

**Town of Bolton  
PLANNING BOARD  
MINUTES  
Thursday April 24, 2008**

Present: Chairman Herb Koster, Sandi Aldrich, John Gaddy, Sue Wilson, Chauncey Mason, Donald Roessler, Town Counsel Michael Muller and Zoning Administrator Pamela Kenyon.

Absent: Henry Caldwell

H. Koster opened the meeting at 6:08 PM.

Herb Koster asked if there were any corrections to the March 20, 2008 meeting.

**Motion by** Sue Wilson to accept the minutes as written. **Seconded by** Don Roessler. **All in Favor. Motion Carried.**

**REGULAR MEETING:**

- 1) **SPR08-05 RUSSELL, LESLIE.** Represented by Donald Russell. For the construction of a proposed garage with storage/workspace, seeks Type II Site Plan Review for an accessory structure greater than 1,500 square feet of floor space, approximately 2,508 square feet is proposed. Section 171.14, Block 1, Lot 2, Zone RL3. Property Location: 398 Potter Hill Road. Subject to SEQR. *Note: This application is in conjunction with V08-07 for a deficient front yard setback that has been approved.*

**RESOLUTION:**

This item was tabled at the applicant's request.

- 2) **SPR08-11 LLC INDIAN POND EST.** Represented by Eugene Baker. Seeks Type II Site Plan Review for the construction of a single family dwelling in the LC45 zone. Section 108.00, Block 1, Lot 4, Zone LC45. Property Location: 882 Padanarum Road. Subject to SEQR.

**RESOLUTION:**

This item was tabled at the applicant's request.

- 3) **SPR08-13 GOUDY BILL.** Represented by Tony LaCassio. 1) In accordance with Section 125.13C1 of the stormwater regulations, seeks Type II Site Plan Review for a major project, specifically to remove more than 15,000 sq. ft. of

vegetation. Approximately 28,500 square feet is proposed; and 2) In accordance with condition set forth by the Planning Board on June 25, 1998, seeks Site Plan Review to clear additional land. Specifically the condition reads as follows: No further cutting is allowed on lots 3, 4, 5, 8 & 9 without prior Planning Board approval. Section 171.11, Block 1, Lot 13, Zone RM1.3. Property Location: Apple Hill Road and being Lot 4 of the Apple Hill Subdivision. Subject to WCPB review. Subject to SEQR.

Tony LaCassio of the Michaels Group spoke on behalf of Bill Goudy. He stated that they are requesting to remove 28,500 sq. ft of vegetation which is greater than 15,000 sq. ft allowed. He stated that the plan has been approved by Tom Nace and the applicant is looking to move forward. P. Kenyon stated that there is no Warren County impact.

J. Gaddy stated that in the past there have been issues with stormwater run-off onto the lower neighbors' property and asked if that has been addressed adequately. P. Kenyon stated that when she met with the engineer at the site she discussed that with him and requested that he pay special attention to this issue. She stated that hopefully they have accomplished that.

J. Gaddy stated that his only concern is to get the exterior coach lights modified to a type of light that is shielded and downward facing with the use of low wattage bulbs. Tony LaCassio agreed to make that adjustment.

Tony LaCassio stated that they are looking to improve the area by removing the paved driveway. They plan to replace it with mulch and seed to prevent erosion and protect the lower neighbors. They have also created several drainage swales and a small basin located behind the house which will be equivalent to a dry well. S. Aldrich asked if they plan any additional planting to replace the driveway. Tony LaCassio replied no. S. Aldrich asked if there was a planting plan for the property. Tony LaCassio replied no. However the package they offer their customers includes plantings along the front elevation by the roadside. This includes two trees, about three inches in diameter, and the rest is lower lying shrubs.

H. Koster asked if Tom Nace was okay with the berm at the bottom of the stormwater basin. P. Kenyon replied that she assumes so since he has approved the plans but would be happy to have him review that again. H. Koster stated that he would like to see something that has a stronger root system planted to assist in erosion control.

#### **RESOLUTION:**

**Motion** by Don Roessler to accept the application as complete, waive a public hearing and grant approval with the following condition: 1) Exterior lighting is to be downward facing and shielded with low wattage bulbs used. This motion includes a SEQR analysis and findings of no negative environmental impacts with all aspects favorable to the application as presented. **Seconded** by Sue Wilson. **All in Favor. Motion Carried.**

J. Gaddy thanked P. Kenyon for the past minutes and commented to the Board that if they read the minutes the Board was concerned about trying to get 150 trees planted. He stated that now ten years after the fact and there is not a tree left up there. He is concerned that as they go through the review of the zoning ordinance and comprehensive plan how they address these kinds of issues. He feels that nothing got corrected after all the time they put into it. P. Kenyon stated that this was brought before the Board and Jeff Tennett was present and he told them that the condition of approval was that the trees had to have a two year survival rate. J. Gaddy stated that every single development they have has issues like this and he feels rather helpless in these situations.

- 4) SPR08-04 HENSLER, RAY SR.** Represented by John Thomas Peck, CPESC. For the construction of a proposed pole barn, seeks 1) Type I Site Plan Review for a use within ¼ mile of the Schroon River; and 2) a) Type II Site Plan Review for an accessory structure greater than 1,500 square feet of floor space; 1,800 square feet is proposed; and b) a major stormwater project, specifically to remove more than 15,000 sq. ft. of vegetation. Approximately 27,200 square feet is proposed. Section: 139.00, Block 1, Lot 77, Zone **RIL3** & LC45. Property Location: 1792 East Schroon River Road. Subject to SEQR.

John Peck of JTP Environmental Consulting represented Ray Hensler. He stated that he is a Certified Professional in Erosion and Sediment Control for about 21 years. He has been retained by Ray Hensler to assist in a reclamation project for the extraction of soil that was removed by Anton Cooper and to obtain the proper permits to build a new pole barn on the property. He gave an overview of the survey and topographic map that was provided. Before he was hired Anton Cooper had removed 3800 cubic yards of soil material. He stated that he has surveyed the site and feels that they have a very accurate description of what is going on the property currently. He stated that there is a water bar at the top of the hill that takes the majority of the water and prevents it from coming over the bank and onto the road. He stated that even with the slopes and grades of 15-20% it is very stable. He continued that the site is very sandy and any water will be absorbed quickly. He stated that even with the large hill the slope is very gentle. Once the stable slope is shaped their intention is to seed it and place some transplants from the native woods. He feels the environmental impact from this site is almost non-existent and the only possibility for water or sand to wash across the road would be in a 500 year storm. He stated that the testimony to that is all of the ice and snow melt that has just occurred and nothing has moved. Ray Hensler, Jr. agreed. John Peck stated that P. Kenyon and Mitzi Nittmann requested that a silt fence be put in after the excavation took place and that is currently in place. He stated that they have taken erosion control measures by putting in a stabilized construction entrance and they have two lines of silt fence. He indicated that the additional material to be removed is estimated at 4,000 cubic yards and the total removed will be 7,800 cubic yards and total area of disturbance is 22,700 sq. ft. H. Koster asked if all of the material was coming off site. John Peck replied yes.

John Peck stated that the map and plan that has been presented to the Board will be submitted to the DEC, but DEC would like to know the PB input first. He stated that they applied to the APA and the APA has indicated that they have received same and are

not in need of any further information at this time. He stated that Mr. Hensler has paid two civil fines; 1) \$250 to the APA and 2) \$150 to the Town of Bolton. He stated that Jim Hutchins, P.E. was hired to develop the stormwater management plan. He briefly described the stormwater plan. He stated that when the project does begin he has offered to provide project oversight. H. Koster asked if DEC was treating this project as a mine with rehabilitation. John Peck replied yes.

H. Koster asked if there was any planting planned for the project site. John Peck replied yes and referred to page 3 in the plan which indicates the planting and seeding for the site plan. S. Aldrich asked if there was any screening planned between the barn and East Schroon River Road. Ray Hensler, Jr. replied no. John Peck stated that this land is agricultural rural forested area and is zoned as rural/light industrial. He reminded the Board that this is not a commercial extraction to be there for years, it is a one time extraction. He stated that this plan was created to be conducive to the area.

J. Gaddy stated that he would like any lighting on the barn to be downward facing and shielded. Ray Hensler, Jr. stated that he did not intend on having any lighting on the barn but if they do he agreed to the request.

J. Gaddy commented as a point of order, when he reads through the motion for the major stormwater plan, it states that the project will not contribute to any pollution or siltation of Lake George, not the Schroon River. H. Koster stated that they are in the Lake George Basin and DEC's new stormwater regulations are even stricter than Bolton's and these regulations cover the Schroon River.

## **RESOLUTION:**

**Motion by** John Gaddy to accept the application as complete, waive a public hearing and grant approval for 1) Type I Site Plan Review for use within ¼ mile of the Schroon River, and 2) Type II Site Plan Review for an accessory structure greater than 1,500 square feet of floor space; and 3) a major stormwater project, specifically to remove more than 15,000 sq. ft. of vegetation based on the project having met the criteria and standards set forth in the code with the following condition: 1) Exterior lighting is to be downward facing and shielded with low wattage bulbs used. This motion includes a SEQR analysis and findings of no negative environmental impacts with all aspects favorable to the application as presented. **Seconded by** John Gaddy. **All in Favor. Motion Carried.**

- 5) **SD06-05 OBERER, ERNEST.** Represented by Joseph Fuerst PLS. Seeks to divide into 3 lots that parcel designated as Section 171.00, Block 1, Lot 6, Zone LC25. Final Plat. Minor Subdivision. Subject to SEQR. *Note: This item was tabled at the October 18, 2007 meeting pending additional information. Site Plan Review for a major stormwater project is required, but has not yet been applied for.*

*Note: Sue Wilson recused herself.*

Scott Miller and Peter Loyola represented Ernest Oberer and the Oberer subdivision. Scott Miller stated that at their last meeting they obtained sketch plan approval for access to the site via a 20 ft wide driveway with 2 ft swales on each side for stormwater. He stated that they have tried to address the PB concerns of visibility, locations of the proposed homes and the request to provide a visual analysis of the project site.

Scott Miller provided a handout of their view shed study consisting of 4 maps showing the potential area of visibility of the different components of the project. He stated that they separated the maps into 4 components; 1) visual map showing visibility of the house on lot #1, 2) the two homes that were the most concern to the PB on lots #2 & 3, 3) the potential visibility of the driveway and 4) a composite of the overall potential of visibility for the complete project. The pictures were taken from 4 different views; north of Green Island, the Narrows, Huddle Bay, and Goodman Avenue. He stated that they wanted to provide photo simulations to show the proposed locations and the scale of the homes. He stated that before they can move forward with detailed engineering and stormwater they wanted to get PB input.

J. Gaddy stated that he was impressed with the detail of the view shed maps and asked how the maps were created. Scott Miller explained that the maps are done in a GIS program. They download digital elevation models based on the quadrangle that they are in. He stated that the maps are all geo-referenced and to scale. Peter Loyola stated that they do a lot of visual impact assessment work and they attempt to make it as accurate and precise as to where the houses are located based on the GPS. They looked at topography and vegetation and used 40ft for the height of vegetation for this particular project. He continued that they will be very selective in choosing which trees and vegetation will be removed and intend on replanting trees and vegetation once the homes are constructed. He stated that the pictures and 3-D overlay are an accurate depiction of the scale and location of the house.

J. Gaddy stated that he appreciates the detailed presentation and their intention to be conservative in the cutting but he is concerned that once the developers are done with the project there is no telling what could happen to the trees and vegetation left or re-planted. Scott Miller stated that the applicant is willing to have the project come before the PB for Site Plan Review prior to construction and the Board would have another opportunity to review structure and planting plans. He stated that the applicant is also willing to have a deed restriction indicating that only certain colors for the homes be used. Peter Loyola stated that they are very familiar with the concerns of the PB because they do a lot of work in other areas that have scenic corridors and are working to protect their scenic views. He stated that they have been able to write deed restrictions that indicate colors for homes and guidelines for vegetation removal which allow for enforcement action. He stated that they understand that enforcement is a tough issue, but they can do what they can to prevent it from happening. J. Gaddy stated that in speaking with realtors they find that cleared lots increase property value by \$50,000-75,000 and the PB enforcement actions are limited because they can't get the tree back up. He stated that it puts them in a tough situation. H. Koster stated he is not sure that a deed restriction that was enforceable would work, because a \$5,000 fine versus a \$50,000-75,000 increase in

property value doesn't seem to balance out. Peter Loyola suggested that the enforcement actions be comparable to the types and sizes of the houses that are being constructed. He continued that the applicant is going to be retaining one of the homes. The applicant is a landscape contractor and he feels that he is willing and able to do his best to maintain the trees and vegetation necessary for proper screening. He feels that if there is clear enforceable language that it will deter people. J. Gaddy disagreed and stated that they have a current enforcement action which deals with a deed restriction and so far it has gotten them no where.

J. Gaddy stated that he has no fault with what they are proposing but no one can guarantee it will be what they are proposing. He continued that he is a little concerned with the amount that they are going to be removing for the building envelope. Peter Loyola responded that most of what is being removed is not going to be visible but they are intending on replanting a lot of vegetation and ground cover. He stated that they also intend to do all they can for stormwater and erosion control. He stated that he and Scott Miller do a lot of work with the mining industry in terms of mine land reclamation. J Gaddy stated that he is confident that the vegetation will come back and it will be screened.

H. Koster asked Counsel with regard to the small fine for violation of a deed restriction versus the increase in property value, could they enforce greater penalty on this piece of property. Counsel replied that restrictions and penalties in covenants are legally permissible. However, in his observation, both the present and past penalties and requirements are written in the context of those times. He stated that the covenants are excellent for what they propose and enforce and suggests that the Town of Bolton be included in them for enforceability. He also recommended that the language state that the relief sought is equitable relief which comes from the Court in terms of compelling the client to do something. He stated that they should verbalize that there will be a penalty but not in specific amounts. He feels that the Town could feel comfortable knowing that they can reach a middle ground that is agreeable and workable solution to the future assurance that this will work the way it is supposed to work. He emphasized that the essential ingredient is to make the municipality a player. Scott Miller agreed and replied that they have done that in the past with other agencies and could do this with the Town. H. Koster stated that he would like to see some proposed language for the deed restrictions from the applicant. Peter Loyola stated that they already have some language that they have used in the past and can put something together that is specific for this project. J. Gaddy stated that he spoke to Jeff Anthony who indicated that there was some specific language that was written for Lagoon Manor that has been acceptable to the APA. P. Kenyon stated that she could research that and see if it could assist them in this project. Peter Loyola agreed that both Lagoon Manor and the Sagamore have similar accepted language that could be used here.

J. Gaddy stated that he is still uncomfortable about having the top of the mountain developed. He has been up there several times to see if there are other options for house locations but much of the land is prohibitive to construction due to the slopes. He stated

that he would like to see the deed language for cutting and land and vegetation reclamation, but he is still very concerned about the overall development.

S. Aldrich stated that in reviewing the Site Plan Review section in the Code she was concerned about the impact of the proposal on the environment, the relationship to adjacent and nearby land uses, both public and private. She is also concerned with fire protection and emergency service access. She stated that emergency services will not be able to access those properties unless there are ideal weather conditions. She continued that there is a lot of land destruction on the west side of the mountain and she doesn't think that two houses justify it. She believes that it is the applicant's best intention to try and save as many trees as possible but there have been too many times that they have seen other people do the same and it has not happened. C. Mason agreed with S. Aldrich. Peter Loyola replied that with regard to the safety of the roadway, they spent a lot of time reviewing and changing the roadway since the last meeting and feels that it is pretty clear that they can get an emergency vehicle up there. S. Aldrich asked if they would be able to get up there in ice and snow. Peter Loyola responded that if the road is plowed that they should be able to get up there. They have also added the fire protection/sprinklers for the homes and water on the driveway and feels that this issue should be taken off the table for discussion. H. Koster agreed that the road design has been greatly improved and should be taken off the table. However, he urged the applicant to maintain and properly take care of the road so that they can have that fire protection. D. Roessler agreed and stated, as a fireman, this road will be tough to get up but the fire department will make every effort to get up there to save lives and the homes.

H. Koster stated that he feels that a lot of the issues and concerns of the PB can be solved, but he does not want to lead the applicant in the wrong direction if the majority of the Board is not in favor. Peter Loyola stated that he would like to nail down the actual issues that the PB has so that they can work on them. He continued that in terms of the visual impact and assessment he feels that they are compatible with the area because you can see other homes and developments in that area from the lake. He understands that it can't be off the table for discussion but hopes that it can be conceded, to a certain degree, that there is some compatibility there. He feels that the issue is visibility of the homes and what the applicant can do to make the project as invisible as possible. H. Koster stated that he feels that the visual aspect can be taken care of, if it is properly verbalized, but he feels their biggest expense is going to be stormwater planning and developing. J. Gaddy stated that he wished there was more room to compromise for placement of the homes, but he doesn't see it due to the slopes. Peter Loyola stated that if they need to review re-orienting the home placement they would be willing to do that, but they are trying to maximize what they have.

D. Roessler asked how long the driveway is from start to finish. Scott Miller replied 4,300 ft. D. Roessler explained that the Bolton Fire Department has just purchased a 40 ton fire truck. He stated that due to its size the department has been doing extra training on the new vehicle and it requires at least three people riding in it. He is concerned that this vehicle would not even be able to make it up the driveway. Scott Miller stated that they have proposed storage tanks on the driveway so that any of their vehicles could

make it up and hook up to the tank. D. Roessler also stated that he is concerned that riding in the back of the truck up the driveway could be exhausting to the fireman as well and that also poses a problem. Peter Loyola asked what percentage of driveways and roadways can that new vehicle reach. D. Roessler replied that he did not know. Peter Loyola stated that he would guess about 25 %. D. Roessler agreed but stated that this new truck would be used on the bottom to haul water back and forth. He continued that ambulance vehicles may also have difficulty in accessing the property. Peter Loyola stated that is why their driveway is over and above the necessary standards. They have shoulders, turn-arounds and they are using guardrails. Scott Miller stated that their driveway is almost to road standards because the travel lane is 20 ft. wide with 2 ft. shoulders. Scott Miller stated that they had done an inventory of Bolton's equipment and have contacted the manufacturers of the vehicles to inquire about turning radii, etc and they based their design on this information so that the vehicles can make those turns. He stated that he would provide that information to D. Roessler and the fire department.

D. Roessler stated that after listening to the proposal he thinks the applicant has done his research and feels that they are headed in the right direction and he would not have a problem if the project were to go forward.

H. Koster agreed that they have made improvements but feels that there is more to accomplish and asked Counsel how they should approach the next step. Counsel advised that they should encourage the applicant to believe that they can fulfill other requirements as part of the preliminary process. He stated that if there are specific requirements the PB has, they should be verbalized them. Peter Loyola stated that he feels the issues are the visibility of homes and stormwater management, which he is confident they can handle. He requested that the PB express specifically what their concerns are so that they can work on them.

J. Gaddy stated that he is requesting that they develop some clear, enforceable proposed language for the deed. H. Koster agreed that this would be a great step to take without costing the applicant too much money. He feels if they can come back to the Board with language that would help the Town and the PB do their job, while maximizing the mountainside for their project would be a logical step. Peter Loyola asked that if the language is acceptable to the PB will they be able to move forward from there. H. Koster stated that from his point of view the biggest concern of the PB is the visibility of the homes from the lake but feels that it could be worked out. J. Gaddy agreed. Scott Miller reminded the Board that they are also proposing that each individual lot will come before the PB for Site Plan Review before construction. Peter Loyola stated that the applicant has shown an interest in replanting the area that was burned due to the fire. H. Koster agreed that would be helpful to the applicant. Peter Loyola indicated that the applicant has a personal history with this property and he envisions him keeping it in his family for a long time to come.

## **RESOLUTION:**

**Motion by** John Gaddy to table the application pending the proposed language that would assure the minimum visibility of the proposed houses. **Seconded by** Don Roessler. Sue Wilson recused herself. Sandi Aldrich opposed. **All others in Favor.**  
**Motion Carried.**

The meeting was adjourned at 7:45 p.m.

Minutes submitted by Kristen MacEwan