

Town of Otsego Planning Board

Minutes – September 6, 2016

PUBLIC HEARINGS

NYSHA (Joe Siracusa/Michael Haas) – Site plan review, Farmers' Museum parking lot upgrade – 5775 State Highway 80 (#115.00-1-9.00)

Chairman John Phillips opened the NYSHA public hearing at 7:31 PM. Representative Joe Siracusa gave a brief description of the proposed project. Phillips asked if anyone from the public had comments or questions, but no one responded. Scottie Baker moved to close the public hearing. Steve Purcell seconded the motion and it was approved, 7-0.

Blackbird Hollow, LLC (Joe Galati & Susanne Adsit/Jon McManus/Les Sittler) – Site plan modification, special permitted use, restaurant/hotel – 6855 State Highway 80 (#69.44-1-5.00)

Chairman John Phillips opened the Blackbird Hollow public hearing at 7:33 PM. Those wishing to comment were asked to sign in on a sheet provided by Ed Hobbie.

Ginny Hastings said she expected State Environmental Quality Review (SEQR) to be done in August, as promised in July. She expressed concern about the possibility of a default approval for exceeding the 62-day time limit.

Kathy Chase asked the Board not to forget what the public said during the July public hearing. She presented a petition (filed), signed by 65 people, opposing the proposed project.

Vicky Lentz, President of the Otsego County Conservation Association (OCCA) Board of Directors, read aloud from a prepared statement (filed). She cited perceived deficiencies with the Environmental Assessment Form (EAF), and said it represents segmentation of SEQR. She asked for a full Environmental Impact Statement (EIS) to be done, saying the Board needs to take a “hard look” at the significant impact. Lentz cited various New York State court cases, and expressed concerns about noise, traffic (new study needed), water and energy usage (questions applicant’s estimates), and soil.

Nicole Dillingham, Board President of Otsego 2000, spoke for 21 minutes. She said the Board has 62 days from tonight to make a decision (Attorney Ferrari agreed). Dillingham said that the application had changed and “metastasized” so much, it was difficult to keep track of. She suggested that the 2014 approval was given in deference to Galati’s status as a Planning Board member at the time, but claimed that that approval had expired. Dillingham said the Board should act based on the record, not on what is said. She claimed that, because the proposed project increases the footprint and is in the Lakeshore Protection area, it would need an area variance from the Zoning Board of Appeals (ZBA), but the only variances granted were for an enclosed porch (2012) and a staircase (2013). Dillingham said that a hotel/motel/restaurant is not a

permitted use on a lot of less than three acres, and the Heirloom Barn Law does not apply if the use is not permitted. She said that the 2000 use variance has been abandoned, and that the applicant had specified in 2012 that no food or liquor would be served. Dellingham said the Board should revoke the 2014 site plan approval, which she said was issued in error. She said that the State Historic Preservation Office (SHPO) had opined on August 31 that this was not an appropriate use.

Doug Hastings said that he agrees with OCCA's and Otsego 2000's conclusions, and noted the overwhelming neighborhood opposition. He cited his letter of July 27.

Betty VanHeusen said that the building is not being properly protected, and is deteriorating. She said that the application has no details about the parking lot. VanHeusen said the Board should request assistance from SHPO.

Chairman Phillips read aloud a September 6 letter from Mark Sowalski. It expressed concerns about water usage, wastewater, traffic, and noise.

Dan Lapin of OCCA distributed copies of a package, expressing concerns with the project.

Debra Creedon asked that her e-mail be read aloud; Scottie Baker did so. It complained that, because the application has dragged on past Labor Day, many seasonal neighbors would no longer be around to protest. It also criticized the segmentation of SEQR.

Katina Stabile asked that her July 5 letter be read aloud; Darryl Szarpa did so. It decried the commercialization and negative impact of the proposed project.

Douglas Zamelis spoke for 12 minutes. He said the 2000 use variance was for a small restaurant and tavern with a few inn rooms. He is adamantly opposed to an expansion of this usage, and believes it is incompatible with the Glimmerglass Historic District. Zamelis said that default approvals apply only to subdivisions. He asked the Board to issue a positive SEQR declaration, and deny the site plan application.

With no further comments or questions, Rosemary Craig moved to close the public hearing. Ed Hobbie seconded the motion and it was approved, 7-0.

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. Chairman John Phillips called the meeting to order at 8:41 PM and led the Pledge of Allegiance.

Clerk Bill Deane took roll call. All members present were Phillips, Vice-Chairman Tom Huntsman, Darryl Szarpa, Steve Purcell, Rosemary Craig, Scottie Baker, and Ed Hobbie. Also present were alternate members Paul Russo and Chip Jennings, Planning Board Attorney Jim Ferrari, Zoning Enforcement Officer Barbara Monroe, and Town Board members Carina Franck and Tom Hohensee.

The Board reviewed the minutes of August 2, 2016, e-mailed to the members. Purcell moved to approve the minutes as written. Baker seconded the motion and it was approved, 7-0.

The only correspondence (not related to applications) received since the last meeting was an August 4 memo (filed) from the Otsego County Planning Department, regarding the filing of the Zoeller subdivision.

Chairman Phillips asked if anyone had a conflict with tonight's applicants. No one reported any conflict.

Chairman Phillips asked if anyone from the public had a comment on a non-agenda item. No one responded. The Board moved on to applications.

APPLICATIONS

Frank Kukenberger – Site plan review, gravel mine – 523 County Highway 26 (#114.00-1-75.01)

Applicant Frank Kukenberger said that he wants to open a gravel mine on County Highway 26, on the south side of the family's former gravel mine. Chairman Phillips advised him that, according to *Land Use Law* 4.05 (copy given to applicant), any mine involving more than 750 cubic yards per year would have to be approved by the Department of Environmental Conservation (DEC) before coming to the Planning Board. Phillips advised Kukenberger to work with Zoning Enforcement Officer Monroe in the application process, and Clerk Bill Deane advised him to give two weeks' notice when he was ready to return before the Board.

Matthew & Linda Lionetti – Minor subdivision – 768 County Highway 26 (#114.00-1-46.01)

Clerk Bill Deane explained that this application was removed from the agenda, as the applicants need a ZBA variance first, according to Zoning Enforcement Officer Monroe.

Red Point Builders (Tim Horvath) – Sketch plan conference, deck on east side of Cooperstown Country Clubhouse – State Highway 80 (#115.00-1-11.00)

Builder Tim Horvath described the deck proposed by the Cooperstown Country Club, to be built within 100 feet of Otsego Lake. He submitted drawings of the existing and proposed structures.

Chairman Phillips said this would be a Type I action under SEQR, this requiring a long EAF. Clerk Bill Deane said it would need ZBA variances before returning to the Planning Board, and that they would need a letter from Cooperstown Country Club, authorizing Horvath to represent them, and a list of neighbors within 200 feet of the property lines.

Blackbird Hollow, LLC (Joe Galati & Susanne Adsit/Jon McManus/Les Sittler) – Site plan modification, special permitted use, restaurant/hotel – 6855 State Highway 80 (#69.44-1-5.00)

Scottie Baker read aloud from the minutes of August 2 relevant to the Blackbird Hollow application. Chairman Phillips reported that the DOT (August 3) and SHPO (August 26) had responded to the coordinated review mailings, both agreeing with the Planning Board's lead agency declaration. The letters were filed. Also filed was an August 11 e-mail from representative Jon McManus, waiving the 62-day time limit by one day in order to accommodate tonight's public hearing.

Attorney Les Sittler said that he did not see or hear about the OCCA and Otsego 2000 packages until tonight, and needs time to respond. He will be out of the country in October, and asked the Board to table the application until the November meeting, at which time he would submit written responses to tonight's comments. He said they would waive any deadlines for the Board to make a decision.

Throughout the public hearing and meeting, neighbors in attendance interrupted with applause, reactions, and private conversation. At one point while Sittler spoke, they laughed derisively. Sittler asked for respect and said he would not tolerate rudeness.

Steve Purcell moved to table the application until November 1. Tom Huntsman asked to make a statement first. Huntsman read from a ten-page document (filed) which he had prepared. He said he had spent 40 hours studying the proposed project and the *Land Use Law*, and had found many issues with the project:

- The Board erred in deeming the application complete before SEQR was done, per *Land Use Law* Section 8.04 and other sources. (McManus disagreed, saying that the DEC governs SEQR, but said this was a procedural non-issue.)
- There is nothing in the *Land Use Law* governing site plan modification. In fact, Section 8.05 says that "Upon approval... the site plan cannot be modified." Therefore, there could not be a site plan modification without withdrawal of the original site plan.
- Per Section 7.03, a special use permit shall expire if the special use shall cease for more than two years for any reason. This suggests that the permit issued on April 1, 2014, but never used, has expired.
- The use variance obtained in August, 2000 was for a small restaurant and pub. Since then, the only ZBA variances granted were for replacement of an existing stairway on the east side of the building, and for a porch which no longer exists.
- Section 3.15, the "Heirloom Barn Law," provides for adaptive rehabilitation. The intent of the law, when proposed in 2007, was "To ensure restoration and protection of the historic external appearance." The

appearance of the proposed project bears no resemblance to the original Hickory Grove Inn.

- The Heirloom Barn Law also provides for “minimum impact of the neighbors.” Based on the public hearings and letters from neighbors, this is not the case. The project is also not in keeping with the neighborhood or the Town’s Comprehensive Plan.

- The Heirloom Barn Law does not allow a change in zoning, only special permitted use. Non-conformities cannot be increased (Sections 1.04, 1.05). Per Sections 2.02 and 3.01, this project is not allowable.

- Section 4.04 states that building replacements and repairs should be restricted to the building footprint. There is no variance which allows building outside of the footprint.

- Section 7.03 says “A special permitted use is for only one use.” The applicant is asking for three uses: restaurant, bar, and hotel.

- The applicants claim they have a use variance issued July 1, 2001 allowing a 149-seat restaurant. On March 6, 2012, they obtained a special permitted use for a motel, specifying that no food or drink would be sold to the public. That would suggest that the applicants abandoned the 2001 use variance to proceed with the motel application. Change of a special permitted use is not permitted.

- A new use variance would not be permitted by Section 9.03, since it would alter the essential character of the neighborhood, and the alleged hardship is self-created.

- The proposed rooms more resemble apartments than hotel rooms, as defined by the *Land Use Law*. Apartments are not permitted in any district. Based on this, Huntsman concludes that the site plan/special permitted use application is not valid, and

should be denied. Also, the 2014 permit, erroneously approved, has lapsed and should be revoked.

Sittler said that Huntsman’s statements were “remarkably similar, almost identical” to allegations made by Otsego 2000 and OCCA, and that these similarities would be revisited in the future. Huntsman asked if Sittler was threatening him, and asked him not to point his finger at him. Sittler said he was not threatening Huntsman, and apologized for pointing. He mentioned some e-mails from Huntsman which had come to his attention.

Representative Jon McManus asked Huntsman if he had had discussion with other Planning Board members outside of the meeting venue. Huntsman said that he had met and communicated with some members, asking them only to come to the meeting with an open mind.

Steve Purcell repeated his motion to table the application until November 1. He said everyone should be given equal opportunity to respond. Ed Hobbie seconded the motion and it was approved, 5-2, with Huntsman and Baker opposed.

Later during the meeting, Huntsman said that he felt threatened and uncomfortable by Sittler's response. Chip Jennings said that just because two people come to the same conclusion does not mean that they worked together on it.

NYSHA (Joe Siracusa/Michael Haas) – Site plan review, Farmers' Museum parking lot upgrade – 5775 State Highway 80 (#115.00-1-9.00)

Rosemary Craig read aloud from the minutes of August 2 relevant to the NYSHA application.

Tom Huntsman complimented representative Joe Siracusa for the thorough application presentation. Ed Hobbie moved to approve the application as presented. Steve Purcell seconded the motion and it was approved, 7-0. Chairman Phillips stamped the plan "approved" and signed it.

OTHER BUSINESS

Zoning Enforcement Officer Barb Monroe distributed copies of her July 19 report.

Chairman Phillips asked for a volunteer to serve as Planning Board liaison for the September 14 Town Board meeting. With no offers, Phillips said he would plan to do it.

Chairman Phillips said he had submitted a 2017 budget to the Town Supervisor, asking for the same amounts as in 2016.

Chairman Phillips reminded the members of their 2016 training requirements. Scottie Baker again wondered whether the Board's time on the Blackbird Hollow application could count toward this.

Baker asked about the requirements for scheduling a special meeting. Attorney Ferrari said it would be subject to the State's open meeting laws.

Town Supervisor Meg Kiernan had e-mailed the Board members, asking them to think about rewording the Heirloom Barn Law. Ed Hobbie shared his suggestions, including the requirement for an architectural rendering of all four sides of the building. The consensus of the Board was to table further discussion until October.

Town Board member Carina Franck asked Board members to work on suggested revisions to the *Land Use Law* and submit them on paper to the Town Board.

Bill Deane discussed the October 4, 2016 agenda, reminding the Board of resumption of the 7:00 start time. As of now, there are no applications on the agenda.

With no further business, at 10:10, Scottie Baker moved to adjourn the meeting.

Respectfully submitted,
Bill Deane, Planning Board Clerk