

Town of Otsego Planning Board

Minutes – November 1, 2016

PUBLIC HEARING

Don Myers & Eileen Gardner (Jon McManus) – Site plan review, expansion of seasonal residence within 500 feet of Otsego Lake – 6819 State Highway 80 (#69.52-1-4.01)

Chairman Phillips opened the Myers/Gardner public hearing at 7:02 PM and asked if anyone from the public had questions or comments about the application. No one responded. Phillips noted that a hearing notice addressed to Lakeview Motel & Marina, Inc. had been returned to sender. Rosemary Craig moved to close the public hearing. Steve Purcell 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 7:00 PM and led the Pledge of Allegiance. He then asked for a moment of silence for former Town Councilman and Highway Superintendent George Tucker.

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

The Board reviewed the minutes of October 4, 2016, e-mailed to the members. In an October 12 e-mail, Jennings had explained his denial of a conflict of interest in the Blackbird Hollow application (“I do not know the applicant, nor do I have any personal or financial interest in the application’s outcome”), mentioned in the October minutes.

Baker moved to approve the minutes as written. Hobbie seconded the motion and it was approved, 7-0.

Chairman Phillips reviewed correspondence received since the last meeting. All of it pertained to applications and other business to be discussed later in the meeting.

Chairman Phillips asked if anyone had a conflict with tonight’s applicants. Craig said that she would recuse herself from the LLIB application as usual. Huntsman again disputed Les Sittler’s allegation of Huntsman having a conflict of interest on the Blackbird Hollow application. Huntsman said that he has read the laws and ethics code, and has no conflict of interest because he has no financial incentive. He is irritated by the applicant’s and representative’s allegations and behavior. Chairman Phillips opined that there is a conflict. Attorney Ferrari said it is moot because the application has been withdrawn.

Huntsman asked to call an executive session regarding personnel. Chairman Phillips said it could wait until the “other business portion of the meeting.

Chairman Phillips asked if anyone from the public had a comment on a non-agenda item. He said that, although the Blackbird Hollow application was on the agenda, it has been withdrawn.

Debra Creedon discussed issues involving both the LLIB and Blackbird Hollow properties. Attorney Ferrari said that the Department of Environmental Conservation (DEC) is examining those issues.

Ellen Pope of Otsego 2000 cited her October 27 correspondence about Blackbird Hollow, where she alleged the applicant had violated terms of his 2014 approval. Chairman Phillips said such violations would not be a Planning Board issue. Town Supervisor Kiernan disagreed, saying that if there are State Environmental Quality Review (SEQR) violations, the Planning Board as lead agency is responsible. Huntsman, citing SEQR Section 617.3, agreed with Kiernan, and would discuss the matter further later during the meeting. Attorney Ferrari said it would be up to the DEC to determine whether there was a violation.

Ginny Hastings and Danny Lapin both questioned whether SEQR has been complied with in Blackbird Hollow, and suggested the Planning Board should take action.

Purcell moved to close the public discussion. Craig seconded the motion and it was approved, 7-0.

APPLICATIONS

LLIB, LLC (Bill Miller/Jon McManus) – Request to extend conditional approval of Upper West Side major subdivision to February 10, 2017 – County Highway 28, Pierstown (#84.00-1-15.62)

Applicant Bill Miller is again requesting a 90-day extension to his conditional approval for the Upper West Side major subdivision approved in 2011. Clerk Bill Deane noted the current approval is good through November 12, 2016, and a 90-day extension would take it to February 10, 2017.

At Chairman Phillips's request, Rosemary Craig and Scottie Baker read aloud from an October 28 letter (including photos) from neighbors Robert & Patricia Hanft, Jack Drumm, and Douglas Sokolik, and an October 31 response from applicant Bill Miller. The neighbors said that Miller has used the property as a "dumping ground" and asked the Board to add conditions to any further approval extension. Miller responded in detail, calling the neighbors' claims unsubstantiated. Both letters were filed.

Craig recused herself and left the meeting table, with alternate member Chip Jennings taking her place. Scottie Baker asked Miller about the neighbors' letter, which states that their common road area has been compromised by his dumping. Miller disagreed, saying that as far as he knows, all the material in question is on his property. Baker asked if he was in the process of building a road. Miller said he was not, as he wants to leave open the possibility of selling the land in its entirety.

Tom Huntsman asked what the long-term goal is for the property. Miller said it depends on the market; the land is for sale. Huntsman said the property looks like a dump, and suggested Miller should agree to "tidy it up" if he wants the approval extended. Miller says that what is on the property is \$20,000 worth of construction material, not garbage, and he would not agree to any stipulations to the approval. Miller said it didn't matter to him what the Board decides to do; he has a "Plan B" if the approval is not granted. Steve Purcell asked him to elaborate; he refused.

Chairman Phillips and Attorney Ferrari explained the law allowing extensions to conditional approvals, and how it relates to LLIB. Darryl Szarpa and Jennings asked about the DEC investigation mentioned during "public comment"; Ferrari said he expected that would be complete and a report available to the Planning Board before the end of another 90-day extension. Ferrari suggested that Miller clean up the property. Zoning Enforcement Officer Monroe said she had issued a "stop-work" order on the property today, requiring Miller to stop dumping and clean up the debris.

Steve Purcell noted that Miller could clear-cut the property if he chose. This is a reason the Board has repeatedly granted extensions as a "lesser evil."

Baker moved to extend the approval for another 90 days, to February 10, 2017. Purcell seconded the motion and it was approved, 6-1, with Huntsman opposed. Miller or an authorized representative will return at the February meeting if he wants another extension.

Craig returned to the meeting table and Jennings left it.

Don Myers & Eileen Gardner (Jon McManus) – Site plan review, expansion of seasonal residence within 500 feet of Otsego Lake – 6819 State Highway 80 (#69.52-1-4.01)

Clerk Bill Deane read aloud the minutes of October 4 related to the Myers/Gardner application. He said that the items requested by the Board had been received in time. Applicant Don Myers and representative Jon McManus were present.

McManus reviewed the revised site plan with the Board. He said that the slope on the property is about 5%. The Board agreed that their requirements had been met.

Tom Huntsman moved to approve the application and authorize the chairman to sign both the site plan and elevations. Rosemary Craig seconded the motion and it was approved, 7-0. Chairman Phillips stamped two sets of the site plan "approved" and signed them, giving one to McManus and keeping the other for the file.

Barbara (Rich) Polgar – Site plan review, replacement of shed/sauna within 100 feet of Otsego Lake – 6584 State Highway 80 (#84.12-1-30.00)

Rich Polgar was present, along with his mother, Barbara. Since the 1970s they have had a 12'x12' shed/sauna on their property within 100 feet of Otsego Lake. This past winter, a tree fell on the building, leading to severe damage. They want to replace the building, doubling the size to 12'x24'. Polgar submitted drawings showing the

existing property and proposed new shed, which would be eight feet from the Lake. He said that the increase in size would be closer to the house, not the property lines, and the building would be safer.

Clerk Bill Deane read aloud the Zoning Board of Appeals (ZBA) minutes of September 20 and October 18 (not yet approved) related to the Polgar application. During the latter meeting, the ZBA held a public hearing with no comments, and granted the variances sought: a 27-foot variance to meet the rear-yard setback requirement on the east (Lake) side, along with a variance from *Land Use Law* Section 4.04, which prohibits new construction in the lakeshore protection area.

Rich Polgar said the new building would be a pre-fabricated shed with no foundation and no running water. He paid \$25 cash to Zoning Enforcement Officer Monroe for his site plan application.

Tom Huntsman went through the site plan requirements in Section 8.04 of the *Land Use Law*. The consensus of the Board was that all of the requirements either had been met or were not applicable.

The Board discussed SEQR, wondering if it would be a Type I action due to its proximity to the Lake. After discussion, Huntsman moved to deem it a Type II action, requiring no further review, per SEQR Section 617.5(c)(10). Scottie Baker seconded the motion and it was approved, 7-0.

Huntsman moved to deem the application complete and waive the public hearing due to the result of the October 18 ZBA hearing. Steve Purcell seconded the motion and it was approved, 7-0.

Huntsman moved to approve the site plan application and authorize the chairman to sign it. Purcell seconded the motion and it was approved, 7-0. Chairman Phillips stamped two sets of the site plan “approved” and signed them, giving one to Polgar and keeping the other for the file.

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 Phillips noted that, in an October 31 letter, representative Les Sittler wrote, “until the issues of bias and prejudice clearly present at the September meeting are cleansed from the Planning Board’s proceedings involving this application, there is nothing further that my client can or will do. These circumstances make it impossible for Blackbird Hollow, LLC to proceed further with this application and the application is withdrawn herewith, effective immediately.”

Phillips said that unsolicited correspondence from neighbors related to the application was received and added to the file.

Tom Huntsman discussed the Blackbird Hollow application which the Board approved in 2014. He said he had spent countless hours researching this situation. Huntsman believes the applicant violated SEQR, and the Planning Board as lead agency is responsible and has the authority to take action, per Section 617.3. He said that, in their environmental assessment form (EAF), the applicants had incorrectly and fraudulently checked that the project is not in the Historical District. As a result, the Board declared it a Type II action, requiring no further review, instead of an unlisted action, which would have required the filing of a full environmental impact statement (EIS). Huntsman said that the applicant should file a corrected EAF and EIS, and a “stop-work” order should be issued until this is resolved. Ed Hobbie said he agreed 100%.

Attorney Ferrari said he is gathering information on this situation, but thinks that the Board acted properly. He explained the SEQR process and legal ramifications. Huntsman read aloud from the Planning Board minutes of March 4, 2014, at which time the Board actually declared it a Type I action with negative declaration based on the completed SEQR forms.

Clerk Bill Deane reminded the Board about the 2016 application for a restaurant/bar/hotel, which had been “suspended” prior to the June 7 meeting. Theoretically, they may revive this application.

OTHER BUSINESS

Zoning Enforcement Officer Barb Monroe said she had prepared no written report, but there was “not much going on” other than complaints.

Chairman Phillips asked for a volunteer to serve as Planning Board liaison for the November 9 Town Board meeting. With no one volunteering, Phillips said he would go.

Clerk Bill Deane said that this was the time and opportunity for the Planning Board to make recommendations to the Town Board for 2017 appointments; specifically, a member for 2017-23 (following the expiration of John Phillips's current term); two alternate members (currently Chip Jennings and Paul Russo); and the chairman (currently Phillips).

Darryl Szarpa noted Russo's poor attendance at meetings, and Rosemary Craig said that she had spoken to Russo and he was not interested in being reappointed. Chairman Phillips, praising his attendance and training, moved to recommend that the Town Board reappoint Jennings. Steve Purcell seconded the motion and it was approved, 7-0. Nobody made a motion about the 2017-23 position. Phillips said that he planned to reapply. The consensus of the Board was to "wait and see what happens" before dealing with the chairman situation.

Chairman Phillips again reminded the members of their 2016 training requirements, saying that he was working on ideas for people to meet these. Szarpa suggested the training CDs that former member Doug Greene had donated. Scottie Baker said she would check on these.

Chairman Phillips said that he had taken it upon himself to check on site plan applications approved by the Board, to make sure they were being followed correctly. He thinks future chairmen should do the same.

The Board discussed the "Heirloom Barn Law." Scottie Baker, saying that it has not served its purpose, moved to recommend that the Town Board dissolve the law and strike it from the record. Ed Hobbie seconded the motion but, after discussion, and an attempt to withdraw the motion, it was defeated, 7-0.

Tom Huntsman said that the law was "a noble experiment," but that it is too vague and has failed, resulting in an incorrect application. He suggested that instead of scrapping the law, the Town Board put a six- to twelve-month moratorium on it. Chairman Phillips said that there should be a more stringent process, but again cautioned the Boards not to "throw out the baby with the bathwater." Carina Franck said that the subject is on the Town Board's November 9 agenda, and the issue is use, not saving buildings. Rosemary Craig said that a building should not be more important than people. Hobbie discussed the Town's proposed formation of a new historic preservation committee, seeking alternatives to the demolition of historic buildings.

Huntsman moved to recommend that the Town Board put a moratorium on the Heirloom Barn law, giving everyone a chance to discuss alternatives. Phillips seconded the motion and it was approved, 7-0.

Chairman Phillips read aloud an October 24 letter from Delaware Engineering, declaring lead agency status for the Village of Cooperstown on a proposed upgrade to the wastewater treatment plant on Linden Avenue. Public Works Superintendent Brian Clancy explained the project. Huntsman moved to agree to the Village's lead agency declaration. Steve Purcell seconded the motion and it was approved, 7-0.

Doug Hastings announced that the Cubs were leading Game Six of the World Series, 7-0. Ginny Hastings passed out snacks for the Board.

Deane discussed the December 6, 2016 agenda. There are no pending applications, but Hobbie talked about a project (relocation of the Fly Creek hardware store building) he may be bringing to the Board.

With no further business, at 9:33, Scottie Baker moved to adjourn the meeting.

Respectfully submitted,
Bill Deane, Planning Board Clerk