

Town of Otsego Planning Board

Minutes – March 1, 2011

PUBLIC HEARING

LLIB, LLC (Bill Miller/Jon McManus) – Upper West Side major subdivision – County Highway 28, Pierstown (#84.00-1-15.62)

Joe Galati and Rosemary Craig recused themselves and left the meeting table. Acting Chairman Donna Borgstrom called the LLIB public hearing to order at 7:30 PM, and noted that the applicant had a stenographer employed for the hearing. She asked applicant Bill Miller to describe the project for the audience. Miller put his subdivision plat on an easel and discussed his application process. Borgstrom interrupted him, saying that he was editorializing and giving a “history of events” rather than a description of the project. After Miller finished, Borgstrom asked if there were any questions from the public, but no one responded. She then opened the floor for comments:

- Pat Hanft of 155 Stocking Brook Road read aloud from a letter (filed) she had written. She reiterated points made by Paul Lord during the December, 2010 meeting, also discussing the original 1989 subdivision and deed restrictions and the length of the proposed road, and urged denial of the application.
- Beth Westfall, attorney for Bob and Pat Hanft, cited local and state laws. She said that a performance bond is not waivable, even though the requirement has been waived for others. She discussed alternatives to a performance bond.
- Marilyn Bradshaw of 6539 State Highway 80 read aloud from a letter (filed) she had written. She discussed threats to the health of Otsego Lake and to the viewshed, and urged denial of the application.
- Veronica Seaver asked that the Board leave the original 1989 subdivision as it is.
- Carol Akin of 6539 State Highway 80 read aloud from a letter (filed) she had written. She expressed concern about the Lake and the ongoing oversight of the storm-water pollution prevention plan (SWPPP). Akin displayed various photos, one purporting to show how the mountainside would look with the houses added by this subdivision, another showing the effects of runoff after the 2006 flood.

Borgstrom reminded the public that the Planning Board must act according to current laws, and urged people to discuss perceived problems with the laws with the Town Board. Borgstrom also read aloud e-mails (filed) opposing the application from Ted Peters (January 4), David Pearlman (February 25), Addison Bissell (February 25), and Deborah Creedon (February 27). Also, a January 20 note from Leon Kalmus, advising that he had sold his property to John and Amanda May.

With no further comments, Paul Lord moved to close the public hearing. Steve Purcell seconded the motion and it was approved, 5-0. Galati and Craig returned to the meeting table.

REGULAR MEETING

The monthly meeting of the Town of Otsego Planning Board was held on this date at the Town Office Building in Fly Creek, New York (the meetings scheduled for January 18 and February 1 were canceled due to inclement weather). Chairman Joe Galati called the meeting to order at 8:02 PM, and roll call was taken by Clerk Bill Deane. Members present were Galati, Donna Borgstrom (Vice-Chairman), Paul Lord, John Phillips, Rosemary Craig, Steve Purcell, and Joe Potrikus. Alternate

member Dan Croft was absent. Planning Board Attorney Jim Ferrari and Zoning Enforcement Officer Hank Schecher were also present (Ferrari arrived after the public hearing).

The Board reviewed the minutes of January 4, 2011, e-mailed to the members. Phillips moved to approve the minutes as written. Craig seconded the motion and it was approved, 5-0 (Borgstrom had temporarily left the room, and Potrikus abstained because he was not at the January meeting).

The only correspondence received since the last meeting were informational letters from Lorman Education, which Chairman Galati passed around.

Hank Schecher distributed copies of his February 9 Zoning Enforcement Officer report (filed). It itemized seven applications pending Planning or Zoning Board review.

Chairman Galati asked whether anyone from the public had a comment on a non-agenda item. No one responded.

The Board moved on to applications.

APPLICATIONS

LLIB, LLC (Bill Miller/Jon McManus) – Upper West Side major subdivision – County Highway 28, Pierstown (#84.00-1-15.62)

Joe Galati and Rosemary Craig recused themselves and left the meeting table. John Phillips read aloud from the minutes of January 4 relevant to the application. Applicant Bill Miller was accompanied by his engineer, Jon McManus.

Phillips said that he had read the SWPPP and Department of Environmental Conservation (DEC) report. He said that the SWPPP far exceeds required standards, and that the DEC will police it. He noted the applicant's voluntary tree-cutting agreement, and that future septic systems will have to be engineered.

Paul Lord asked about the depiction of white roofs on the plat. Miller said that was just to show them better among the trees.

Miller noted that the complaints are coming from neighbors who already have homes near the Lake, and haven't done as much as he to mitigate the issues they are talking about. Miller also noted that the property is more than 1,000 feet from Otsego Lake.

Lord said that the December minutes well represent his concerns. He reiterated concerns about the SWPPP, 100-year floods, steep slopes, cumulative effects (in conjunction with the Walker subdivision), and threatened species of aquatic life. Lord cited his extensive experience with lake, river, and stream management. He disputed Phillips's contention that grass is as effective as trees in preventing run-off. Lord gave a demonstration of run-off using water, sponges, a paper plate, a paper cup, and a bucket.

Phillips said he has credentials in environmental and geological fields, too. He said it would be unfair to put all the responsibility of the environment on Miller.

McManus reiterated Phillips's last statement, and noted that the DEC looks at the cumulative effect mentioned by Lord. He said the applicant had met and exceeded all regulations and that, if Lord thinks they are inadequate, he should discuss it with the Town Board.

Steve Purcell said that he is a farmer and carpenter, and very conscious of environmental issues. He said that this would be a very difficult decision, but he is restricted by what is in the *Land Use Law* (even if it is becoming antiquated) and must vote accordingly.

Acting Chairman Borgstrom discussed the decision-making process, and brought up the issue of a performance bond. She read aloud from the relevant section of the *Land Subdivision Regulations*.

McManus said that the big-money items are covered by the SWPPP, which in turn would be enforced by the homeowners' agreement and the DEC.

Lord asked Attorney Ferrari for input as to whether the bond requirement was waivable. Ferrari said there was no one-word answer, but that it could be argued that it was not waivable.

Miller said that a performance bond would contradict what the neighbors want, forcing him to develop sooner. McManus suggested making the bond contingent on whether or when he begins development, but Miller said that if a bond were required, he wanted to do it by the book.

McManus said he would work up numbers for a performance bond and present them to the Board members and Town Engineer Wayne Bunn within two weeks. They could then discuss it at the April 4 meeting.

Miller asked for a vote contingent on the bond decision. Phillips moved to approve the subdivision contingent on the bond decision. With no second, the motion failed.

Lord moved to freeze the 45-day clock on the decision process. Miller said he was not willing to freeze the clock any longer. Lord withdrew the motion.

Bill Deane questioned the status of the clock. He noted that a public hearing was held on the preliminary plat on December 7, 2010, and the clock was frozen 28 days later on January 4, 2011; there was no motion to restart the clock. Lord said that the clock was implicitly restarted by the Board's actions tonight. Deane thought that the 45-day clock would then expire in 17 days, before the next meeting, opening the possibility of an approval by default. He asked the members and attorney to review the minutes of the December and January meetings to determine the status of the clock.

Attorney Ferrari said that in his opinion the Board had 45 days after tonight's public hearing (also on the preliminary plat) to make a decision. Lord asked if that means the clock is automatically reset whenever there is a new public hearing. Ferrari said that it did not.

The applicant will return for the April 4 meeting. At 9:17, Borgstrom called for a short recess. The meeting was resumed at 9:24. Galati and Craig returned to the meeting table.

Robert & Karen Faller – Minor subdivision – Stone House Road (#98.00-1-44.01)

Donna Borgstrom read aloud from the minutes of January 4 relevant to the application. A public hearing had been scheduled for February 1 contingent on applicant Robert Faller's submitting a modified plat showing a statement from an engineer, indicating plans to comply with New York State law in specifying a wastewater treatment system. Faller did not submit this, so no hearing was scheduled. Faller said he had the modified plat now.

The Board examined the plat and found it satisfactory. Paul Lord moved to deem the application complete and schedule a public hearing for April 5. Steve Purcell seconded the motion and it was approved, 7-0.

Barrett Clarke Estate (Justin & Megan Lindberg) – Major subdivision, 132 Parslow Road (#97.00-1-3.01)

Donna Borgstrom read aloud from the minutes of January 4 relevant to the application. A public hearing on the preliminary plat was held on that date with no public comment. Applicant Megan

Lindberg was accompanied by her mother, Debbie Green. Lindberg submitted an updated plat, which was examined by the Board members.

Members went through Section 5.4 of the *Land Subdivision Regulations*. Paul Lord noted that the proposed lots are not rectangular. Chairman Galati said that the plat was missing contours, trees, and swamps; Lindberg said there are none on the property. The consensus of the Board was that the only deficiency was that the plat was not marked “final plat.”

The Board discussed the State Environmental Quality Review Act (SEQRA). They gave the applicant time to work with Zoning Enforcement Officer Schecher in completing a long environmental assessment form (EAF). After she completed this, John Phillips suggested this was a Type II action per SEQRA Section 617.5(b)(1). Discussion followed, and Chairman Galati started through the EAF. Attorney Ferrari thought it qualified as an unlisted action, necessitating a short EAF. The Board gave the applicant time to complete this.

After the EAF was completed, Galati went through it with member input. Lord moved to make a negative declaration and authorize the chairman to sign the form. Borgstrom seconded the motion, it was approved, 7-0, and Galati signed the EAF.

Phillips moved to waive the public hearing in view of the result of the previous hearing, but there was no second. Phillips then moved to approve the final plat, contingent on it being labeled as such by surveyor Brian Carso, and to waive the public hearing in view of the result of the previous hearing. Borgstrom seconded the motion and it was approved, 6-1, with Lord opposed.

Chairman Galati advised the applicant to arrange for his signature after the plat was amended, and Borgstrom advised her to file the plat with the County within 30 days.

Joe Vezza/Tony Gambino – Site plan modification, special permitted use, restaurant – 5438 State Highway 28 (#131.00-1-1.00)

Chairman Galati summarized the recent history of the Gambino building, which the board most recently approved as a restaurant in March, 2010. New owner Joe Vezza now wants to add a 14'x32' kitchen addition, and move a shed. He submitted a January 26, 2011 site plan prepared by engineer Hans deWaal.

The Board, with input from Attorney Ferrari, discussed the situation. There is no expansion of the use, as no seats are being added to the restaurant. There were no special conditions on the special use permit granted in 2010. The consensus was that no Planning Board intervention would be required for this project.

Glen Miller & Diane Wicks-Miller – Sketch plan conference, major subdivision – 1988 County Highway 22 (#52.00-2-10.06)

Applicant Glen Miller wants to divide a 30.25-acre lot into three lots of 24.25, three, and three acres, respectively. The larger lot includes a conservation easement. Because of a 2004 subdivision involving this property, the current proposal qualifies as a major subdivision. Miller submitted a site map and aerial photos showing the property and proposed subdivision, which is more than 500 feet from Canadarago Lake.

The Board reviewed the documents. Donna Borgstrom advised Miller to work with Zoning Enforcement Officer Schecher in completing the requirements listed in the *Land Subdivision*

Regulations. Bill Deane asked Miller to give two weeks' notice when he was ready to return before the Board.

Jeff Haggerty – Sketch plan conference, expansion of Haggerty Ace Hardware – State Highway 28 (#131.00-1-7.00)

Joe Galati recused himself from this application and left the meeting table, due to engineer Jon McManus's involvement with the project. Donna Borgstrom read aloud from the minutes of November 9, 2010 relevant to the application.

McManus submitted a drawing showing the proposed expansion of Haggerty Ace Hardware. The Biard examined the drawing and asked questions. McManus said that he had gone through the GB-1 and zoning regulations, and thinks the only possible issue is the rear-yard setback, due to the extension of a building that appears to already be within ten feet of the property line. He will either have to get variances from New York State and the Zoning Board of Appeals, or reposition the addition. McManus said that the impervious surface currently makes up 58.9% of the property, and the proposed expansion would still leave it under 70% limit. He discussed drainage issues and run-off mitigation.

McManus asked to be put on the April 4 agenda for site plan review. Galati returned to the meeting table.

OTHER BUSINESS

Chairman Galati discussed rescheduling the workshop to discuss potential changes to the *Land Subdivision Regulations*. Members expressed no interest in rescheduling at this time.

John Phillips reported on attending the most recent Town Board meeting as the Planning Board's liaison. Phillips said the issue of ethics was raised, precipitating an e-mail on the subject from Town Supervisor Meg Kiernan to the Planning Board members. Paul Lord said that the relevant Section 5 has never been adhered to, and the Planning Board was never advised about the 2008 changes to the law. Lord said that he has challenged Kiernan three times to show him any ethics law that applies to the Planning Board, and has yet to receive an answer.

Phillips asked for a volunteer to attend the next Town Board meeting as Planning Board liaison. Rosemary Craig said she thought she could do that, and would let Phillips know.

Bill Deane discussed the April 5, 2011 agenda. Expected to return are LLIB, Faller (public hearing), and Haggerty.

With no further business, at 11:18, Craig moved to adjourn the meeting.

Respectfully submitted,
Bill Deane
Planning Board Clerk