

Planning Board Meeting Minutes – April 8, 2019

A meeting of the Planning Board, Town of Yorktown, was held on **Monday, April 8, 2019 at 7:00 p.m.** in the Albert A. Capellini Community & Cultural Center located at 1974 Commerce Street, Yorktown Heights, NY 10598.

Chairman Rich Fon called the meeting to order at 7:00 p.m. with the following Board members present:

- John Kincart
- John Savoca
- Bill LaScala
- Aaron Bock
- Rob Garrigan, Alternate

Also present were:

- John Tegeder, Director of Planning
 - Robyn Steinberg, Town Planner
 - Tom D'Agostino, Assistant Planner
 - Nancy Calicchia, Secretary
 - John Buckley, Esq. – Oxman Law Group, PLLC
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Correspondence / Liaison Reports:

There were no liaison reports. The Board reviewed correspondence as follows:

Popeye's Restaurant - Memo from the Town Engineer dated 3-29-2019 relating to the Popeye's Restaurant to be located in Staples Plaza was received by the Board. The Town Engineer listed items to be addressed by the applicant specific to water usage and wastewater flow after the Planning Board's site plan approval. Chairman Fon stated that the application went through the review process twice with a site plan approval in 2015 and an amendment in 2018. All departments were involved in this process, including the Town Engineer and other Boards and agencies during that time. Mr. Bock asked if this was already existing why was it not picked up by the Town Engineer at that time and if there was anything left to do from the Planning Board's approval (*i.e.* - *trees, etc.*). Response was all was complete from the Planning Board perspective. Discussion followed with respect to the restaurants in the area such as Thyme that is now closed and the recently approved new restaurant pads in front of the Lowe's relating to this issue. The Board questioned whether the application should be re-opened for a limited purpose to review the specific impacts that were not looked at and whether other information may be needed. Mr. Tegeder stated that the Board can re-open the application requesting information if they feel it is necessary and the design engineer could provide the numbers for the wastewater usage, however, this project has been looked at for quite a while and all items were addressed at that time. The Board would need to determine if this is a significant adverse impact. The Planning Board is the approving authority and anything after this approval are requests for administrative permits. The Town Engineer would issue the permit for a sewer connection and there is no moratorium in place. Mr. Savoca asked the Planning Board attorney, Mr. Buckley if anything can be done legally or procedurally. Mr. Buckley responded that on a permit level, the Town Engineer can withhold the sewer connection permit. Mr. Buckley said that this should not be considered as it was approved and does not understand why it has come up. He said that the Town Engineer should have no discretion as there was input during the process. Mr. Savoca asked if the Board decides not to re-open, what the Town Engineer can do. Mr. Tegeder responded that the only items remaining are the permits. The Building Department permit can be processed. Mr. Kincart stated that the restaurant was approved in 2015 and it would be unfair to take away the approval. He also mentioned that they subsequently approved the new pad sites in front of the Lowe's which will be going to the same pump station and if it was a problem, the Board should not have approved the most recent pad sites.

Rob Aiello, Project Engineer of JMC Engineering was present. Mr. Aiello stated that the SEQR item being discussed was addressed in the original approval of 2014 with the gas station and retail pad. The retail pad changed to a restaurant

and was approved for a restaurant in 2015. The applicant returned to the Board for a minor amendment when the tenant was known. Mr. Aiello has been in contact with Michael Quinn, the Town Engineer, and has submitted estimated wastewater flows. Mr. Quinn asked for a water record from an actual Popeye's restaurant which has not been submitted as yet. Mr. Aiello said that the construction contract has already been bid. Mr. Tegeder asked Mr. Aiello what the estimated sewage flow is for Popeye's versus the retail pad indicated on the original EAF. Mr. Aiello said that the Popeye's would be approximately 1,600 gallons per day. The retail pad had been 270 gallons per day.

After further discussion, the Board decided to stand by their approval for the site plan and restaurant and take no further action. The Board advised Mr. Aiello to apply for the building permit and pay the required fee. The Planning Department will draft a response to the Town Engineer with the Board's comments.

Meeting Minutes:

Upon a motion by Aaron Bock and seconded by John Savoca and with all those present voting aye, the Board approved the meeting minutes of March 25, 2019 with a few corrections.

Motion to Open Work Session:

Chairman Fon motioned to open the Work Session and with all those present voting aye, the Board opened the Work Session.

WORK SESSION

Unicorn Contracting Corporation

SBL: 37.18-2-73, 74, 85, & 86
Discussion: Approved Site Plan
Location: 355 Kear Street
Contact: Ciarcia Engineering, P.C.
Description: Approved site plan and minor subdivision to construct a three story, 40,000 square foot building with a mix of retail and office uses.

Comments:

John Savoca recused himself. Dan Ciarcia, P.E. and Paul Guillaro were present. Chairman Fon stated that the building was not sited as per the approved plan. Mr. Ciarcia is here as a follow-up from the previous Board meeting of 3-25-2019. He said that the original plan that was the subject of the approval was December, 2017. After that resolution, it went off for approvals from other agencies. The project was signed off in September of last year. As provided, the design of the building changed slightly. He said that the as-built survey shows the actual foundation distances from the property line and he overlaid the approved plans. He said that the discussion was to come in with all the tweaks to the plan and present them. The difference is the 2-foot change and the building shape. The transformer, drainage enclosure, reduced parking spaces, handicapped spots, etc. were part of the refinements to the plan. All changes are in an area with no setback issues. The location of the northeast corner of the building was held for fire access. The walkway on the south end of the building is 4 feet wide. Mr. Ciarcia mentioned that the parking spaces have been increased by a total of 7 parking spaces (*December – 170 spaces, current – 177*). Chairman Fon asked if the building increased in size. Mr. Guillaro stated that the depth changed by a foot and is wider by 2 feet. Mr. Tegeder stated that the latest submission shows the building is 30 sf smaller, but the Building Department actually measured today and thinks it may be 100 sf larger. Chairman Fon stated that someone should have seen the issue before the building was framed. Mr. Ciarcia stated the change only affects the parking between the new building and the Grace building.

Mr. Tegeder requested that an amended plan referencing the two foot difference, trash enclosures, sign plan, etc. is to be submitted to the Planning Department. It was mentioned that there are not significant changes to this plan. Mr. Kincart asked the applicant if there were any other changes being considered that may come up before this amended approval. Chairman Fon asked if there is anyone else that needs to see this plan. Mr. Tegeder stated that the Building Department physically measured the site today and he is not sure about the Town Engineer. Mr. Ciarcia stated that a memo was received from the Town Engineer and he responded to the comments. Mr. Ciarcia stated that he will submit a more developed landscaping plan and revised plans per the Board's request.

Clean Energy Collective – Proposed Solar Farms

Foothill Street

SBL: 15.07-1-5
Discussion: Site Plan
Location: 3849 Foothill Street
Contact: Kathy Haake – Clean Energy Collective
Description: Proposed solar farm consisting of 18.2 acres (*including areas of disturbance*) of a 34 acre parcel in the R1-40 zone.

Underhill Avenue

SBL: 48.05-1-29
Discussion: Site Plan
Location: 650 Underhill Avenue
Contact: Kathy Haake – Clean Energy Collective
Description: Proposed solar farm consisting of 13.0 acres (*including areas of disturbance*) of a 17.5 acre parcel in the R1-80 zone.

Comments:

Kathy Haake, applicant; John Miller, Director of Project Development; Eric Redding, Project Manager; Jay Myrto, Project Manager; Joseph Riina, P.E., Consultant to CEC and Alan Rothman, property owner of 650 Underhill Avenue were present. Kathy Haake stated they were here to discuss the proposed solar farms at two different sites – Underhill Avenue and Foothill Street. Mr. Bock stated that the legislation for the solar law is before the Town Board and he is not sure if it has gone out for a public hearing as yet. He questioned why the Planning Board was reviewing this application without having a law in place. Mr. Tegeder responded that this item is for informational review only and could be helpful with the proposed solar law as to what is or is not appropriate to include in the new solar law. Mr. Savoca said that we could model their comments in connection with this proposal. A draft of the proposed solar law dated 3-21-19 is located on the Town's website and will be on the Board's next agenda.

Ms. Haake stated that she would like the Board to take an open look at the project and she understands that the solar law is not in place. She said she has been around for the past 18 months trying to work with the Boards on solar and would love to see solar in this town. *Chairman Fon clarified that she has only been to the Planning Board twice during this time.* Ms. Haake stated that the owners are looking to develop their property and this would be their first choice for development as the land would be conserved and still have use in the future, however, if the solar should fall through, the property owners will move forward with other options. The property will be leased from the owners. This is not a permanent structure and there is a second life for these properties. There will be a de-commissioning agreement for the end of the useful life of the system. The life expectancy is between 25 and 40 years max. A PILOT will be negotiated and paid to the town. Ms. Haake stated that the solar panels are well sited and will be well screened. There will be no light or noise generation. They will not be using water or sewer connections. She said that although the trees would be gone, the property will remain and a thoughtful mitigation plan (*tree bank, tree plantings, screening*) will be followed according to the requirements and expectations of the town. She said that on properties that are going to be developed, trees are also removed. Ms. Haake asked the Board to view the plans and invited all to the site for a visual assessment and commentary. Mr. Miller, Director of Project Development stated that developing this project with the town could help with the development of the solar law.

Walt Daniels stated that the Open Space Committee looked at both properties several years ago. The Underhill property is a main gateway to Yorktown and impacts will be very visible on Underhill. He noted that the hillside is steep and can be seen from Turkey Mountain. The Foothill Street property should be preserved as open space for the scenic quality, and protection of the Mohegan outlet stream. Eric Redding, Project Manager, responded that they have looked at the slopes on the Underhill property and he believes that the installation on those slopes is feasible. A visual assessment will be provided to the Board.

The Board stated that the new tree law has not been adopted yet. Chairman Fon asked about the proposal in terms of mitigation for tree loss and if specific locations such as a recreational site or at the library have been considered. Supervisor Gilbert stated that the new tree law will have a menu of options for mitigation. Chairman Fon stated that the project is environmentally significant with the tree removal between both projects and is a concern. The comments from the Conservation Board's memo of 4-8-2019 were reviewed and the comment specific to National Audubon's report was noted.

Mr. Kincart asked if there have been any discussions with the neighbors to the north of the Foothill Street property specifically the Putnam Valley Schools. Ms. Haake responded not yet but it would be an excellent learning project for the students. She believes there are solar panels on both of the schools adjacent to the site. Mr. Kincart stated that it should be noted that the school would be a concerned agency.

Mr. Tegeder asked if there is any significant surface run-off from the areas proposed for solar panels at the Foothill site, and if it drains directly into the stream. Mr. Miller responded no. The thermal impacts to the stream were discussed and it was noted that the thermal impact would be an issue with DEC as well as the town. Mr. Tegeder stated that the measures to treat thermal loading could potentially be considered as tree mitigation. The wetlands may be affected by the thermal loading from the drainage as well.

Mr. Bock asked if the Board should think about what the impacts might be if this property is developed under the R1-40 zone, and the associated impacts such as fire, trees, etc. He understands this is a passive use but what would the difference be to the forest if residential clustering were built there instead.

Mr. LaScala asked about the savings guarantee, tax abatement and carbon credits. Ms. Haake said that it will be a benefit because of the lack of coal. Mr. Miller responded that the product works with the utility company for savings on the utility rate with a certain percentage off. The carbon credits are kept by NYS as part of the grant they receive and is not funded by the tax payer, it is funded by rate shares paid. Clean Energy Collective does not sell the carbon credits. Mr. LaScala asked if there is not enough power what would happen. Mr. Miller discussed the grid power and how it works. Mr. LaScala asked if this team has a list of projects before other boards and if so, to please provide it to the Planning Board. Mr. Miller responded that they will provide a list.

Chairman Fon asked the Planning Department to coordinate a site visit with the Planning Board, Conservation Board, Tree Advisory Board, Open Space and the Town Board to look at the two proposed sites. This would be a great opportunity for all the Boards to assess the visual impacts and tree clearing situation for the proposal and future proposals as the Town Board will ultimately adopt a code for the proposed solar law.

Crystal Court Subdivision

SBL: 27.11-2-43

Discussion: Minor Subdivision

Location: Crystal Court

Contact: PANBAR Realty

Description: Proposed 4-lot subdivision on 5.07 acres in the R1-20 zone.

Comments:

John Barile and Lou Panny were present. Mr. Panny stated that they were before the Board not long ago with respect to this application. Since then, changes have been made to the plans per the Board's comments. The plans were shown to all. The changed lot lines and the conservation easement was shown on the plan. They have three lots for the homes and plan to donate the 4th lot which is land that is located at the rear of the property to the Town for recreational use. The sewer main is existing and will be extended to the properties. The road access was shown to all. The cul-de-sac was enlarged for emergency vehicle access. Tom D'Agostino asked Mr. Panny if the front yard setback is less than 40 feet in Lot #1. Mr. Panny responded that by shifting the one house forward it created maximum property for the homeowner for the future. If the Board prefers this house location, a variance will be needed from the Zoning Board. Mr. Kincart stated that this application was not under the flexibility standard.

The Board discussed the land donation with beach access further as well as a possible trail. Mr. Panny stated that he would be happy to donate this land and have the town control what goes on with this property. Discussion followed with respect to a donation or an easement. Mr. Kincart stated that a recreational fee will be required for the additional two lots. The Board asked the Planning Department to draft a memo to the Town Board with respect to the land donation. A Public Informational Hearing will be set up for May.

Town Board Referral – 1285 Aspen Road SWPPP

SBL: 5.71-1-11
Location: 1285 Aspen Road
Contact: PANBAR Realty
Description: Proposed single family house on 2.75 acres in the R1-20 zone on septic.
Comments:

John Barile and Lou Panny were present. Mr. Panny stated they are proposing a single family house to be located on a dead end street. He said that the application meets all the requirements. The driveway will be at 10% grade. Per a referral from the Town Board, they are here for a review of the application. The plans that were provided by the Town Clerk were shown to the Board. Mr. Tegeder asked about the road frontage variance since the lot did not have the required frontage on an improved town road. Discussion followed with respect to the driveway and the access.

The Board had no issues and asked the Planning Department to draft a memo to the Town Board. The Board also requested to solicit comments from the Town Engineer and to mention the road frontage.

Town Board Referral – The Weyant

SBL: 37.14-2-32
Location: 2040 Crompond Road
Contact: Site Design Consultants
Description: Petition to rezone the 2.62 acre property from the R1-10 Zone to the Transition Zone to construct 23 rental apartments in 4 one and two-story buildings.
Comments:

Joseph Riina, P.E., Dr. Phil Grealy, Traffic Consultant, John Devito and Kyle Devito were present. Mr. Riina showed the concept plans to the Board. There will be a total of 23 townhouse units. There was a minor shift of units from the plan that they had seen previously. He said that nothing has changed with the connection to the Roma property. The location of the entrance has not changed which is across from the town right-of-way next to the Verizon. They are expecting a final report for the permit on the entrance and exit. The emergency exit onto Hamblyn Street was shown. Expanding the travel lanes on Route 202 will pull the curb back 5 to 8 feet. They will continue the streetscape up along the front of the property. He said that the interim plan is shown as reverse (*entrance and exit*) until the DOT approves the access to Route 202. There will be an extension of the island. There will be a 5-foot high wall (*at the highest point*) around the southeastern corner of the property and a 6-foot high fence along the rear of the property. Along Route 202, there will be an open rail fence and stone pillars.

Mr. Riina stated that the stormwater design and SWPPP is 90% done. The storm basins and infiltration were shown on the plans. A rainwater harvester has also been included. All drainage, after treated, will exit the site and tie into DOT drainage. All DOT maps show that there is a catch basin. If they find it, they will tie into it. The town water is existing and the town sewer main already on the property will be relocated.

All of the trees will be removed with the exception of some larger trees on the property line. Mr. Riina said that this is a result of the design change and a landscape architect is currently working on the plan. The lighting plan was discussed. The lights will emulate the town's street scape. The lighting will not shed off the property. The resident patios and front doors will have lighting but these were not included on the lighting plan. With respect to the sidewalk, whether the DOT approves the road widening or not, a sidewalk will be connected to the Roma building property.

Dr. Grealy updated the Board as to where they are with the DOT. They met with the DOT last Monday to review the land dedication and the existing DOT ROW line proposed dedication to accommodate the future widening of 202. He said that there are three main components of dedication: providing an abstract of title in DOT format, preparation of a map, and legal description of the land being dedicated. Phase 1 has to be expanded to meet their criteria. When the land is dedicated to NYS for these plan improvements, the stone wall and trees along the property frontage will be removed. The land dedication has to be finalized before the permanent access is permitted and this could take up to two years

Mr. Tegeder said that when this proposal first came into being, the belief was that the only egress and ingress would be from Hamblyn Street. Now that this is being designed with the main connection from Route 202 and the density has been reduced by 35%, it may be unnecessary to construct the ingress from Hamblyn as shown, which is similar to merging ramps at highways. With the new proposed main entrance at Route 202, and Hamblyn Street being proposed for emergency use, it is wasteful and unnecessary to construct in any other configuration than a typical 90 degree intersection. It will be used for main access temporarily. Dr. Grealy stated that while sensitive to neighbors, this design is less safe than a perpendicular connection. Dr. Grealy said that the traffic numbers are based on the original 36 units. The current proposal is for 23 units, which would generate less traffic.

Supervisor Gilbert asked where the snow will be plowed. Mr. Riina responded that there are stock pile areas in several locations.

Mr. Bock asked Mr. Riina if he has addressed the Town Engineer's memo with respect to the water and sewer. Mr. Riina responded that they have contacted Mr. Quinn to set up a meeting and are waiting to hear back from him in order to review. There is a town sewer main on the property. Mr. Tegeder asked if the water was 6,000 gallons a day and Mr. Riina replied it was. Mr. Tegeder asked if flows would be reviewed by the DEP and Health Department. Mr. Riina stated that they are not expecting to do that as the sewer main is on the property. Supervisor Gilbert stated that it was more of an issue with the Hallocks Mill sewer plant. The town is working on connecting 300 homes currently on septic and the question is the capacity of the sewer plant. The current permit is for 1.5 million gallons. Supervisor Gilbert said that the town was asked if they were interested in increasing the capacity of which they are. He said that they will push back to the town to do an infiltration study. Mr. Devito asked how this will affect his project. Supervisor Gilbert responded that they will have to look at this project in connection with the plan. Mr. Devito stated that he needs to know what the Board is considering at this time as this is costing a small fortune. Mr. Kincart stated that by approving the transitional zoning, the property would have the right to connect. Mr. Devito stated that he needs a direct answer in order to to move ahead with this project as each day brings about another obstacle. Chairman Fon stated that we need to find out what the town's plans are for the infrastructure. Chairman Fon stated that the town has the responsibility to maintain its infrastructure and a program should be in place to inspect infiltrators, it should not be the responsibility of the applicant.

The Board had no issues with the plan as presented. The Planning Department requested that the applicant submit a street elevation drawing, landscaping plan, street scape detail, building renderings, the perpendicular 90 degree connection to Hamblyn and the lighting plan.

Discussion – Stormwater Maintenance Agreements

The Board reviewed prior maintenance agreements and the town template in order to follow up with their discussion regarding the Fiore subdivision maintenance agreement and future agreements. Points discussed:

- Inspection requirement - An obligation should be imposed on the property owner to maintain the system annually and by whom. Item #4 in the generic agreement states every five years.
- Recording requirement - Some type of requirement needs to be created for recording purposes. There was discussion of noting the infiltration system on the plat, on the deed or on the tax bill so that it runs with the property.
- Security requirement - a cash bond to be held in escrow was discussed. Mr. Buckley stated that there could be a periodic increase of the bond every 10 years. The Board discussed imposing an inspection and maintenance requirement which the applicant or the owner would pay for to be enforced by the town at the owner's expense.
- Specify type of maintenance agreement in the SWPPP and on the plan.

- Items #4 and #9 in the generic agreement conflict or contradict each other. Mr. Riina stated that the town run-off from the street and the site's stormwater system are not entirely separate. There is nothing separate that the town should/can maintain.
- Easement for Fiore subdivision - The town needs to be granted an easement. Mr. Bock stated that the town should maintain the current pipe that goes to the catch basin that had to be relocated.
- Mr. Riina stated that the DEP has their own format for stormwater agreements and the Town Engineer has to sign off on the MS4 permit. In Yorktown, the Town Supervisor signs as the MS4 administrator. Mr. Bock referred to the Town Code and the easement with access to the site.

Motion to Close Meeting

Upon a motion by John Kincart and seconded by John Savoca, and with all those present voting aye, the Board voted to **close the meeting at 9:50 p.m.**