

**TOWN OF BOLTON
PLANNING BOARD
MINUTES**

**Thursday October 18, 2012
6:00 p.m.**

SEQR = State Environmental Quality Review
PB = (Town of Bolton) Planning Board
WCPS = Warren County Planning Board
APA = Adirondack Park Agency
LGPC = Lake George Park Commission
DEC = Department of Environmental Conservation

Present- Herb Koster, Henry Caldwell, Don Roessler, John Gaddy, Chauncey Mason, Kirk VanAuken, Sandi Aldrich, Gena Lindyburg, Zoning Administrator Pamela Kenyon and Counsel Michael Muller

Absent- None

The meeting was called to order at 6:07 pm.

PUBLIC HEARING

SPR12-23 GRAMEGNA, JOHN. Seeks Type II Site Plan Review to create an impervious parking area along the south side of the property. Section 213.17, Block 1, Lot 9, Zone, RCM1.3. Property Location: 3841 Lake Shore Drive known as Somewhere in Time Bed & Breakfast. Subject to WCPS review. Subject to SEQR. This Item was tabled at the August meeting pending a public hearing.

Peter Murray gave a brief description of what the applicant is trying to achieve. He stated that the applicant has run this facility for about a year now and is looking to make some additional improvements to better operate the facility. Specifically the applicant is trying to improve the parking area on the south side of the drive access to the HOA. There are approved parking spots in that area. However the applicant has found that this is a rather wet area as a result of a stormwater basin further up the drive. Peter Murray stated that the applicant would like to improve this area with something that is suitable to this Board. He noted that the agenda indicates that this will be an impervious area but that is not the case; the applicant is seeking to put down 2" trap rock, which he does not believe to be impervious. However whatever this Board finds acceptable is what he will do.

Dennis Phillips, representing the Diamond Ridge HOA, stated his clients are looking to request that the Board deny the immediate application and rescind the previous approval on the site plan relative to the use of the property on the grounds that the previous approval was based on material omissions of fact that are vital to the approval process.

Dennis Phillips provided a map of the Diamond Ridge Subdivision. The subject property is located on the map and is shown to be split by the private road. He provided

a brief history of the property. Looking back to 2000 the property was a single family dwelling and after that time it was approved for a Bed and Breakfast with 4 bedrooms. After that approval the subdivision got started and came into existence around 2003-2004.

Dennis Phillips stated that the subdivision has some double coverage with regard to covenants and restrictions. An important covenant and restriction is that the lots are all to be used exclusively as single family residential lots with no commercial use or development. Which brings them to the first omission from 2011 application. When presenting the parking plan, the applicant never indicated that they would be using lot 1 of the subdivision for parking which violates the covenants and restrictions.

Dennis Phillips stated that the applicant has expanded the property from a 4 bedroom Bed & Breakfast to a venue that can accommodate up to 120 people. He stated that the applicant fudged where the parking was going to take place. At the time he represented that the parking would only be on this property but he ended up using lot 1 of the subdivision. Additionally the parking is taking place on the subdivision road.

Dennis Phillips stated that they have reviewed the online publication information for this property which describes it as a facility that sleeps up to 30 people and also indicates that there is on and off street parking for up to 50 cars. Dennis Phillips stated that there is no on street parking because the road is owned by the HOA. No approval was requested of the HOA for the parking and no approval was given. Additionally even if approval was granted the site line coming on and off that driveway onto Route 9N is not good. If cars were parked there it could make it even more difficult to pull out safely. Dennis Phillips stated that he found several other publications for the facility including LakeGeorge.com which indicates that side road parking is available as well as off street parking for up to 40 cars. Another publication indicates that there is parking for up to 50 cars. The parking is not on his property but rather the HOA road and on Lot 1, which is owned by the applicant, but in violation of the covenants and restrictions on that lot for parking.

Dennis Phillips stated that when looking at this facility expanding to the Bed & Breakfast the Zoning Department issued a determination on this property. Even though the local code did not define Bed & Breakfasts they went to an outside definition and it was found that basically a Bed & Breakfast is compatible with a local neighborhood except for the parking issue. He stated that he would agree that a Bed & Breakfast is compatible with the neighborhood. However when the applicant proposed to expand to a wedding venue he does not feel that parking issue was addressed.

Dennis Phillips stated that the application from December 2011 did not address this either. In question 7, which asks about whether there were any easements or any other restrictions affecting the property and the applicant provide the answer as “not applicable”. However they know that relative to lot 1, which was being used for parking is subject to a double set of covenants and restrictions prohibiting this. They also know that there was an easement in existence between the north and south parts of the

applicant's property for ingress and egress over the driveway into the subdivision. That easement did not say that it was intended to be used as a parking area. The property on the south side of the driveway is very small and looks to be more of a lawn than anything else.

Dennis Phillips stated that with respect to question 11 of the permit, asking if there are any other required permits or approvals associated with the proposal and the applicant answered "not applicable". If there was to be parking on the side of the road and a modification of the covenants and restrictions to allow parking on lot 1, it would have to be addressed by the HOA Board of Directors, which was never done.

Dennis Phillips stated that with regard to question 15, ownership intentions, the idea was to maximize the potential of the property, which is understandable. However when it talks about events of 125 people you make that modification from a compatible Bed & Breakfast to a wedding venue in a residential neighborhood. When you get to legal findings by the PB, particularly 16C, you could have answered maybe but you wouldn't know because you thought the parking was taken care of. Additionally you would be dealing with traffic and congestion concerns due to the increased use of the property.

Dennis Phillips stated that if you have a land owner or business parking on land that is not your own it would be considered as trespassing. So he is looking at this as a property rights matter. When the applicant bought into this subdivision he bought into the rule and regulations of the subdivision as well.

Dennis Phillips stated that when the PB made the decision to approve for the expansion, they had 3 questions that were answered as "not applicable". However the record shows that they very well could be applicable; there is a possibility of some information withheld when they made their decision.

Dennis Phillips stated that under the zoning ordinance there is a provision in Section 200-85 that says if there are material representations or material omissions of fact, with respect to application that is presented to you, you have the power to declare your prior approval null and void. Dennis Phillips stated that his clients are asking for the prior approval to be rendered null and void, that the new application to be denied tonight and for the entire project to go back to the drawing board.

Alex Jeyschune, President HOA, stated that he is an engineer and he has reviewed the site plan and one of the glaring misrepresentations that he saw was the amount of parking spots. There were only 7 bedrooms with 7 spaces, the applicant indicated that he was going to add have a venue to accommodate 115 people and do all of this with just one staff person and one parking space allotted to that staff person. Alex Jeyschune stated that the applicant told them at a meeting with the HOA that he had a staff of 11. That would mean that this would take away an additional 10 parking spaces that were designated to the event attendees.

Alex Jeyschune stated that Mrs. Jane Bozone is the only full-time resident of the Diamond Ridge. She passes by this property daily and on a recent weekend she observed catering trucks parked on top of the parking being filled by the attendees. The site plan did not show any place for catering trucks. Alex Jeyschune stated that there are misrepresentations on the plan that was proposed with regard to parking that need to be addressed.

Jane Bozone, full-time resident of Diamond Ridge, stated that since 2006 she passed the property as it deteriorated. She was happy to see the applicant purchase the property and make improvements. She stated that everything was good up until this past year. Since April there have been major parking issues up the sides of Diamond Ridge Road which was last observed on September 8th. This has been a major contention with the applicant, even though the HOA has installed 6 no parking signs. Parking on Diamond Ridge Road was never part of the applicant's parking plan application, nor his approved permit.

Jane Bozone stated that there is additional parking being directed by sign on lot 1, which is a wetlands lot in Diamond Ridge. On April 26th Pam Kenyon directed the applicant not to use lot 1 and to restore it immediately. This condition only has deteriorated throughout the summer with encroachment deep into the lot and vegetation removed and not being enforced.

With regard to parking 10 cars on the south side sliver, Jane Bozone stated that there is a steep embankment near Route 9N which could cause safety problems. The applicant told her that if you are parking in space #10, that car will have to wait until spaces 1-5 exit before they can leave. It should also be noted that Diamond Ridge HOA owns 14' up the mound where. She stated that there are significant safety issues with this parking area.

Jane Bozone stated that the applicant wants to hold 10 pounds of events on a 5 pound footprint. Clearly the parking plan supported by the Bed & Breakfast infrastructure does not support these large venues as evidenced in her documentation to the Town since April. She hopes that the size of the pavilion does not dictate the amount guests allowed if the infrastructure doesn't support it. Submitting a parking plan after the pavilion was approved using 4 persons to a car as a formula is unrealistic. She would like to restore some common sense and provide safety to the neighborhood, whereby events can take place and are contained and managed within the site in a way that the site can support.

Herb Koster reminded the public to please hold all comments to the application at hand which is the parking area on the south side of the property.

Lawrence O'Connell, Vice President of the HOA and adjacent neighbor, stated that he is concerned with the parking on Lot 1. He is also concerned with parking on the south side of the property because it is a hill that will create a lot of run-off. The HOA has a stormwater drain below this area which has been prone to problems. In 2010 when the

applicant started his construction those drains became totally clogged. It cost each lot owner several thousand dollars to repair. He stated that the applicant has offered to help out financially but has yet to pay for anything. He is concerned that this proposal will cause further run-off issues.

Lawrence O'Connell stated that he has watched the construction on the site. When the applicant put the pool in he put blacktop under the pool. In comparison when he put up a barn on his own property he put several thousand dollars of stone and pipe running around it for drainage in addition to the retention pond and swales. Lawrence O'Connell stated that the applicant has not been a good neighbor. He makes promises that he has not kept and does whatever he wants to do.

Chris Navitsky, Lake George Waterkeeper, appreciates the PB decision to hold the public hearing. He stated that they have met with the applicant on the site to discuss stormwater controls and rain gardens, some of which have been installed. He stated that the Waterkeeper does have concerns with the continued expansion of the property and its use. They feel the PB should require a submission of an overall comprehensive plan.

Chris Navitsky stated that no information on stormwater management has been provided for the southern parking area. Run-off should be managed to reduce off-site impacts. Drainage issues are present on Route 9N at the driveway entrance. The proposed site plan provides the opportunity to improve existing conditions for public safety and water quality. He believes that the Town considers gravel as impervious cover. Additionally, numerous parking areas are on grass which increases run-off. Consideration for re-enforced turf should be considered for all grass parking areas.

Chris Navitsky stated that the Waterkeeper feels the applicant should submit a comprehensive plan for all existing and proposed uses to allow the PB a thorough review. The current facility has expanded to meet facility use and needs and required several town review board applications. The segmented expansions have prevented a thorough review of the facility and its uses. He feels that any further approval should be withheld until the Town receives a comprehensive plan.

Holly Whipple stated that she understands that this is about the parking but the more parking you allow the more people can attend the facility. She stated that the noise is unbearable when there is an event. She asked the Board to keep that in mind before allowing for more parking for more people at the facility.

Linda LoPiccolo agreed and stated that this facility is out of control. She stated that it is being used more frequently than was proposed and events are held almost every weekend. She has had to call the police on numerous occasions.

Carolyn O'Connell stated that she has contacted the police several times as well. The music goes beyond the ordinance, specifically June 21 and on Labor Day.

Herb Koster stated that a lot of those that wrote letters also spoke this evening so their letters will be made part of the record. He asked if there was any additional correspondence. Counsel Muller read the following letter:

1. Patricia Toronto opposed to the application.

RESOLUTION

Motion by Henry Caldwell to close the public hearing for SPR12-23. **Seconded by** John Gaddy. **All in Favor. Motion Carried.**

REGULAR MEETING

Herb Koster asked if there were any changes or corrections to the August 16, 2012 minutes.

RESOLUTION

Motion by Don Roessler to approve the August 16, 2012 minutes as written. **Seconded by** Sandi Aldrich. **All in Favor. Motion Carried.**

- 1) **SPR12-23 GRAMEGNA, JOHN.** Seeks Type II Site Plan Review to create an impervious parking area along the south side of the property. Section 213.17, Block 1, Lot 9, Zone, RCM1.3. Property Location: 3841 Lake Shore Drive known as Somewhere in Time Bed & Breakfast. Subject to WCPS review. Subject to SEQR. This Item was tabled at the August meeting pending a public hearing.

Peter Murray stated that with respect to the public hearing and issues submitted by Dennis Phillips he requested that the Board not act upon the request until he has had an opportunity to review the submission. This will give them an opportunity to respond and review the zoning code with respect to the process under which that type of consideration should be taken.

With regard to the comments from the Waterkeeper's comments, Peter Murray wanted to get some reaction of the Board. He asked if they would like to be presented with a drawing with respect to the parking in the gravel. He stated that the applicant would like to do something that is satisfactory to the Board and Town Engineer.

Herb Koster stated that he questioned the fact the Engineer considered the 2" stone as impervious. However his explanation is that 2" stone on the earth is one thing but at any time someone could put smaller stone or dust on top of it which would make it impervious. Herb Koster stated that unless there is an engineered project presented the Board cannot make a decision and if they were to decide tonight they would have to rely on the Engineers determination that this would be impervious.

Peter Murray requested to have both matters tabled to submit more material. Counsel Muller stated that he understands where they are going however he is concerned with the closure of the public hearing because they now have a clock running. Herb Koster asked

if the applicant wouldn't mind if they re-opened the public hearing. Peter Murray stated that he would not mind and he understands that there are concerns outside of the scope of the applications but he would like to limit the public hearing to the facts and criteria involved. Herb Koster agreed and stated that he tried to keep it to that tonight. There was further discussion of re-opening the public hearing.

Peter Murray stated that based on the timeframe of this, the applicant has requested to withdraw both applications at this time and come back in the spring with a comprehensive plan.

Henry Caldwell stated that this means that the applicant can still have these large parties. Counsel Muller stated that the applicant would be in violation if any of the allegations are true and it would be up to the Planning Office to proceed with enforcement. Counsel Muller stated that the withdraw of these applications as well as the determinations would not bear on the facts as alleged in terms of misrepresentations or exceeding the scope of the original approval.

Herb Koster asked what their role is because there are several problems with this project, for example parking on a private road. This is a civil problem but they didn't give the applicant permission to do this. He stated that he personally has seen violations of the approved site plan. Counsel Muller stated that the violations need to be handled by the Planning Office and Town Board.

Dennis Phillips stated that what this application has done has triggered a cross application by asking for rescinding of prior approval. He has not looked at the due process that follows making an application of this nature but it strikes him that it is not so much of an enforcement issue for the Planning Dept but a new issue for the PB to consider. Counsel Muller stated that he does not disagree with him in terms of the objections of his clients and he reads the section 200-85 and 150-34 as he would. However this applicant has never been put on notice by the Town that this is an issue and as his counsel indicated they need to explore the process and have an opportunity to be heard. Counsel Muller stated that if Bolton's choice is to prosecute on these alleged issues he is sure that both he and the Planning Office will receive instructions from the TB.

Dennis Phillips asked if the PB is the proper venue to ask for the rescinding the decision. Counsel Muller stated that it is one of the tools available. They can also prosecute on alleged code violations. Those choices and directions will come from the TB. One of the issues that may come back here is determining if the applicant exceeded the site plan requirements. Dennis Phillips asked if the applicant decides to withdraw, his clients would like to pursue their recourse and request that the prior approval is null and void. Counsel Muller stated that it has been amply stated on record and the TB has to react to it.

Henry Caldwell stated that he would be inclined to rescind the prior approval and have the applicant start all over again. Counsel Muller asked that they not act on anything at

this time. The applicant has the right of due process. He stated that it might come down to that however they need to have further direction from the TB on how to proceed.

Peter Murray asked if this cross application presented to the Town Board is considered notice that the Town has taken any action. Counsel Muller replied that no action has been taken by the TB at this time. Peter Murray thanked the Board for their time.

- 2) **SPR12-25 GRAMEGNA, JOHN.** In accordance with Section 200-47G2, Seeks Type II Site Plan Review to occupy a transient mobile home for more than 48 hours. Section 213.17, Block 1, Lot 9, Zone, RCM1.3. Property Location: 3841 Lake Shore Drive known as Somewhere in Time Bed & Breakfast. Subject to WCPS review. Subject to SEQR.

Note: This application was withdrawn by the applicant.

- 3) **SPR12-24 PANZARDI, SHERRY & PETER.** Represented by Hutchins Engineering. As a condition of approval from the Local Board of Health when approving a septic variance (resolution 183), seek Type II Site Plan Review to construct a single family dwelling and detached garage. Section 156.16, Block 1, Lot 21, Zone RCM1.3. Property Location: Pioneer Village Road. Subject to SEQR.

Tom Hutchins stated that the applicants are here as a condition of approval from the local BOH for a septic system variance for placement of a system on a parcel that is less than 20,000 sq. ft. It is the system that was presented to the BOH. They are not looking for any physical variances beyond the septic variance. This is a 1600 sq. ft living area house with a 23' x 24' detached garage. Tom Hutchins stated that the challenge is the slope which is 15% along the road. The house will be built on the cross slope as most of the houses in this area are in this area. There will be cuts and fill but they have as designed believe it grades out. They have added a stormwater retention area at the lower portion of the site. They meet all of their separations as required. There is a private well which meets their separation. However the local BOH also required that they have an ultraviolet treatment installed which they were agreeable with.

Tom Hutchins stated that this has been reviewed and approved by the Pioneer Village HOA Board.

John Gaddy asked if they planned to have any drainage system on the west side of the driveway because the water seems to come off onto the neighbors. Tom Hutchins replied that they brought the swale back as far as they could and it will be brought to the stormwater basin. However some may still go over.

Sandi Aldrich asked if there will be any blasting. Pete Panzardi stated that they did have someone look at it and were told it would be a minimal area.

John Gaddy asked if there will be a re-vegetation plan for the other lot. Tom Hutchins

replied there is none at this time but the applicants own that lot as well and family will be residing there.

John Gaddy stated that he would like to add the provision that an exterior lighting is downward facing and shielded.

Sandi Aldrich asked if they could limit the hours of blasting. Don Roessler stated that hours are M-F 8am-5pm and Sat 9-5 and nothing on Sunday. Tom Hutchins stated that they would be agreeable to those terms.

RESOLUTIONS

Motion by Don Roessler to declare the PB as lead agency for SPR12-24. Seconded by Sandi Aldrich. All in Favor. Motion Carried.

Motion by Don Roessler to accept SPR12-24 as complete, waive a public hearing, and having met the criteria set forth in the code, grant final approval of the project as presented the following conditions: 1) any exterior lighting will be downward facing and shielded and 2) any blasting will be limited to the hours of Monday-Friday 8:00am to 5:00pm, Saturday 9:00am to 5:00pm with no blasting to occur on Sunday. This motion includes a SEQR analysis and findings of no negative environmental impacts with all aspects favorable to the application as presented. Seconded by Sandi Aldrich. All in Favor. Motion Carried.

- 4) **SPR12-26 STREIGEL, RON & MARIE.** Represented by Christian Gearwar. Seek Type II Site Plan Review for stream crossings associated with timber harvesting. Section 155.00, Block 1, Lot 17.5 and Section 156.00 Block 1, Lot 59.5, Zone LC25. Property Location: Edgecomb Pond Road, Finkle and Water Plant Roads. Subject to WCPB review. Subject to SEQR.

Chris Gearwar stated that this is a winter timber harvesting plan. He stated that Chris Navitsky has just pointed out to him that there are some details missing from the plan. So he would be happy to add them so that they are satisfactory.

Henry Caldwell asked where the headers would go. Chris Gearwar replied that the landing across from the transfer station would make a perfect location but he is not sure if it is large enough. The other option is where is indicated on Water Plant Road if that doesn't work. Henry Caldwell stated that the wettest part of the property is along Water Plant Road. Sandi Aldrich asked why they wouldn't bring the header out on Edgecomb Pond Road. Chris Gearwar replied that they could but the trees are tall and he is not sure if there is room enough for a truck to go in and turn around on the landing. He stated that they could consider backing the trucks in from Finkle Road. Sandi Aldrich stated that if they were to put it off Edgecomb Pond Road it would cut out the major stream crossing on Finkle. Chris Gearwar replied that they would still have trees to cut on the other side.

He stated that all of the main pre-existing logging trails are on the plan. He stated that

he has 5 stream crossings; streams 3, 4 & 5 are considered intermittent streams. DEC used to have Forest Rangers or ECO's come out to the site but they don't do that anymore. Their current practice is the submittal of the application online with aerial photos being used.

Chris Gearwar stated that this will be a winter harvesting. He is hoping that they have a winter and the ground is frozen to make this a lot easier in terms of soil disturbance.

Sandi Aldrich asked how much of the 77 acres will be logged. Chris Gearwar replied approximately 60 acres. Some areas aren't going to be cut at all because they don't have any trees that need to be cut.

Henry Caldwell asked if they could condition this to be limited to winter harvesting. Chris Gearwar replied yes. He stated that it will be timber sale showing notice. This timber will be marked and the inventory will be sent out to anyone that would be interested in submitting a bid on these trees. In the notice it will state any particulars that will guide the harvest.

With regard to the header, Chris Gearwar stated that he would like to have it off Finkle Road across from the Transfer Station. Herb Koster stated that Mr. Gearwar has been in this business long enough, he feels that they can take his recommendation.

Henry Caldwell stated that he believes that this property was logged in the 80's and the header was on Water Plant Road. Chris Gearwar provided details of the header in this location. Henry Caldwell asked if he has marked off trees. Chris Gearwar replied yes. This is a forest reserve and the applicants are looking to keep this as a sustainable forest. Most of the trees being taken are white pine that have been there too long. He has left most of the oak and birches because those trees will take over the site. This is looking forward to the future of northern hardwood stand. Henry Caldwell asked how many years before they can make another cut. Chris Gearwar replied approximately 15-20.

Herb Koster asked if Chris Gearwar will be retained to oversee the bid project. Chris Gearwar replied yes that is part of his contract.

Sandi Aldrich asked if the 75' buffer of undisturbed trees includes Finkle Brook. Chris Gearwar stated that along Finkle Brook and tributaries calls for a 50' buffer on either side. No logging equipment will be allowed within the brook but they can cut trees within that area selectively. The drainage corridors along the intermittent streams will have 25' on either side. The only time they can get around a brook is with a stream crossing.

Sandi Aldrich asked if a bridge will be constructed for the crossing. Chris Gearwar replied yes.

Herb Koster asked if they can make a condition to make sure that the forester is kept on.

Counsel Muller replied yes they can do that. Chris Gearwar explained that the contract with the applicant states that but it will also be in the timber sale contract. There was further discussion of the contracts.

RESOLUTIONS

Motion by Henry Caldwell to declare the PB as lead agency for SPR12-26. Seconded by John Gaddy. All in Favor. Motion Carried.

Motion by Henry Caldwell to accept SPR12-26 as complete, waive a public hearing and having met the criteria set forth in the code, grant final approval of the project as presented with the following conditions: 1) it is required that a licensed Forester supervises the timber harvest and 2) that the timber harvest is done when the ground is frozen. Seconded by John Gaddy. All in Favor. Motion Carried.

Counsel Muller stated that he was contacted by Mr. Oberer and his attorney Mike Hill. They have requested an informal meeting with Mr. Oberer, his attorney, Counsel Muller, Pam Kenyon, Herb Koser, John Gaddy and one other person from the PB. The Board discussed who was available to meet. Herb Koster stated that they would set the meeting for Friday, November 2nd at 1pm with himself, John Gaddy and Don Roessler attending.

The meeting was adjourned at 7:38pm