

September 24, 2008

1

TOWN OF NEW WINDSOR

PLANNING BOARD

SEPTEMBER 24, 2008

MEMBERS PRESENT: JERRY ARGENIO, CHAIRMAN  
NEIL SCHLESINGER  
HENRY VAN LEEUWEN  
HOWARD BROWN  
DANIEL GALLAGHER

ALSO PRESENT: MARK EDSALL, P.E.  
PLANNING BOARD ENGINEER

MICHAEL BABCOCK  
BUILDING INSPECTOR

MYRA MASON  
PLANNING BOARD SECRETARY

DOMINIC CORDISCO, ESQ.  
PLANNING BOARD ATTORNEY

ABSENT: HENRY SCHEIBLE

REGULAR\_MEETING

MR. ARGENIO: I'd like to call to order the September 24, 2008 meeting of the Town of New Windsor Planning Board. Please stand for the Pledge of Allegiance.

(Whereupon, the Pledge of Allegiance was recited.)

MR. ARGENIO: I have a note here I'm going to read just

a remainder that due to the Jewish holiday of Yom Kippur starting the planning board meeting for October will be scheduled for the third and fifth Wednesdays of the month, that's October 15th and October 29th. So that being said let's dive right into this.

APPROVAL\_OF\_MINUTES\_DATED\_JULY\_9,\_AND\_AUGUST\_13,\_2008

---

MR. ARGENIO: If anyone sees fit I'll accept a motion that we accept the minutes dated July 9th and August 13, 2008 as written.

MR. VAN LEEUWEN: So moved.

MR. BROWN: Second it.

MR. ARGENIO: Motion has been made and seconded that we accept the minutes from July 9 and August 13 as written. Roll call.

ROLL CALL

MR. SCHLESINGER	AYE
MR. BROWN	AYE
MR. GALLAGHER	AYE
MR. VAN LEEUWEN	AYE
MR. ARGENIO	AYE

ANNUAL\_MOBILE\_HOME\_PARK\_REVIEW

---

WALTER'S\_MOBILE\_HOME\_PARK

---

MR. ARGENIO: First we'll go to the mobile home park review, Walter's Mobile Home Park on Route 207. Sir, can I have your name and address for the benefit of the stenographer?

MR. DANTAS: Alan Dantas.

MR. ARGENIO: Mike, what say you about this facility?

MR. BABCOCK: Everything is fine there, Mr. Chairman.

MR. ARGENIO: That's great, I'm glad to hear that and we have a check here made out in favor of the Town of New Windsor for \$435. Anybody sees fit, I'll accept a motion.

MR. VAN LEEUWEN: So moved.

MR. SCHLESINGER: Second it.

MR. ARGENIO: Motion has been made and seconded that we offer one year extension for the permit to operate Walter's Mobile Home Park on Route 207.

ROLL CALL

MR. SCHLESINGER	AYE
MR. BROWN	AYE
MR. GALLAGHER	AYE
MR. VAN LEEUWEN	AYE
MR. ARGENIO	AYE

MR. ARGENIO: Thank you for coming in, sir.

REGULAR\_ITEMS:

\_\_\_\_\_

CIMORELLI\_AUTO\_REPAIR\_(08-12)

\_\_\_\_\_

MR. ARGENIO: First regular item is the Cimorelli Collision Center site plan amendment. This plan, Joe's not here, Mr. Babcock has pointed out to me that this is represented by Mr. Minuta and I don't see him in the audience. Myra, have you heard from Joe? Is there an issue?

MS. MASON: Not that I know of.

MR. ARGENIO: We'll table this and go to the second regular item for tonight's agenda.

ROCK\_TAVERN\_VILLAGE\_(08-13)

---

MR. ARGENIO: Second regular item on tonight's agenda is the Rock Tavern Village subdivision. This application proposes four lot non-residential subdivision of the 97.25 acre parcel. The plan was reviewed on a concept basis only.

MR. VAN LEEUWEN: Folks, I have something to do with this, I'm part owner of this property and so I will excuse myself.

MR. ARGENIO: Thank you, Mr. Van Leeuwen.

(Whereupon, Mr. Van Leeuwen stepped down from the board for this proposal.)

MR. VAN LEEUWEN: Guys, this is the parcel on the corner of Toleman and 207, you guys familiar with that near the storage place? Sir, can I have your name and who you're with?

MR. WOODRUFF: Keith Woodruff from Pietrzyk and Pfau.

MR. ARGENIO: Can you tell us what you're going to do here, please?

MR. WOODRUFF: What we're going to do is basically a quick 4 lot subdivision.

MR. ARGENIO: A quick four lot subdivision? That's awful presumptuous, wouldn't you say?

MR. SCHLESINGER: Yeah.

MR. ARGENIO: Go ahead, Keith.

MR. WOODRUFF: Which all four lots will be of commercial use, currently there's an existing parcel on the site that will be cut off into its own individual

lot, the remaining three lots will then be sold off for commercial use.

MR. SCHLESINGER: Where is the storage facility in relationship to this?

MR. WOODRUFF: I believe it's actually on the corner here, isn't it?

MR. ARGENIO: Yes.

MR. WOODRUFF: It's on a separate tax lot.

MR. ARGENIO: What's your access for proposed lot 4?

MR. WOODRUFF: Lot 4 is going to be coming in off that commercial access drive.

MR. ARGENIO: Why does it say temporary T turnaround?

MR. WOODRUFF: No, I'm not sure if it was going to be then converted into a cul-de-sac or was going to be used in the event that they do develop lot 4, in the event that they want to continue it the road to somewhere else down further in the lot or how they're going to configure it that's going to be something that's going to be done at the site plan stage.

MR. ARGENIO: So at this point you're proposing no development here but you're proposing a subdivision of the parcel 10?

MR. WOODRUFF: Correct, the only development is the actual access road itself.

MR. ARGENIO: What's the disturbance of that?

MR. WOODRUFF: I believe it's under an acre I don't think we have.

MR. ARGENIO: Do you know, Mark, off the top of your head?

MR. EDSALL: Looks like it is under the acre. I looked quickly, I have commented on some ways to handle that in the interim in my review sheet.

MR. SCHLESINGER: Mark, on a residential subdivision I'm pretty familiar with the road and cul-de-sac and whatnot, how does that apply on a commercial site?

MR. EDSALL: Because it's a commercial site where you have a little bit of a curve ball is sometimes depending on where the house, how the site is developed. Lot 4 they could move the cul-de-sac in further to match the site plan, they could have the turnaround actually become part of the improvements on lot 4 because there's a shared commercial accessway, we really don't know how it's going to be developed from a commercial standpoint.

MR. ARGENIO: So it is effectively showing a minimum requirement, you folks when you get the site plan will have another bite at the apple.

MR. SCHLESINGER: You said that's a shared driveway unlike a private road or like a private road?

MR. EDSALL: There's three types of roads, town roads, private roads being just for single family we created years ago, Mr. Babcock and I in our attempts to address some development issues we created shared commercial accessway which has to be built to the town standards as a road but the town can either take it for dedication at which time it's a town road or there has to be a maintenance agreement between the commercial users.

MR. SCHLESINGER: That's what I wanted to know and what's the maximum amount of lots allowed on a shared

commercial?

MR. EDSALL: There's no prescribed limit that becomes discretionary with the board.

MR. CORDISCO: Because it's done to public road standards essentially what remains to be seen is whether or not the town's going to have any interest in taking the cul-de-sac as a town road or whether it's going to remain private ownership in which case as Mark alluded there will need to be a road maintenance agreement.

MR. EDSALL: Generally the intent when the law was written is that the town did not want to own every commercial cul-de-sac road because it's a burden but wanted to make sure the road is up to an equal standard so it will hold up to a commercial use.

MR. ARGENIO: I just want to read a couple, do you have Mark's comments, sir? I want to just quickly go through them, a couple of things that I want to highlight for you this project is located adjacent to Route 207. As such, it's going to need to be referred to Orange County Planning. Myra, you're going to take care of this?

MS. MASON: Yes, I will.

MR. ARGENIO: It's not been sent out yet?

MS. MASON: No.

MR. ARGENIO: Submittal to the DOT will be necessary, that's obvious because you're looking for access on their highway which Myra will take care of that. Supporting information should be submitted to evaluate, the evaluation submitted does not contain federal wetlands and/or state regulated wetlands. What is the disposition of this lot right here?

MR. WOODRUFF: That was done on a previous subdivision of which a first portion lot 91 is shown on the map is cut off along with lot 92, it leaves a 50 foot wide access road between them but these two lots all get access off Toleman Road.

MR. ARGENIO: How big was that piece originally, Henry?

MR. VAN LEEUWEN: Almost 100 acres.

MR. ARGENIO: It's quite a piece of land there, quite a piece of land, it's fairly, it pitches, I've walked that parcel, I've had the opportunity to walk it and I don't think it's wet but Mark's comment does not fall on deaf ears. I agree with it. If anybody sees fit, I will accept a motion that we authorize the issuance of a lead agency coordination letter.

MR. SCHLESINGER: So moved.

MR. GALLAGHER: Second it.

MR. ARGENIO: Motion has been made and seconded that the Town of New Windsor Planning Board circulate lead agency letter. Roll call.

ROLL CALL

MR. SCHLESINGER	AYE
MR. BROWN	AYE
MR. GALLAGHER	AYE
MR. VAN LEEUWEN	ABSTAIN
MR. ARGENIO	AYE

MR. ARGENIO: Can't talk about any sanitary yet and so much as the sizing of the same will be driven by the proposed development so that's kind of a moot point. I want to read this note to you relative to the fire marshal's review of these plans are approved but the

big three letter word but providing that the temporary turnaround meets New York State Fire Apparatus access road requirements. I don't know what exactly that means. It would seem to me that--

MR. EDSALL: I spoke with Mr. Bedetti, he believes that the cul-de-sac or the T turnaround dimension may not meet the Appendix D.

MR. CORDISCO: State fire code.

MR. EDSALL: However he recognizes that you're going to be seeing it again and the layout may, configuration may change based on the site plan. So he's saying that that's his only issue and he wants us to be aware of it.

MR. ARGENIO: Yeah, it's very early on in the global scope of this project, certainly this subdivision shouldn't be a lot of heavy lifting here, I wouldn't imagine. Let me ask you kind of a loaded question relative to the cell tower. I seem to remember discussion going back and I don't remember who the applicant was, there's a lot of discussion about the crumple zone and the fall zone of the cell tower and you have a block illustrated on the plans, I assume that the block does not reflect the exact size of the cell tower. What does the block represent?

MR. WOODRUFF: I would have to doublecheck but I would assume that the block would represent the concrete pad that the cell tower would sit on.

MR. BABCOCK: There's also a shed generator room.

MR. ARGENIO: This is 150 scale, that must be some pad.

MR. EDSALL: It might be the limits of the fenced area.

MR. WOODRUFF: I have to doublecheck with the

surveyors.

MR. ARGENIO: Here's where I'm going with this question to the professionals, do we have a code?

MR. EDSALL: Yeah, my comment number 7 asks that they ensure that the placement of the cell tower on lot 3 complies with that the local code provisions. And it's exactly, Mr. Chairman, what you alluded to at the collapse zone, you have to have a minimum setback but if your cell tower design is such that the collapse zone is larger than the setback then you've got to move your lot line so they merely have to check to look at the original design and as long as the cell tower collapse zone is within the lot it's fine.

MR. CORDISCO: They should illustrate that on the plans as well by the perimeter shown around that area.

MR. ARGENIO: A dashed line illustrating the zone.

MR. EDSALL: There should be a file hopefully that the applicants submitted with the original application for the cell tower that would define the parameters of the tower.

MR. ARGENIO: Mark, let me ask you a question, your comment number 4 you're looking for plan profile and details for this road, is this a little much at this point in time, plan profile and details?

MR. EDSALL: Well, at minimum we have to get it off of the state highway because--

MR. ARGENIO: Perfectly reasonable.

MR. EDSALL: I thought it would be beneficial to have a rough plan prepared for that area and if they extended it in a little further so be it but the critical area is off the highway, DOT will want to see that.

MR. ARGENIO: Plan profile and details at this level seemed to be a bit much, do you understand the instructions on that?

MR. WOODRUFF: We already have the details for the deed.

MR. ARGENIO: We want a profile coming off the state highway.

MR. WOODRUFF: Fifty feet, 100 feet?

MR. EDSALL: Yeah, if we don't get the profile for the balance of it at least the detail because you'll be approving the road itself as a particular thing but the profile beyond the state's jurisdiction is optional.

MR. ARGENIO: I agree, I'll look to my right to Howard and Neil, you guys have anything on this? It's not a big deal. Danny, any thoughts on this?

MR. GALLAGHER: No.

MR. ARGENIO: You have some homework to do, sir, relative to do and you need to do it but I don't see a lot.

MR. EDSALL: We'd like revised plans as soon as possible because we'd like to refer this over to DOT and Orange County Planning to keep it moving so as soon as you get those in to Myra.

MR. ARGENIO: Yeah, that's important, the referral is not going to be done on this plan. Would you make the corrections Mark asked and the corrections we discussed here?

MR. WOODRUFF: They seem reasonable.

September 24, 2008

13

MR. ARGENIO: We'll get this moving.

MS. MASON: Keith, this is what I need, okay?

MR. WOODRUFF: Yes, okay.

MR. ARGENIO: Thank you for coming in.

MR. WOODRUFF: Thank you.

CIMORELLI\_(CONTINUED)

---

MR. ARGENIO: I don't see Mr. Minuta in the audience and we have not heard from him. That's very unlike him to not be here when he's supposed to be here but then you've not heard anything?

MS. MASON: No.

MR. ARGENIO: Okay.

(Whereupon, Mr. Van Leeuwen resumed his position on the board.)

DISCUSSION

---

MR. ARGENIO: I have in my hand a letter from the law office of Marc S. Gerstman. I'm going to very briefly summarize it in my own words then I'm going to ask Dominic to add a couple thoughts to it. The sum and substance of the letter is Mr. Gerstman and you guys can have a copy has been retained by the City of Newburgh and he wrote a letter to me regarding J Street. Do you guys remember J Street? J Street is a street up in the Reserve on Mt. Airy Road that's the applicant that did an Article 78 against the town and he got the subdivision approved on very small lots, the quarter acre lots or third acre lots over there. So he's approved to do a certain quantity of lots in that subdivision by law at the direction of a judge, a judge told us or the town that this is a lawful subdivision and he will do the subdivision in your town. As such, when the folks from The Reserve came in and they said look, here's the other 7 lots or 8 lots whatever it was we want approval on it, we approved it per the decision of the court. Mr. Gerstman sent this letter on behalf of his client, City of Newburgh espousing about the water quality and about Brown's Pond, et cetera, but I don't know if he's not privy to the history of this but fact of the matter is that that subdivision was I'll use the term jammed down our throat by the courts.

MR. BROWN: Court approved.

MR. ARGENIO: So Dominic do you have any other thoughts?

MR. CORDISCO: I'd like to add a couple things here if I may. Mark Gerstman who I know he's an environmental attorney out of Albany, special counsel to the City of Newburgh for environmental matters as you say Mr. Chairman makes a number of assumptions and doesn't seem to have background of the file so I think--

MR. ARGENIO: If I can interrupt you, make sure Myra get everybody a copy of the letter because Dominic is right, he makes a number of assumptions in his letter.

MR. CORDISCO: Essentially what he's asking for at the conclusion of his letter is that we do one of two things, one he's asking that we either deny the J Street subdivision or Town Board halt it or not process the application for another year while the compliance with storm water controls out on the site are evaluated. It's a very interesting request, anyone who's taken a look at the Town of New Windsor zoning code and subdivision law would see that we're not an enforcement board and we don't have the powers for enforcement, that essentially was what he's suggesting that we do.

MR. ARGENIO: And he's implying in his letter.

MR. CORDISCO: That's exactly correct and so at this point what I would suggest is that if the board was so inclined you could authorize me to draft a response and send him a response giving him the history of the file and also talking to him about setting forth the limitations that we have in our own code. That being said, to the extent that there are any storm water issues out on the site, storm water is something that's primarily regulated by the DEC and if there are violations that are occurring out there then it's really the DEC is the front line of that battle.

MR. ARGENIO: The letter's laced with it seems as though it appears to be it maybe and you'll see it when you read it it's a very well written letter.

MR. GALLAGHER: That's the one right up against the overflow of Brown's Pond where we asked for upgraded screening?

MR. CORDISCO: That's actually a very good point Dan

and worthwhile to adhere that the board has already granted preliminary approval to this project.

MR. EDSALL: Could I remind the board also that in fairness to Mr. Gerstman's request when we were considering the application and you asked for clarification from the Town attorney to verify that they were entitled to the lots in accordance with the court's decision one of the issues that I think you went out on a limb on was that you told the applicant that because they had pending violations with their current operation and that they had an amended SWPPP in front of the DEC to correct some of their operational problems, you asked that they have that resolved before you move forward on reviewing the application.

MR. ARGENIO: We went out on a limb from an environmental standpoint you mean?

MR. EDSALL: Exactly from a procedural standpoint you went out on a limb beyond what you had clear guidance from the law on, you held up the application pending a resolution from DEC on the amendment of their SWPPP because you said I want, you wanted to make sure even though they might be entitled to those lots--

MR. ARGENIO: Do you remember this?

MR. EDSALL: You said you might be entitled to the lots, we want to make sure that nothing you do with this subdivision is counterproductive to the improvement of your water quality work at the site. So you have already done in a way what he asked. DEC approved their amended SWPPP and then you continued to move forward so you have acted extremely cautiously in the past even though they might be entitled to the lots, you have acted very cautiously and gone beyond what you might of by the strict interpretation of your local code been allowed to do.

MR. ARGENIO: I got reprimanded by Dominic for going a little bit too far with the environmental business with this application but the applicant coalesced and he was okay with it and they did what we asked them to do. Anybody disagree with that?

MR. SCHLESINGER: What was the date, when was the court approved subdivision?

MR. EDSALL: The '70s which predates everybody here except maybe--

MR. VAN LEEUWEN: I can tell you the story cause I know the story. I first got on the board that's when this thing was approved.

MR. ARGENIO: My father was on the board.

MR. VAN LEEUWEN: Your father was my vies chairman when this was approved.

MR. CORDISCO: If you would have a motion that would authorize me to provide a response.

MR. VAN LEEUWEN: So moved.

MR. SCHLESINGER: Seconded.

MR. ARGENIO: Roll call.

ROLL CALL

MR. SCHLESINGER	AYE
MR. BROWN	AYE
MR. GALLAGHER	AYE
MR. VAN LEEUWEN	AYE
MR. ARGENIO	AYE

MR. ARGENIO: I don't have anything else other than a memo from the Supervisor that says the Town Board, not

going to read the whole memo, I'll summarize it, it's the minutes and the Town Board has actively asked us to try to whenever we can encourage water conservation in the town with these different applications and subdivisions to be mindful of the fact that water is not in unlimited supply in the Town of New Windsor and we need to be mindful of that when these applicants come in front of us.

MR. CORDISCO: Yes, just a plug for my class next Thursday I'm teaching a class over at Orange County BOCES center on SEQRA.

MR. ARGENIO: I thought there was one on a Saturday.

MR. CORDISCO: No, it's on Thursday night, October 2nd, and you need to register but that's through the Municipal Planning Federation out of Orange County.

MR. ARGENIO: Okay, motion to adjourn.

MR. VAN LEEUWEN: So moved.

MR. SCHLESINGER: Second it.

ROLL CALL

MR. SCHLESINGER	AYE
MR. BROWN	AYE
MR. GALLAGHER	AYE
MR. VAN LEEUWEN	AYE

September 24, 2008

20

MR. ARGENIO

AYE

Respectfully Submitted By:

Frances Roth  
Stenographer

