

# Town of Otsego Planning Board

Minutes – December 7, 2010

## 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 Paul Lord called the meeting to order at 7:30 PM, and roll call was taken by Clerk Bill Deane. Members present were Lord, Donna Borgstrom (Vice-Chairman), Joe Galati, John Phillips, Steve Purcell, and Joe Potrikus. With Wes Ciampo absent, alternate member Rosemary Craig joined the meeting table. Planning Board Attorney Jim Ferrari and Zoning Enforcement Officer Hank Schecher were also present.

The Board reviewed the minutes of November 9, 2010, e-mailed to the members. Borgstrom moved to approve the minutes as written. Galati seconded the motion and it was approved, 7-0.

Chairman Lord reviewed correspondence received since the last meeting:

- A November 15 letter (copies distributed and filed) from Village of Cooperstown Attorney Martin Tillapaugh, reiterating points he made during the November 9 meeting, and objecting to the request for a “new” application for the Village’s proposed site plan modification.
- The November/December 2010 issue of *Talk of the Towns&Topics*, copies of which were distributed.
- The Fall 2010 issue of *Planning News*, copies of which were distributed.
- A notice (passed around) from the Catskill Center for Conservation and Development, advertising a seminar, “Site Plan Review and Special Use Permits,” to be held in Arkville on December 16.
- A November 24 e-mail from Wayne Bunn, expressing interest in retaining his role as Board Engineer, with the same employment situation as last year.
- Verification (filed) of approval from the Department of Environmental Conservation (DEC) on the Barron application, which was approved by the Board contingent on this approval in November.

Hank Schecher distributed copies of his December 7 Zoning Enforcement Officer report (filed). It itemized one land use permit issued, and seven applications pending Planning Board review. 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. Donna Borgstrom read aloud from the minutes of November 9 relevant to the application. Chairman Lord explained that the correct sequence of Board activity in subdivisions should be State Environmental Quality Review (SEQR) and submission of a preliminary plat, followed by a public hearing.

Engineer Jon McManus distributed copies of a revised road and storm-water pollution prevention plan (SWPPP) maintenance agreement; a list of waivers sought; and a proposed negative declaration. All documents were filed.

Chairman Lord retrieved the long Environmental Assessment Form (EAF) which was started on August 10, and resumed going through it with member input. The “no” answer to question #20 – “Is there or is there likely to be public controversy relative to potential adverse environmental impacts?” – was followed by laughter from the audience. Steve Purcell suggested that the answer should be “yes,” but with no one else objecting, the answer remained “no.”

John Phillips moved to declare a negative declaration and authorize the chairman to sign the EAF. Joe Potrikus seconded the motion. Attorney Ferrari said that he had researched the question about “quorum” which arose at the last meeting, and learned that, in subdivision applications, SEQR approval requires a majority of the full Board (four of seven members, even though only five members are voting), whereas approval of an application requires only majority of those voting (three in this case).

Lord said that he would be voting against the motion, citing the “cumulative effect” of subdivisions along Otsego Lake, the near-minimum lot sizes, and the difficulty enforcing deed restrictions. McManus said that the application should be considered on its own merits, noting among other things that the applicant has met all zoning requirements, and submitted a SWPPP which actually reduces run-off. Donna Borgstrom, John Phillips, and Steve Purcell offered input. The motion was passed, 4-1, with Lord opposed. Lord signed the EAF.

The Board examined the plat dated December 7, 2010. Revisions included modified road width, and added notes regarding possible extension of the cul-de-sac, and tree-cutting (“Trees to be managed pursuant to the SWPPP”). Chairman Lord noted that this was not actually in the SWPPP, but in the SWPPP agreement. He also noted completion of the SEQR and preliminary plat submission.

## **PUBLIC HEARING**

### **LLIB, LLC (Bill Miller/Jon McManus) – Upper West Side major subdivision – County Highway 28, Pierstown (#84.00-1-15.62); resumption of hearing adjourned on September 7**

Chairman Paul Lord called the resumption of the LLIB public hearing (adjourned on September 7) to order at 8:12 PM. Engineer Jon McManus put the preliminary plat on an easel and gave a brief description of the proposed project. Lord opened the floor to questions:

- Marilyn Bradshaw of 6539 State Highway 80 asked about the proposed tree-cutting restrictions. McManus clarified the proposal.
- Pat Hanft of 155 Stocking Brook Road asked whether the proposed road would have a different name than Reiss Road. After discussion, it was agreed that the road probably would be named according to the “911” procedures. Hanft also asked whether buyers of the lots could cut down all the trees if they wanted to. Applicant Bill Miller said that tree-cutting would be restricted to 30% per ten years, regardless of who owned the lots.
- Marian Whalen of Sugar Hill Road asked whether tree removal would affect runoff. McManus said that was covered by the storm-water pollution prevention plan (SWPPP). Whalen also asked whether the 30% restriction included trees removed in development of the subdivision; McManus said it did not, but that the SWPPP takes that into account.
- Robert Hanft of Reiss Road asked if the SWPPP was sufficient to handle run-off after removal of 30% of trees; McManus said it was. Hanft also expressed concern about potential damage done to Reiss Road by large construction vehicles. Miller said that he would share equitably in road maintenance costs after the houses are built and a homeowners’ agreement is in place.
- Rosemary Craig of 153 Reiss Road asked whether it matters where the removed trees are. McManus said this is covered by the SWPPP.

With no further questions, Chairman Lord reminded attendees that the Town Board makes the laws, and the Planning Board merely tries to interpret and enforce them, using judgment where appropriate. Lord opened the floor to comments:

- Robert Hanft read aloud from a statement (filed) he had written. He said that he was not against development, provided it is thoughtful and responsible. He wondered who would see that promises are kept. Hanft said that the original intent of the subdivision (maximum 12 lots of at least five acres each) should be considered. He said that the proposed development would have a negative impact on many people’s property values and viewshed, with a benefit only to the applicant. Hanft noted the great amount of public opposition to the project. Finally, he thanked the Board for their time and service.
- Carol Akin of 6539 State Highway 80 read aloud from a statement (filed) she had written. She noted the “Historic District” status of the area, a “national treasure.” Akin said the project would produce a dramatic change to the viewshed. She expressed concerns about run-off, future maintenance, water quality, and tree-cutting. Akin urged the Board to deny the application, and thanked them for their time and service.
- Pat Hanft said that approval of this application would set a dangerous precedent.
- Marilyn Bradshaw said that she was concerned about the cumulative effect of subdivisions along Otsego Lake, about excessive tree removal, and about setting a bad precedent.

- Howard W. “Bill” Michaels of 144 Browdy Mountain Road read aloud from a statement (filed) he had written. Michaels said he supports the project, that the applicant was generous to add a tree-cutting restriction, and that the “Historic District” status applies only to publicly-funded projects.
- Chairman Lord read aloud a December 7 e-mail (filed) from Debra Creedon, urging denial of the application due to concerns about tree removal, landscape, and enforcement. Lord also noted that letters addressed to Howard & Doris Reiss and Clark S. Hall had been returned to sender.

With no further questions or comments, at 8:44 Joe Potrikus moved to close the public hearing. Donna Borgstrom seconded the motion and it was approved, 5-0. The Board resumed the “applications” portion of the meeting.

### **APPLICATIONS, Continued**

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

Chairman Lord asked if any member wanted to revisit SEQR, but no one responded. Lord said that the Board could now deny the application, approve it, approve it with waivers, or approve it with modifications and waivers. He noted that the Board had 45 days to act.

John Phillips clarified statements he had made, that the applicant could cut all the trees on his lot if he wanted. Phillips said that he was not in favor of excessive tree-cutting, merely noting that it was permissible under the *Land Use Law*. He also noted that grass is better at preventing run-off than trees.

Joe Potrikus moved to approve the preliminary plat as presented with requested waivers (road requirements, road specifications, bonding requirement). Phillips seconded the motion. After discussion, Potrikus withdrew the motion.

Potrikus moved to approve the preliminary plat separate from the requested waivers. Phillips seconded the motion. Attorney Ferrari said that, according to the *Land Subdivision Regulations*, the Board should discuss waivers and modifications as part of the motion. After discussion, Potrikus again withdrew the motion.

Discussion about the performance bond waiver followed, with Chairman Lord pleading his case for requiring it, and the other members and applicant sharing concerns and thoughts on this subject. The consensus was that the Board had no issue in granting waivers on road requirements and specifications.

Phillips moved to approve the preliminary plat as presented with requested waivers (road requirements, road specifications, bonding requirement). Potrikus seconded the motion, and the vote was 3-2 in favor, with Lord and Borgstrom opposed. Ferrari said this constituted an approval by default.

Lord said that the Board could schedule another public hearing, or waive the hearing and consider the December 7 plat as the final plat. Borgstrom moved to waive the second public hearing, due to receiving sufficient input at the previous hearing(s). Purcell seconded the motion and it was approved, 5-0.

Phillips moved to approve the final plat as submitted with requested waivers. Potrikus seconded the motion. Lord asked each member to give input on their decision-making process before voting.

Purcell said that the applicant has done a good job. Though Purcell is concerned about the viewshed, he has to vote according to the laws. He noted that there will be less erosion after the project is completed.

Potrikus said that he is passionate about viewshed and landscaping, just as the neighbors are, but emotions aside, the Board has to go by the laws and what the applicant presents. He said he had read everything presented “cover-to-cover,” and can’t see any reason to deny the application. Potrikus noted that anyone who wants to build houses there will have to come before the Planning Board. He also acknowledged the applicant’s “exhaustive efforts,” money spent, and consideration of public concerns.

Borgstrom echoed the comments of Potrikus, lauding the comprehensiveness of the plan and cooperation of the applicants. She said that the area was less steep and less of a run-off concern than the Walker application approved by the Board last year, and said that the LLIB application was “approvable.”

Phillips also echoed the other members, saying that the project conforms to the laws in every way, that the applicant has done due diligence to mitigate run-off, and that he didn't feel the project will have significant impact to the environment. He reiterated that the Planning Board doesn't make the laws, and rhetorically asked what kind of precedent they would set if they didn't follow the Town's own laws.

Lord said that his goals for this application were (1) to oversee a full and thorough discussion on its merits (accomplished); (2) to follow the laws as written so the judgment of the Board is likely to be upheld by an Article 78 action (accomplished); and (3) to use his experience and knowledge as an environmental scientist to mitigate the impact of such a subdivision (not really accomplished). Lord expressed concerns with the application: the steep slopes, minimal lot sizes, the lack of enforceability on deed restrictions, and erosion potential (citing three “100-year storms” in the past ten years). Lord said that the person who sold Howard Reiss the property wished he had imposed deed restrictions, as he didn't want the property subdivided. Lord said that the Otsego Lake cold-water fishery is “hanging by a fingernail.” On the other hand, he complimented the applicant and engineer for their work. Lord also addressed the neighbors, saying that “not in my back yard” is still alive and well, and that if they were truly concerned, they should come to other Planning Board meetings and Town Board meetings, or apply to become members of either Board.

The motion for approval of the final plat was passed, 4-1, with Lord opposed. Lord stamped the plat “approved” and signed it.

Later during the meeting, Attorney Ferrari said that there is an issue. He said that the 3-2 vote on the preliminary plat would not become an approval by default until 45 days elapsed (January 21, 2011), and therefore the subsequent votes may be invalid. After discussion, Phillips moved to reconsider the vote on the final plat due to a possible improper approval. Potrikus seconded the motion and it was approved, 5-0. The consensus was to address this further at the January 4, 2011 meeting.

Galati and Craig returned to the meeting table.

### **Randy Dean – Sketch plan conference, lot line adjustment/minor subdivision – State Highway 80 (#99.00-1-6.23)**

Broker Joan Fox submitted a letter (filed), authorizing her to represent applicant Randy Dean. Dean had had a minor subdivision approved by the Planning Board in February, 2006. He now wants to redo the minor subdivision by “erasing” one property line, and adding another line somewhere else, on a non-contiguous property. This would leave the same number of lots as before, thus staying within the minor subdivision threshold. The new line would split an 83-acre parcel into lots of 60 and 23 acres, respectively, including an Otsego Land Trust conservation easement. Fox submitted a site map showing the proposed adjustments, and proposed new deeds. Attorney Ferrari examined the deeds and expressed satisfaction with them.

The consensus of the Board was that this would require two separate transactions: a lot line adjustment, and a minor subdivision application. Fox was given a boundary line adjustment form, which she completed. After review, Donna Borgstrom moved to approve the lot line adjustment and authorize the chairman to sign the form. John Phillips seconded the motion, it was approved, 7-0, and Chairman Lord signed the form.

The Board saw no issues with the proposed subdivision. Fox and/or Dean will return before the Board when they are ready to proceed.

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

Justin and Megan Lindberg submitted a letter (filed) authorizing them to represent the Barrett Clarke Estate. A major subdivision of the property had been approved by the Board in June,

2005. The Lindbergs now want to split off 4.25 acres from the 90.91-acre parcel. They submitted a site map showing the proposed subdivision.

Board members examined the map. After discussion, Joe Galati moved to deem the application complete, contingent on submission of a survey plat and a list of neighbors within 200 feet of the property by December 21, and to schedule a public hearing for January 4, 2011. Joe Potrikus seconded the motion and it was approved, 7-0.

**Village of Cooperstown – Site plan modification, special permitted uses, Cooperstown Intermodal Transit Center Project – Linden Avenue**

No one appeared on behalf of this application, and Zoning Enforcement Officer Schecher said that no site plan modification application had been received. Chairman Lord said that he anticipates that someone will submit an application and come to the January 4, 2011 meeting.

Joe Galati said that he had spoken to Ron Coleman at the New York State Department of Transportation (DOT), about the Village's alleged funding deadlines. Coleman told him that the grant money may come into jeopardy after September, 2011, but not before. Galati also noted that on the DOT web-site, items #14 and 75 discuss applicants' need to get title to stakeholders' properties.

**Donald A. Davis Living Trust (Stephen & Susan Barron) – Site plan review, replacement of existing home within 100 feet of Otsego Lake – 104 Lake Shore Drive (#69.44-1-32.00)**

Per an e-mail from Town Supervisor Meg Kiernan, this application was postponed to the January 4, 2011 meeting.

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

Per Zoning Enforcement Officer Schecher, this application was postponed to the January 4, 2011 meeting.

**OTHER BUSINESS**

The Board discussed 2011 appointments of Planning Board Engineer (currently Wayne Bunn), Attorney (Jim Ferrari), Clerk (Bill Deane), and Vice-Chairman (Donna Borgstrom). Chairman Lord expressed concern about Bunn's employment situation, but said that he hadn't come up with a better idea. John Phillips moved to reappoint Bunn, Ferrari, Deane, and Borgstrom. Steve Purcell seconded the motion and it was approved, 6-0, with Borgstrom abstaining.

The Board discussed a recommendation to the Town Board regarding the Planning Board chairman (currently Paul Lord). Steve Purcell moved to recommend to the Town Board that Lord be retained as chairman. Borgstrom seconded the motion and it was approved, 6-0, with Lord abstaining. Phillips said he would convey this to the Town Board.

Bill Deane discussed the January 4, 2011 agenda. Expected to return are LLIB, Lindberg (public hearing), Barron, Haggerty, and possibly the Village of Cooperstown and Dean.

Chairman Lord reminded the Board about their training requirements for the year. Steve Purcell and Joe Galati still require some training.

With no further business, at 10:37, Rosemary Craig moved to adjourn the meeting.

Respectfully submitted,

Bill Deane  
Planning Board Clerk