway in an effort to save more trees

Mr. Johannessen stated that Kellard Sessions has not been to the property due to weather. When weather permits, Kellard Sessions will go to the site to confirm the wetland boundary line.

Mr. Johannessen stated that the applicant has been asked to submit a Wetland Delineation Report that complies with Town Code.

Mr. Kerner stated that the slight rotation of the proposed would give the advantage of fronting the proposed house away from the backyard of the existing house in the front of the property.

Ms. Andersen reviewed the CAC memo dated March 10, 2014. The CAC suggested that consideration be given to reduce the number of bedrooms being proposed to allow the movement of the house further out of the buffer.

The CAC suggested that consideration be given to making the back line of the lot more diagonal, which might allow placement of the proposed house and septic further from the wetland buffer.

Ms. Andersen stated that the CAC would like a site walk to better understand the proposal.

Mr. Staudohar stated his willingness to add more bend to the driveway in an effort to save more trees.

Mr. Staudohar stated that the existing electric fence on the property was a consideration when proposing the property line. The property line works well with the location of the existing septic, and where the expansion area for the lot would be. If the property line is moved too far to the south, the potential to get the expansion area in is limited. Setbacks from the pool deck and property line must be maintained.

Mr. Staudohar stated that he liked the idea of rotating the house.

Mr. Staudohar stated that the plan was based on a four bedroom design and a perc rate that is in the middle of the chart. Percolation tests have not been done due to the cold weather. A few test pits have been done, and the soils are good.

Mr. Staudohar stated that the applicant is not locked into the size of the septic system. Mr. Staudohar stated his willingness to either reduce the size of the septic or move the house out further.

In response to Mr. O'Donnell, Mr. Pinheiro stated that the house is being built for his daughter.

Mr. O'Donnell stated that when looking at the aerial submitted, the driveway on the left side of the property looks like it will be right next to the larger house next door.

Mr. Staudohar stated that he could not get a clear copy of the aerial from 2009-2011.

Mr. O'Donnell stated that the aerial does not seem to depict the size of the pool or what is on the property on the east side. The two driveways adjacent to each other do not look like a desirable feature.

Mr. Tetelman stated his concern that the property is being developed for convenience. Impervious surfaces and expansion areas are being proposed in the Town's wetland buffer. Mr. Tetelman stated that for him to accept the plan, it must show more care with work being done in the wetland buffer. This is a new lot that is being cut out of an existing lot, for the sake of convenience, which is different than proposing work on a piece of property with an existing house. Mr. Tetelman restated that his main concern is the work that is being proposed within the 150 foot wetland buffer.

It was the consensus of the Board that Sketch 2 was the more favorable plan, however revisions were still needed.

It was determined that Mr. Staudohar would prepare a new plan to be reviewed at the site walk, which would take place sometime in April.

Ms. Yacavone addressed the wetland disturbance issue, stating that the applicant has been in discussion with Steve Coleman with regard to a mitigation plan. The applicant is aware of the challenges that the site presents.

Mr. Tetelman reiterated that this is a subdivision of a lot that does not need to be subdivided.

Mr. Staudohar stated that he would be able to prepare a sketch plan next week.

#### **IV. PROJECT REVIEW**

**Hazelnut Farm, 21 Waccabuc River Lane, South Salem, New York (Lynn Bygott, owner of record), Application for Waiver of Site Development Plan Procedures to construct a covered riding ring, Cal # 7-13PB**

Andy Cheung, AC Engineering, PLLC, was present on behalf of the applicant. Lynn Bygott, owner was present. Patrick Medeo was also present.

Mr. Cheung reviewed his memo dated March 17, 2014, addressing comments made by the Board at the November 19, 2013 Planning Board meeting. The Notice of Intent has been revised. Two new site plans have been submitted: the Soil Erosion and Sediment Control Plan (revised March 16, 2014); and the Existing and Proposed Conditions Site Plan (revised March 16, 2014).

Mr. Cheung stated that the Soil Erosion and Sediment Control Plan shows the grading being revised 2:1 from the top of the road down, which shifted the footprint down, still outside of the 150 foot buffer. In addition to the grading a 1250 gallon septic tank with a riser on top has been included. The roof gutters will empty in to the pre-treatment tank. The pre-treatment tank leads to a series of six cultecs. At the end of the cultecs, a six inch pipe will come out at an elevation lower than the outlet of the tank.

Mr. Cheung stated that as part of the revision, the Existing and Proposed Conditions Site Plan (Drawing 2) was submitted. This plan shows everything existing on the site and everything that is proposed on the site. The footprint will remain the same. The soil stock pile has been revised. The silt fence line has been revised along the contours of the project. A temporary construction entrance has been added, detailed for the types of trucks coming on and off the site.

Mr. Kerner commended Mr. Cheung on the completeness of the plan.

Mr. Johannessen reviewed the Kellard Sessions memo dated March 11, 2014.

Mr. Johannessen stated that the resubmission of materials was in good order.

Ms. Andersen reviewed the CAC memo dated March 10, 2014.

Ms. Andersen stated that the main concern of the CAC is that while the pad is standard, the manure storage is not sealed. There is a large potential for effluent to go down the drain toward the wetland buffer.

Mr. Cheung stated that he is a consultant for the Watershed Agricultural Council (Ag Council). Mr. Cheung stated that the channel referred to by the CAC is a vegetated treatment channel, which takes wastewater from the manure storage pad, and from upstream of the pad where potential wastewater could be generated from the barn. When the vegetated treatment area was sized, it was done according to National Resources Conservation Standards (NRCS), which is a document used by the Ag Council to size vegetated treatment areas.

Mr. Cheung confirmed that the dumpster pad is contained with a curb, and that any runoff from the pad goes into the drain, then into the vegetated treatment area.

Mr. Tetelman stated that he did not see any curbing on the dumpster pad shown on the picture submitted. Mr. Cheung responded that there is a wall in the back, and a wall on one side, with a four inch curb on the right side and a four inch curb in the front. Mr. Cheung stated that a comprehensive wastewater and stormwater design was done by the Ag Council. Wastewater treatment on the farm from the dumpster pad is sized in accordance with NRCS.

Mr. Cheung confirmed that the vegetated swale is acting as a bioswale. There is a sump from the catch basin which catches the solids. The pipe comes across the road into the riprap apron; giving wastewater that is travelling down channel time to settle.

Mr. Kerner asked if there was anything in the swale that could slow down the flow of water. Mr. Cheung responded that the swale was designed with a 1 ½% to 2% slope. There is a little bit of a riprap before making the turn. Part of the Operations and Maintenance Agreement between the Ag Council and the owner is that every three years the treatment channel is evaluated for nitrogen and phosphorous content. If it exceeds 80 pounds per acre of phosphorous, the Ag Council removes and replaces the channel.

Mr. Cheung stated that the dumpster is not covered. Ms. Bygott stated that there is a farm nearby with a covered dumpster.

Ms. Bygott stated that Hazelnut Farm is using environmental pellets and that the dumpster is emptied approximately every four to six weeks.

Mr. Tetelman stated that concerns of the Board are manure storage, and phosphorous getting into the Waccabuc River. Mr. Tetelman stated that protecting the dumpster from rain would be greatly appreciated by the Board.

Mr. Medeo stated his willingness to cover the dumpster.

Mr. Cheung responded that vegetated treatment channels are meant to remove phosphorous.

Mr. Tetelman raised the issue of the overlap of the adjoining properties.

Mr. Medeo stated that there is no parking area. There is one fence line that could be in question. Hazelnut Farm maintains the area on the neighbor's side of the fence. The owner of that property has written a letter stating that he/she is in agreement to this arrangement.

Mr. Johannessen stated that it appears that the aerials show an overlap of parking or driveway over the property. Ms. Bygott stated that the parking was there when she bought the property and that it is within the property line. Mr. Johannessen stated that what is shown on the map does not support Ms. Bygott's statement.

Mr. Siebert stated that either site elements that are off site need to be incorporated on site and within control of the applicant, or some legal control needs to be placed on the offsite component of the site plan by way of a non-revocable easement obtained by the applicant.

In response to Mr. Kerner, Mr. Siebert confirmed that a letter of agreement would not be sufficient.

Mr. Johannessen suggested that removing the fence and paddock areas is an option.

Mr. Medeo stated his willingness to relocate the fence.

Mr. Kerner stated that the paddocks are shown to be off of the subject property on one of the early submissions.

Mr. Johannessen stated that one of the earlier submissions included an aerial with property lines indicating a portion of the parking lot to be over the property line.

Mr. Kerner stated if the applicant submits a revised site plan showing the paddocks on the property, there is no need for an easement or for further discussions with neighbors. Mr. Siebert confirmed.

Mr. O'Donnell questioned whether the accuracy of the boundary and what was shown would be certified.

Mr. Cheung stated that his plan is based on the latest revised survey prepared for Anne-Marie Nordgren. The northings and distances were used to obtain the property line on the overall site plan. Mr. Cheung stated that the plan was revised to show the acreage to be 7.617.

Mr. O'Donnell stated that he would like the horse trails to be included on the site plan.

Ms. Bygott approached the Board to show the location of the trails.

The increase in the number of horses from ten to fourteen was discussed. Mr. O'Donnell suggested that the formula used by the Ag Council is not site specific.

Mr. O'Donnell stated that the Horse Management Plan submitted by the applicant makes reference to recently added waste management techniques. Mr. O'Donnell asked what had been recently implemented.

Mr. Cheung responded that the Ag Council put in the dumpster pad.

Mr. O'Donnell asked whether the Westchester County Department of Health (WCDH) would consider this to be existing.

Mr. Johannessen responded that he had informed the WCDH that the dumpster pad was a recent improvement within the last year. Mr. Johannessen was told by the WCDH that it was considered to be existing.

In response to Mr. O'Donnell's question as to the height of the proposed riding ring, Mr. Medeo stated that the ceiling would be 16 feet, and the height of the peak would be less than 30 feet. The truss goes up approximately nine feet.

Ms. Bygott stated that she had received Architectural & Community Appearance Review Council (ACARC) approval on March 11, 2014.

It was the consensus of the Board to schedule a Public Hearing on April 22, 2014.

The applicant was instructed to submit a revised site plan addressing the removal of the paddocks, inclusion of trails, and covering of the dumpster.

## **V. EXTENSIONS OF TIME**

### **Pasquale Popoli & Angelo Sicuranza, 1437 Route 35, South Salem – Final Subdivision Plat Approval - Request for extension of time to meet requirements of amended approval resolution dated September 28, 2010 - Cal# 8-02 PB**

Mr. Popoli, owner, was present.

Mr. Johannessen stated that the Wetland Activity Permit is still valid.

On a motion made by Mr. Tetelman, seconded by Mr. Goett, a 90-day extension of time to June 16, 2014 was granted to Pasquale Popoli & Angelo Sicuranza, 1437 Route 35, South Salem, to comply with the conditions of the resolution dated December 8, 2009 granting Final Cluster Subdivision Approval.

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

**Tatiana Rozo Gil, 1 Glen Drive, Vista – Cal# 3-11WV – Request for extension of time to meet requirements of Wetland Implementation Permit, Permit # 71-11WP**

Tatiana Rozo Gil and Robert Salerno, owners, were present.

Mr. Salerno stated that the property is coming along nicely. The items remaining to be completed are stone removal and planting.

Mr. Johannessen stated that the rain garden should be completed first so that, over a long period of time, water does not go onto the area being vegetated.

In response to Mr. O'Donnell, Mr. Salerno confirmed that the issue with respect to the plantings in the Town right of way had been resolved.

Mr. Salerno brought up the issue of a NYSEG and Verizon vault and meter located very close to his driveway. The meter is for the vault. It is not Mr. Salerno's meter. Mr. O'Donnell suggested that Mr. Salerno contact the Public Service Commission.

On a motion made by Mr. Tetelman, seconded by Mr. LaSorsa, an extension to October 15, 2014 was granted to Tatiana Rozo Gil, 1 Glen Drive, Vista, Wetland Violation, 3-11WV, to comply with conditions of the Wetland Activity Permit, 71-11WP.

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

## **VI. DISCUSSION**

**First Taxing District (City of Norwalk), East Street, Vista – Rehabilitation of the existing Brown's Reservoir Dam – Cal# 35-12WP**

Mike Elliott, First Taxing District, was present.

Mr. Johannessen stated that the resolution was granted by the Board in June, 2011. The Wetland Permit was issued in January, 2012. The Wetland Permit expired in January, 2014.

Mr. Johannessen stated that the project is 90% complete.

Mr. Johannessen stated that there have been inspections and that there is a punch list of items that need to be resolved in the spring. Because the Board cannot grant a retroactive extension to the expired permit, a new application has been submitted for the punch list of items.

Mr. Elliott reviewed the project. Mr. Elliott stated that an earthen embankment had to be moved, and that the clearing limits contained in the original permit have not changed. The wetland restoration and wetland creation are complete. During the wetland creation, three monitoring wells were removed that need to be replaced.

Mr. Elliott stated that regrading must be done.

Mr. Elliott stated that the contractor has not done much work in the past year. The contractor has not ended the contract, nor has he pursued it.

Mr. Elliott stated that the area is pretty well stabilized. A soil stockpile exists on the property. The existing disturbed area needs to be regraded. The grass need to be touched up.

The Board discussed the issue of the contractor's non-performance.

Mr. Elliott stated that the First Taxing District has been discussion for nine months as to when to end the contract. Mr. Elliott stated that the First Taxing District does have a performance bond, payment bond, and retainage.

The Board discussed the repair of the public road, which was a condition of the permit.

Mr. Elliott stated that the heavy traffic on the site has been over for about one year.

Mr. Johannessen stated that there have been several site inspections and that he has been to the property with Peter Ripperger. Mr. Johannessen stated that there are no current issues with the road.

Mr. Elliott stated that the contractor's Worker's Compensation Insurance had been cancelled. The contractor has not responded to Mr. Elliott as to why the insurance was cancelled, or what he plans to do about the cancellation. The process to terminate the contractor and bring in a new contractor could take a couple months.

Mr. O'Donnell questioned whether the First Taxing District has gone to their bonding company. Mr. Elliott responded that their lawyer sent letters to the contractor last summer. The contractor initially responded by showing up to work, but as the weather grew colder, and working conditions grew less favorable, the contractor's presence decreased.

On a motion made by Mr. Tetelman, seconded by Mr. Goett, the Board determined that the proposed action would be handled administratively by the Town Wetland Inspector, with work to be completed by October 15, 2014.

All in Favor: Mr. Goett, Mr. Kerner, Mr. LaSorsa, Mr. O'Donnell, Mr. Tetelman.

**Jean Emond/Jane Balanoff, 70 Twin Lakes Road, South Salem, New York – Application for Wetland Activity Permit Approval to rebuild screened porch – Cal# 111-13WP**

Justin Leigey, contractor, was present on behalf of the applicant.

Mr. Johannessen stated that the project had appeared before the Board twice before. At the January, 2014 Planning Board meeting, the Board determined that the wetland permit would be handled administratively by the Town's wetland inspector.

Mr. Johannessen reviewed the project.

Mr. Johannessen stated that one week after the permit was issued, Mr. Johannessen received a call from Justin Leigey requesting changes to the approved plan.

Proposed changes include: an addition of about 200 square feet; enclosing the existing covered porch; moving two walkways; installing one new walkway; and potentially moving away from an in ground perimeter drain and going to a gutter system.

Mr. Johannessen stated that because this was not the plan that had been reviewed by the Board when making the decision to process the permit administratively, he felt it to be prudent to bring the plan to the Board for a determination as to how to proceed.

Mr. Johannessen stated that the prior project was a net reduction in impervious surface; the new plan is a slight net increase (about 200 square feet) due to the addition.

Mr. Leigey stated that because the in ground gutter system is not being done, a leader down to a splash pad will be installed. Mr. Johannessen stated he informed Mr. Leigey that the added impervious cover will have to be treated with some sort of stormwater practice. A perc test will have to be done.

Ms. Andersen stated that a landscaping plan had been discussed. Mr. Johannessen stated that a series of conditions are provided in the permit that fine tune the landscaping, including invasive species removal, and a landscaping plan along the property line to aid in noise reduction from the generator.

It was the consensus of the Board that the permit remain administrative.

#### **VII. MINUTES OF February 25, 2014**

On a motion made by Mr. LaSorsa seconded by Mr. Goett, the minutes of February 25, 2014 were adopted.

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

#### **VII. EXECUTIVE SESSION AND ADJOURNMENT**

On a motion made by Mr. Tetelman, seconded by Mr. LaSorsa, the Board entered into Executive Session with counsel for attorney/client privilege discussions at 9:00 p.m.

All 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 9:11 p.m.

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 meeting was adjourned at 9:12 p.m.

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

Respectfully Submitted,



Lisa M. Pisera  
Planning Board Secretary