

The Deerpark Planning Board met for their bi-weekly meeting on Wednesday, May 9, 2007 at 7:00 p.m. at Deerpark Town Hall, Route 209, Huguenot, N.Y. The following members were present:

PLANNING BOARD MEMBERS

Willard (Skip) Wilson -Chairman
Theresa Santiago

David Dean
Dan Loeb

Noel Malsberg
Derek Wilson

OTHERS

Mr. Glen A. Plotsky, Town Attorney
Mr. Ron J. Gainer, Town Engineer
Mr. Liam O'Neill, Town Board Liaison
Mr. Timothy Gottlieb, Engineer
Mr. Brad Cleverley, Engineer
Mr. Al Pasione, Esq.
Mr. Robert Onofry, Esq.
Mr. Jeff Clune, Applicant
Mr. Anthony Gioffre, Esq.
Mr. Joshua Grauer, Esq.
Various representatives from Dragon Springs Buddhist, Inc.

THE PLEDGE OF ALLEGIANCE

GARY BUTLER - PRE-APPLICATION CONFERENCE

Represented by Timothy Gottlieb, Gottlieb Engineering 794-5506

Owner/ Applicant Gary Butler wishes a 3 lot subdivision on property located on Franke Rd., Huguenot, N.Y.

It is an RR Zone.

Section - Block - Lot = 27 - 1 - 16.22

Mr. Gottlieb said that a 779' cul-de-sac will be built to service the 3 proposed lots.

David Dean asked if there is a hunting club nearby?

Mr. Gottlieb answered no.

Mr. Gainer said that eventually Mr. Gottlieb will want to build into the design stormwater management controls for the impervious surface of the road, and include infiltration of the dwelling's roof areas. He said that a drainage study will be needed by the Board to evaluate and accept such a design.

The Board and the Town Engineer looked over the maps and saw no problems with the submittal of this proposed 3 lot subdivision.

Mr. Gottlieb thanked the Board.

JAMES DOSCH

Represented by Timothy Gottlieb, P.E.

Owner/ Applicant James Dosch wishes a 4 lot subdivision on property located on Franke Rd., Huguenot, N.Y.

It is an RR Zone.

Section - Block - Lot = 27 - 1 - 11

Application received November 28, 2003.

Mr. Gottlieb reported to the Board that the owner has sold the piece across the street, so there is now a 4 lot subdi-

vision proposed.

MOTION

David Dean made a motion to declare this a “minor” subdivision. Dan Loeb second. Roll call vote: Santiago, aye; Malsberg, aye; Loeb, aye; D. Wilson, aye; Dean, aye; W. Wilson, aye. Motion carried.

Mr. Gainer handed out his technical memo dated May 8, 2007. He said that at the last meeting the Board had requested that a long form EAF be filed, and that still needs to be done unless the Board wishes to no longer require this, given the smaller subdivision concept now proposed.

MOTION

David Dean made a motion that a long form EAF is not needed for this minor subdivision and the Board will accept a revised short form EAF denoting the current proposal density. Theresa Santiago second. Roll call vote: Santiago, aye; Malsberg, aye; Loeb, aye; D. Wilson, no; Dean, aye; W. Wilson, aye. Motion carried.

Mr. Gainer said that comments are still forthcoming from the Town Highway Superintendent. He said that there are still some technical issues that need to be ironed out on plan, and a public hearing needs to be scheduled.

David Dean told Mr. Gottlieb that the Town wants to preserve stone walls on properties.

Mr. Gottlieb said that there is a stone wall on lot #2 and he will put a note on the map “to preserve stone walls wherever they exist.”

MOTION

David Dean made a motion to schedule a public hearing for the Dosch 4 lot subdivision on June 13, 2007. Noel Malsberg second. Roll call vote: Santiago, aye; Malsberg, aye; Loeb, aye; D. Wilson, aye; Dean, aye; W. Wilson, aye. Motion carried.

The secretary said that she will get the public hearing notice to Mr. Gottlieb.

PEENPACK MEADOWS – PARCEL I & PARCEL II

Represented by Brad Cleverley, P.E. & Alan Pasione, Esq.

Owner/ Applicants Peenpack Meadows Subdivision is seeking a 3 lot subdivision and a 14 lot subdivision on property located off of Peenpack Trail, Huguenot, N.Y.

It is an HMU Zone.

Section - Block - Lot = 62 -1 - 5 ,6 ,11 ,12 , 14

Application received November 8, 2006.

Mr. Cleverley reviewed by saying that in January 2007 the Board granted the Buzzelli/ Jonreb lot line change and also the Burns/ Jonreb lot line change. He said that the minor technical issues have been resolved that the Board had asked for.

Mr. Gainer referred to his technical memo for the Peenpack Meadows Phase II project, dated May 8, 2007. He said that there are a variety of “preliminary plat” issues that still need to be addressed. He said that infiltration still needs to be illustrated for the roof areas on all lots, relative to the building structures themselves. He said that a stormwater management plan has been reviewed, and there are several issues that still need to be addressed as noted on his memorandum.

Parcel #1 discussions

Mr. Gainer said that Parcel #1 is identified as the 6 acre piece to the north (Section 61, Block 1, Lots 5-11 & 14).

The Board then made a review of the short form EAF filed on Parcel #1. The responses provided were accepted, and the Board reviewed all questions contained in Part II and answered “no” to all questions on the SEQRA form.

MOTION

Based upon the board’s review of the latest plans, the public record and EAF, Theresa Santiago made a motion for a negative declaration conditioned upon the applicant incorporating the mitigation offered in changing his drainage plan to conform with the Town Engineers’ latest comments. Noel Malsberg second. Roll call vote: Santiago, aye; Malsberg, aye; Loeb, aye; D. Wilson, aye; Dean, aye; W. Wilson, aye. Motion carried.

MOTION

Theresa Santiago made a motion for conditional preliminary subdivision approval for Parcel #1 based on the applicant adhering to the outstanding issues written on the Town Engineer’s technical memo, dated May 8, 2007. Noel Malsberg second. Roll call vote: Santiago, aye; Malsberg, aye; Loeb, aye; D. Wilson, aye; Dean, aye; W. Wilson, aye. Motion carried.

Parcel #2 discussions

Mr. Gainer identified Parcel #2 as the 22 acres parcel to the south (Section 61, Block 1, Lot 12).

The Board then made a review of the short form EAF filed on Parcel #2. The responses provided were accepted, and the Board reviewed all questions contained in Part II and answered “no” to all questions on the SEQRA form.

MOTION

Based upon the board’s review of the latest plans, the public record and EAF, Theresa Santiago made a motion for a negative declaration but conditioned on the applicant incorporating the mitigation offered in changing his drainage plan to conform with the Town Engineers’ latest comments. Noel Malsberg second. Roll call vote: Santiago, aye; Malsberg, aye; Loeb, aye; D. Wilson, aye; Dean, aye; W. Wilson, aye. Motion carried.

MOTION

Derek Wilson made a motion for conditional preliminary subdivision approval for Parcel #2 conditioned upon the applicant changing the drainage plan to meet the Town Engineer’s technical memo, dated May 8, 2007. David Dean second. Roll call vote: Santiago, aye; Malsberg, aye; Loeb, aye; D. Wilson, aye; Dean, aye; W. Wilson, aye. Motion carried.

DEERPARK OIL COMPANY

Represented by Robert Onofry, Esq. & Jeff Clune, 856-6565

Owner/ Applicant Deerpark Oil Co., wishes to lease their garage to the Port Jervis School Bus Transportation Department, for the purpose of the schools’ mechanics to work on the school buses, at the location off of Route 42/97, Sparrowbush, N.Y.

It is an HMU Zone.

Section - Block - Lot = 44 - 2 - 1.2

Application received March 30, 2007

Public Hearing was left open for written comments.

No written comments were received.

Skip Wilson reported that in researching the Deerpark Oil project, he had made copies of previous resolutions and minutes for the Board members, and in checking with the Town Building Inspector, there is no C/O on the Deerpark Oil garage. He said that the applicant had given him five sets of the final site plans, but the notes on the plans

were illegible, so he said that he was unable to stamp them as approved.

Skip Wilson said that in researching the project, he reported that they do have a 10 year build-out for completion of site improvements.

Ron Gainer said that the Board now had a revised, amended application before them, and if they wished to modify this 10 year time frame they could consider that as part of any action on this latest application.

Mr. Onofry said that a C/O will have to be obtained before the Port Jervis School Board would be able to final sign off with New York State Education.

Mr. Emerson said that what is still needed to obtain a C/O for the garage is a final electrical inspection.

Ron Gainer had referred to his memo, dated April 23, 2007, that he had handed out to the Board members, which documents the condition of the present site. He noted that the screening requested by the Board to the north and east of the building is still not in place. Ron Gainer also advised that, based upon his office's review of the SSDS design, we are recommending that a note be added to the plan "the septic system can service a maximum of eleven persons."

Concerning the screening, the Board agreed that the trees could be moved closer to the neighbors property line, from the location showing on the originally approved site plan drawings.

MOTION

David Dean made a motion to conditionally approve the amendment to the Deerpark Oil garage site plan to allow the School District to utilize the garage on site, with the following conditions:

1. The garage has to have a C/O before the school may use the facility;
2. The applicant may move the screening back to the property line, bordering on the north side of the facility, between Darragh Lane and the facility itself, to screen the adjoining neighbors;
3. If the paintball field ceases to operate, there must be screening installed between the building and Route 42;
4. Screening required by the original site plan approval must be done within one year of this approval;
5. Note be put on the map, "The sanitary disposal system must service a maximum of eleven persons;"
6. Payment of all town engineering fees.

Theresa Santiago second. Roll call vote: Santiago, aye; Malsberg, aye; Loeb, aye; D. Wilson, aye; Dean, aye; W. Wilson, aye. Motion carried.

Mr. Onofry thanked the Board for expediting the approval of this project.

DRAGON SPRINGS BUDDHIST, INC. - INITIAL MEETING

Represented by Mr. Anthony Gioffre, Esq. & Mr. Joshua Grauer, Esq.

Owner/ Applicant Dragon Springs Buddhist, Inc. is seeking to raise the height of their multi-purpose building on property located at 140 Galley Hill Rd., Cuddebackville, N.Y.

It is an RR Zone.

Section - Block - Lot = 31 - 1 - 21.22

Application received April 20, 2007

ZBA Variance granted on April 19, 2007.

Mr. Gioffre said that he had submitted documentation material with respect to a previously approved building, the multi-purpose building which this Board had approved. He said that this application seeks to amend a small portion of that building, approximately 25% of that building. He said that the only change from what the Board had previously approved is that 25% would be raised in height to approximately 68'. He said that the purpose is for the installing of a professional, authentic stage. He said that subsequent to the Boards' approval it was learned that an

appropriate stage opening of a certain height is required for the professional stage, and it is consistent with all of the other workmanship quality that is done on the premises, his clients are proposing to amend the application to fit within the architectural design guidelines, which require that the stage opening be approximately 2 1/2 to 3 times of a stage opening. He said that this is less than the 2 1/2 times, so his clients are really trying to mitigate what they are requesting.

Mr. Gioffre said that an application was submitted to the Zoning Board of Appeals for a variance for the height of the building, and the Zoning Board did grant that variance, and now the proposal of 68' is a conforming height. He said that the Zoning Board of Appeals held a public hearing on the matter and considered, among other things, the aesthetics of the site, which would be the only change before this Board. He said that there is no other change, with respect to the design, layout, there's no change in use, occupancy or intensity of the site. He said that other things considered by the Zoning Board was the average tree line in the area, which is generally higher than the proposed building. He said that the premises is over 400 acres, and that the improvements located on the site are effectively in a bowl. He said that in considering location, topography, the tree line, the proposed additional height, would generally not be visible to the public. He said that he respectfully submits that there are no other site planning issues, and there is no proposed change to the use, occupancy or intensity of this site. He said that as such, he respectfully requests a waiver of the public hearing requirement for this, and his clients ask that the Board grant favorable approval.

Mr. Plotsky said that he can confirm that the ZBA did grant the variance to the height as indicated by Mr. Gioffre. He said that however, that the ZBA approval was conditional. He said that it was conditioned upon review and approval in some fashion by the fire departments that serve the property. He said that it was also conditioned upon site plan review by the Planning Board.

He said that in regard to the issues and the request by counsel that the public hearing be waived, with all deference to Mr. Gioffre's opinion, he said that under the Town of Deerpark Zoning Law, this Board does not have the authority, where this is a special use permit and a site plan revision, to waive a public hearing. He said that Mr. Gioffre indicated that there is no change in use.

He said that in the generic sense that is true, but he said that he does believe that at any time that this applicant has appeared before this Board that there was any mention of there being a stage, much less a professional stage at this multi-purpose building. He said that with regard to the issue of the conditions of the ZBA approval, that being the fire department approval, he said that he has received correspondence from Mr. Grauer, that is several letters over the past several weeks, one of which includes a case indicating that it is not appropriate for the Planning Board to review fire prevention. Mr. Plotsky said that however, that case is 27 years old, and he has not had the opportunity to verify that that is still binding law. He said that however, that case refers to a section of the New York State Town Law which was repealed and revised and does not refer to the newly enacted section of the New York State Town Law that would give the Town Board the authority that it would require to do the review, and further the Law specifically indicates that with regard to that case, there's also specific mention that with regard to the Zoning Law that municipality would use, there was no specification in the Town of Sloatsburg zoning, that gave the town the authority to review that particular aspect, the protection from fire. He said that it is his opinion, in briefly researching it, although he said he needs to do some additional research, he said that he believes that under Section 230.51(b) of the Town of Deerpark Zoning Law that in fact, this Board does have the authority specifically delegated by the Town Board and the Town Law to do that review. He said that his suggestion to the Planning Board, with regard to the various legal assertions that have been made, both in writing from Mr. Grauer prior to this evening, and the request made by Mr. Gioffre this evening, that the Board allow a short opportunity for him to do some research, so that he can properly advise the Board as to the appropriate steps that should be taken. He said that during that period, he has no objection to the Board, if they are so inclined, to schedule a public hearing, just in the off chance that he is correct and a public hearing is required, and that way there will be no significant detriment to the applicant.

Mr. Plotsky said that when Mr. Gioffre indicated that the only change to the site plan is the height of the building, that in fact, the ZBA put on their approval, that the new plan incorporate various fire protection representations made by the applicant to the ZBA in terms of things that they will be doing, one of which is a 20,000 gallon hold-

ing tank of water, a fire prevention system. He said that based upon his recollection, no such holding tank was included among the much recently submitted and approved plan and the application that the applicant has filed with this Board.

He said that at one point there was a discussion about such a holding tank, however, he said that he believes that it was at a completely different location, it was half the size (10,000 gallons), and it was ultimately withdrawn by the applicant who made some other proposal in terms of providing for fire protection, other than the underground holding tank. He said that there are a number of aspects to what the applicant said again, and he would like the opportunity to specify and to hear those specific questions, and he advised the Board, if it wishes, it could certainly schedule a public hearing because a proper application has been filed. He said that he will defer to the Planning Board secretary and/or to the Chair to advise the Board if, in fact, an application has been made.

Derek Wilson asked, have they submitted to the Planning Board an application for site plan review for this change? The secretary answered yes.

Skip Wilson answered that they also have an escrow account.

Mr. Gioffre said to Derek Wilson that the application was submitted requesting a waiver and in the alternative if the Planning Board did reject that request for a waiver, it did ask for an application.

Derek Wilson asked for missing pages (pp. 2-5) from a letter submitted to the Board from the applicant.

Skip Wilson answered that he made copies, the applicants had done a balloon test for the tower, and the document was given to the Board, so they would understand.

David Dean said that in the past, other buildings on the site were subject to the fire company comments, as to their adequacy to fight the fire. He said that certainly he wouldn't see any reason why this Board wouldn't ask the fire company for the same here.

Mr. Gioffre said that the issue is not that his clients will build some kind of haphazard building that doesn't address fire issues, obviously that's the last thing that they want. He said that based upon the Moriati case and he didn't debate Mr. Plotsky, despite the fact that he had a nice discussion about the case that he didn't review, they can debate that case and the applicable law, but Mr. Gioffre's comment, with respect to the fire issues is, that they were addressed at the Zoning Board hearing, the fire issues that were raised by (Cuddebackville) Deputy Fire Chief O'Brennen. He said that Section 8, an old copy of the Town Code...he said that he did look on line for the section of the Code, but did not reference the 230 Section, but Section 8.1 also delegates the review of the fire safety issues to the Building Inspector. He said that regardless of whether or not the Zoning Board of Appeals attempted to confer authority on another Board, he said that they simply do not have that jurisdiction. He said that the ZBA is a quasi-judicial body and they do not have that executive authority, and the Code is clear and Mr. Gioffre read from the Zoning Code, Article 8, Section 8.1 (page 82); "Building Inspector: The Town Board shall provide for the services of a Building Inspector to simultaneously enforce the provisions of this Law and the Uniform Fire Prevention and Building Code Enforcement Law." Mr. Gioffre said that there were several issues raised by Deputy Fire Chief O'Brennen at that ZBA meeting, and his clients acknowledged that O'Brennen's concerns will be addressed and will be addressed at the appropriate point. He said that his clients would agree to an appropriate condition of approval, and the time to address them would be the building permit phase of the project.

David Dean asked, "The Deputy Chief was happy with your presentation?"

Mr. Gioffre answered, "You were at that meeting and I will not surmise or guess what...if he was happy, unhappy, upset..."

David Dean said, "So you do not have any written comments from him?"

Mr. Gioffre answered, "No, we even attempted to meet with many of the fire officials over the intervening time since that meeting. In fact, we were advised not to contact them any further, that they have retained counsel."

David Dean asked, “They asked you not to?”

Mr. Gioffre answered, “Dragon Springs received correspondence from an attorney, we sent a letter to that attorney, we have not heard anything back from that attorney. We have copied

Mr. Plotsky, and I believe the Board, on that correspondence. We have attempted to meet with various fire officials, go to the site, walk them through the plans, walk them on the site, all to no avail. So, our hands are tied. To that extent, the appropriate time to address that, I believe, would be with Mr. Gainer and Mr. Emerson, as the Code... I’m sorry, if I could correct myself, with Mr. Emerson, as the Code clearly dictates, and the case law, I believe is clear. And I’ll further debate Mr. Plotsky about the application 274-A.”

Dan Loeb asked, “So, see if we can get this into language that I can understand. You maintain that because of your inability to have any kind of rapport with the fire department at this point, that it’s up to the Building Inspector, it comes under the Building Inspectors’ purview?”

Mr. Gioffre answered, “No, I’m not saying that. I’m saying that your Zoning Law, the Deerpark Zoning Law, confers that authority to Mr. Emerson. We have attempted to meet with fire officials, as they have raised concerns at the Zoning Board of Appeals hearing. I have reached out to them, my clients have reached out to them, and we were advised by an attorney that has been retained by them, I don’t know if it was prior to this application, subsequent to this application, that we were not to contact them any further, they need time that a meeting should be scheduled, should be scheduled through his office. My office wrote a letter to that attorney, we have received no correspondence back.”

David Dean asked, “Did you ask for a date of the meeting?”

Mr. Grauer answered, “I sent the letter. I’d have to pull that letter, but we’d be wasting time.”

David Dean said, “That’s okay, I’m here, and if you have that, I’d love to hear it.”

Mr. Grauer said, “Before I go to the letter, I am going to make the point, and I think Mr. Gioffre is going to emphasize on this point. There’s a New York State Fire Prevention Building Code that address all fire safety issues, is on an application for a building permit. You cannot receive a building permit unless the fire enforcement officer is satisfied that the fire code and prevention safety requirements are satisfied. And the case law we sent you, is still good Law in New York today. And it specifically requires that the Planning Board defer to the appropriate officials to deal with those types of issues. The case that Planning Boards are not authorized to assume the powers of building or fire inspectors. That’s why you have building and fire inspectors. We can never receive a building permit until they are satisfied with our fire prevention plan. Site plan approval, which is what we’re here for, has to do with layout and design. And the courts have said that concern with general welfare, doesn’t enable you to get in the issues that are delegated by the New York State Law, in particular the Fire Prevention Act to the fire inspectors and the building inspectors. It’s like a separation of powers and jurisdictions. The Planning Boards’ jurisdiction is to lay out the design. No one is trying to evade fire safety. We made an exhaustive record and submitted an affidavit to the Zoning Board of Appeals, because the issues came up then, and we made representations that we’re bound by. But the bottom line is, your building inspector will never and should not issue a building permit to increase the height of this structure until he is satisfied and the fire inspectors are satisfied that all requirements are established. That’s our position of what the procedure is.”

Noel Malsberg asked, “Is the hydrant system and everything set up for the land and the design?”

(The above statement attributed to me is a bit garbled.

I was responding to Mr. Grauer’s statement regarding the limits of the Planning Board’s purview which he asserts is constrained to layout & design. My point was that THE DESIGN PLAT WE REVIEWED SHOWED THE HYDRANT SYSTEM.

The intended question was –IS NOT THE HYDRANT SYSTEM THEN PART OF THE DESIGN REVIEW? edit by noel malsberg.

These minutes have not been approved.)

Mr. Grauer answered, "No. Specifically this case...but the answer is..."

Derek Wilson said, "I'll be helpful here, you said about expediting the meeting here. There's more issues than whether it's up to the Board to consider fire protection issues. And our attorney has already asked for, essentially until the next meeting, to do further research on it, so he can provide us with some information. Because plenty of times people have given us case law in favor of the applicant, and then upon research by our attorney, or who we hired at that time, there tends to be contradiction sometimes. But our attorney also brought up the fact that this application is basically from that facility, is a change of use, it's a multi-purpose building, but we never at the time discussed the professional theater stage and the occupancy limits of that, the parking, what the facilities for sanitation is, there's a lot of aspects to this. I assume you're going to have an audience come to the site."

Mr. Gioffre said, "There's no change in occupancy and intensity of use of that building than what has previously existed."

Derek Wilson said, "I'll disagree with that, and I'll say that the Planning Board is bound to hold a public hearing because this is a major change. I mean, if somebody came in and had a building that they were using to store auto parts in, and it used to be a theater, and now they want to make a theater out of it, that would be a change of use, that we would review that as a site plan review."

Mr. Gioffre said, "We have always said that with respect to the multi-purpose building, that there's going to be use for many different uses, hence the term multi-purpose building. It can be used for putting together flower arrangements..."

Noel Malsberg asked, "Where in the documentation does it mention the stage?"

Derek Wilson asked, "The professional stage?"

Mr. Gioffre answered, "I don't have the documentation in front of me, with all due respect, I believe that the approval resolution...and I do believe that I did say on the record, and I can go back through the minutes and try to find it, but it was to be used for the preparation of dances, dance exercises, lectures...whether or not you use the term stage, a stage can be used for many things. In my church we have an auditorium, and the auditorium is used for lectures, it's also used for performances by the kids that go to the school, which is also a religious..."

Derek Wilson said, "I don't want to run in circles..."

Mr. Gioffre said, "Excuse me, your resolution of approval also says, "And all of the permitted uses."

Derek Wilson said, "What I would like to do to help your clients along to expedite things, is to set a public hearing for this application at our next available agenda. Would that be our next meeting? And at that time our attorney will have time to review this, and we'd be dealing with it as an amendment to an existing site plan approval and special use permit for the Dragon Springs facility for the multi-purpose building. It encompasses a variance given by the ZBA at whatever time it was."

Mr. Gioffre said, "May I also ask that in connection with that motion, you make a motion to designate yourself as lead agency and circulate your intent pursuant to SEQRA?"

Ron Gainer asked, "What do you have for environmental documents?"

Mr. Gioffre answered, "We submitted an EAF. This is a minor amendment to a previously approved building, and the height is conforming."

Ron Gainer asked, "What about the occupancy? Are you committing to the 100 persons, or whatever it was?"

Mr. Gioffre answered, "As I indicated, there's no proposed changes to the occupancy."

Ron Gainer asked, "And that's identified in the EAF?"

Mr. Gioffre answered, "It's a short form EAF and there's very limited information, I'm stating it on the record right now. There's no proposed change in occupancy."

Ron Gainer said, "I just want to make sure that the documents that are circulated describe it accurately."

Mr. Grauer said, "Well, we assume that in the approval, would be subject to the same existing conditions, unless you ask for further conditions. But the existing conditions are what they are."

David Dean asked, "Did you find your letter Mr. Grauer?"

Mr. Grauer answered, "I don't have it, but I'd be very happy to get you ten copies of it, but it has no relevancy to this hearing. If I had it in my files, I would give it to you, but I can fax it."

David Dean said, "Maybe you can forward that to our counsel."

Mr. Gioffre said, "I have it."

Derek Wilson said, "Okay, I put a motion on the floor, I don't know if anybody else is going to second it."

Lana Han said, "Before you make a motion, I'm the in house counsel for Dragon Springs. I just want to mention that there's been a history, where we've sent correspondence, citing cases, citing law supporting the non-discrimination position that a Board should take. But things have been delayed over and over again. The scheduling of a public hearing, and for something that we believe is a simple matter in this situation, with a multi-purpose building and additional height. We will not be changing anything on site. That this is going to be delayed, a public hearing to be scheduled. And this goes back to a history, a pattern where it has been continuous discrimination, where we have offered our position, and legal letter, telling this Board, the counsel for this Board, that the case law and the statutes in New York State support our position to really expedite the process. And for instance, for two years our construction has been delayed, and we missed an entire season. There has been a history where there has been a delay of five months, where we cannot do anything much. Because there was no review, no communication about our position, and eventually it just kind of faded to a point where the Board decided, okay, it's not an issue. But we lost a season of five months. That's a serious damage and impediment to our building, our exercising of our first amendment rights in this country. And we are very serious about our position, we are building up our records to really address these issues. It's a pattern. And I really hope that this Board can make the right decision. And we're doing this through our representatives, we have done the work and the research to try and offer to you an opportunity to have this addressed in the proper way. So, it's a decision you have to make. But you would also have to address the consequences. We are very serious about it. We have mentioned this before. And we haven't really seen any serious changes, the position. And it's really disheartening sometimes. But we would like to have this put on record and let the Board make a decision based on what we have accumulated and the history of the decision by this Board. Involving something of this matter, it's not a complicated application, and we did this with the authority of the local zoning law, saying that you have the right to waive in this position and in an application like this. So, it's up to you. But on the other hand it's also up to us as to how we want to have this addressed. So, we're having this before you again. And I don't want history to repeat itself. It's not a pleasant thing. And we don't want this to continue any further. So, I'd still like to have that addressed also."

Mr. Grauer asked, "I don't remember what the question was about the letter. Was the question, "did I ask for them to contact me to make an appointment?"

David Dean said, "Yes, you said that you had tried to schedule..."

Mr. Grauer said, "And here's the letter..."Of course, Chief Brennen is also free at any time to set up an appointment through this office with your assistance to inspect the multi-purpose building." That couldn't have been more clear in English...April 23, 2007 letter, I sent it to Mr. Simiello, overnight mail, and facsimile. So, I think that's a response to your question. But when they get around to doing this, again under the case law, and we checked this case law, it's good up to the minute, it's for later in the building permit process. But they were invited by me, and by our client, to come take a look at everything and anything. Fire safety has to be addressed through the proper channels, and we tend to do so, and must do so."

David Dean said, "So, if I may. Can I see the print that shows the...I want to see the blue print that shows the tank and the fire suppression system. I mean, you're saying that...where is all that."

Chun Feng said, "The site plan was approved by this Board. That 20,000 gallon tank is associated with the sprinkler system. Yeah, we had a drawing submitted already, they have reviewed this already, and my feeling is that there is a part of the multi-purpose building sprinkler system. It's not a part of the site, the yard hydrant system. The yard hydrant system, if you recall, in July and then the time after the fire house, so like that's redundant. So, we have the relay system by the lake, then you have additional fire pumps, so it's insured that the yard hydrant system is pressurized. So, this 20,000 gallon tank is not yard hydrant, it's only part of the building fire suppression system. So, that time we submitted a multi-purpose building, construction by our engineer we included everything. We included the fire tank, included the sprinkler system, this Board wants for review, we be happy to give you copies for review. But that's not a part of the site plan. The site plan no change. If you remember the building height is not reflected on the site plan. That shows the outside of the building, and that outside has not changed. So, I would go to our attorney. I don't know why there's another...it's not a site plan amendment because there's no change on the site plan itself."

Derek Wilson asked, "Glen (Plotsky), when you're going to research this on the New York State Statutes on the Planning Boards' authority, the SEQRA Law also give the Planning Board the second level of authority, but look at different issues, so do you look at that?"

Mr. Plotsky answered, "Yes, to see whether or not the fire prevention is specifically excluded or specifically included..."

Derek Wilson asked, "Under SEQRA as well as the New York State Planning statutes?"

Mr. Plotsky said, "Absolutely. And just so we're clear in response to the assertions raised by Ms. Han, and I don't want to get into a particular debate on this issue. There have been repeated statements about how this Board has delayed the project and behaved discriminatorily. To the extent that there's any allegation that I am contributing to that, because that was really the impression at least how I interpreted Ms. Hans' comments. I received correspondence from Mr. Grauer two days ago by fax and e-mail, hard copy yesterday. And I apologize to the applicant that I've been out of my office as much as I have the last two days. And I apologize to the applicant that my internet system was down at my office today, so I was unable to do the research before I came today. However, I would say to the applicant, that the Town of Deerpark Zoning Law specifically requires a public hearing. You can't schedule a public hearing before the applicant appears before the Board. You can't schedule a public hearing without ten days notification by the applicant to any adjainers. The nearest public hearing is in 14 days. And as I understood Mr. Wilson's motion, it is to schedule a public hearing at the next meeting, which would be 14 days. Not of course, being a mind reader, or clairvoyant, I don't know what this Board will do at the conclusion of that public hearing. But I fail to see where at an initial meeting, which is what this is, scheduling a public hearing has any delay to this applicant that isn't required by the Town of Deerpark Zoning Law. This is as much of a discussion that I want to have. With regard to Mr. Gioffre, yes, I did make some observations about the Law, but that was because I read the Law and just looked at the Town Law to see that some of the number's changed. That's as far as the research can take me without my computer being operable. And I will apologize to you as well. I would have happily researched the issue before this evening had I had the capability of doing so. I didn't. I'm committing to do that within the next two weeks. And obviously if I come across something that I think is pertinent, whether it's in your favor or against you, I will, as I always have, communicate that to you as promptly as I can. We have had, I think, a fairly amicable relationship, albeit, somewhat on opposite ends of the spectrum at different times. We agree to disagree. That's your prerogative and job, and that's my prerogative and job. Mr. Grauer and I had a relationship that's a little more ingenuous, because I don't like the tenure of his letters, but he's got a job to do as well, and if his letters have to be threatening, well, so be it.

As far as Ms. Han, I speak to her when I have to, generally in the presence of the other attorneys. Not out of any disrespect to her, but my understanding is, in terms of the priority, Mr. Gioffre and Mr. Grauer are lead counsel, and therefore, they are the ones that I speak to. Those are my observations. There's a motion, I believe it requires a second, and possibly a vote relative to scheduling a public hearing. Obviously, I would anticipate that the Board will review SEQRA at that same public hearing, and then a determination is going to be made. If, in fact, there is an allegation of discrimination, this is frankly not the forum where it should be heard. Mr. Grauer is well aware of the forum where it should be heard, I'm sure he's discussed that with Ms. Han repeatedly. If they feel that a lawsuit is appropriate, bring it on."

Mr. Gioffre said, "If I could just make one comment before the Board folks. Just to go back to Section 7.3, and I apologize for the Code references, but I tried to update my Code sections but your copy and mine were not...It does say that the Planning Board has the right to waive when any of the procedural requirements for the approval... a procedural requirement would be a public hearing. Again I would like to renew that request. I understand that there's a motion on the table. And if you do decide to reject the request for the waiver of a public hearing, I would just again ask that you observe the SEQRA requirements and designate yourselves as lead agency and circulate your intent."

Skip Wilson said, "I have one other issue, and that's that you have an application in, and part of our application is to get a letter from the Fire Company's signature. And we don't have that. That's part of every application that we give out."

Mr. Gioffre said, "And we reached out to their counsel."

Mr. Plotsky said, "I'll attempt to facilitate that as well, I've had a discussion with fire company counsel."

Mr. Grauer said, "I'd like to add one point. The request that we've made, if in the context of recognizing, we of course, can't force you to waive the public hearing. And the Code talks about it as a discretionary power that you have. The position that we have advocated is, having already received a variance, which makes the increased height conforming, which is essentially a legal point. We've submitted the position and the request that you view this for what it is. It's a minor application, it's a minor issue. Years ago we came before you, and we wanted to put in a shed. That was also a minor issue."

Derek Wilson asked, "How long have you represented them for?"

Mr. Grauer answered, "I wasn't there. I just read the...I call myself part of the plan. The concept that we're making, the request that we're making is, there's form, there's substance. We would like you to look at what this is, and see if you are amiable to waiving the public hearing, which is something you have the power to do, under your Code. To put all the protections that you are entitled to, and that we recognize and affirm, anything we do here is subject to compliance with the uniform Fire Code, subject to the plans meeting the approval of the Building Inspector and the Fire Inspector, as reasonable. The question is, is there anything here, once the variance has been granted, that you need to have a discussion at a public hearing about. Or, is this a diminutive issue that you're comfortable waiving a public hearing on. That's our request, the decision is up to you. I wanted to make that pitch."

Derek Wilson said, "I'm going to ask you a question. Many times we've held public hearings and nobody came. But, it gave the public an opportunity to come. And your personal situation, if a neighbor of yours, on a 400 acre parcel of property, proposed a change to their use of the building, of an existing site plan, I'm sure that you would love the opportunity to have some input on it. Plus, it gives the Board time to discuss. In other words, you're trying to rush through an approval tonight, and I didn't see any plans what this thing looks like, it's 68', you're doubling the height over the existing approved height. Now, the ZBA granted you the variance for that. I don't know what other issues this impacts, that's up to our engineer. A lot of things can come up at the public

hearing. And that's what the public hearing is for. So, I mean, if you don't hold the public hearing, and something was overlooked, then the Board was remiss. So, we're not trying to delay. We said...I made the motion to set the public hearing, and I'm going to amend the motion to make sure that we circulate any necessary environmental documents. In other words, they have a short form EAF, Ron? So, that we circulate....in fact the procedure, I'm not sure that we have to circulate. If we declare it an unlisted action, you can process it under SEQRA in one meeting, if we determine it to be a minor change."

Ron Gainer said, "I would think it easiest to process everything else in the same fashion all prior applications were processed. I would say, procedurally it would be simpler just to follow that."

Mr. Gioffre said, "Mr. Wilson, your point with respect to the public hearing is a point well taken. That being said, we had a public hearing already on the sole issue of height, which is really the only issue that this application entails. That was before the Zoning Board of Appeals, where you were at Mr. Dean. I respectfully submit that. Anybody that was going to attend that meeting and discuss the height or other issues came to that meeting. And the neighbors that lived in the area, I respectfully submit, didn't have an issue with the height."

David Dean said, "There was one person who had an issue, and that was the assistant Fire Chief. And I know you've reached out to try to resolve that issue. However, that issue is unresolved at this point."

Mr. Gioffre said, "I believe that we resolved it at that meeting..."

David Dean said, "I respectfully disagree, because I don't hear, or I didn't see from you documentation that the Assistant Chief was satisfied. And I didn't hear him say that he was satisfied at the meeting. If you have minutes that prove that the Assistant Chief said, "hey, that's fine with me, I like it" bring them on, because I don't remember that conversation."

Mr. Grauer said, "We acknowledge that we don't have those minutes. If we had those minutes, our position would still be the same. It's a fire safety issue for the Building Inspector. So, if your counsel could prove that to you, is it still necessary to go forward with a public hearing."

Derek Wilson said, "I'm going to give you a little understanding behind my motion. My motion is not to discuss solely the fire protection issue, on the site plan, it is to do a site plan approval and special use permit review to deal with the proposed changes to the multi-purpose building. The height is only one aspect of it. And I said before, I went through sanitation, I went through occupancy, you said there's absolutely no problem. That's what we have the public hearing for. So we just don't run on and on all night. I have a motion on the floor, and is it clear Barbara, it's to set the public hearing for the next meeting, and to circulate any needed environmental documents to take...I need a second motion, if we're going to take lead agency. I'll make a combined motion that we take lead agency on this."

Ron Gainer said, "What your motion should be for, would be for the Board to declare their intent to take lead agency."

Derek Wilson said, "I'm sorry, we declare our intent to take lead agency."

Dan Loeb seconded.

Roll call vote: Theresa Santiago, aye; Noel Malsberg, aye; Dan Loeb, aye; Derek Wilson, aye; David Dean, no; Skip Wilson, aye. Motion carried.

David Dean said, "They don't want a public hearing, they made that very plain."

Mr. Gioffre thanked the Board.

The Chairman said that the date of the public hearing will be May 23, 2007.

DEERPARK VILLAGE - DISCUSSION

Represented by Mr. Robert Onofry, Esq.

Mr. Onofry said that the applicant would like consideration for completeness of the EIS that was submitted. He said that Mr. Gainer and Mr. Parish have had considerable interaction regarding information to be supplied as to the changes that Mr. Gainer requested and Mr. Parish responded to that, and Mr. Gainer can certainly comment on that. He said that there's the legal issues that he has discussed with the Planning Board counsel. The first of which, included in Mr. Parish' memo to the Board, is a letter dated February 26, 2007, which was supposed to be an internal letter to the applicant only, discussing various alternatives. He said that only alternative #1 was to be submitted to this board. He said that he discussed this with Mr. Plotsky, for purpose of amending the submittal of Mr. Parish letter. He said that he will re-structure the letter, withdraw that February 26, 2007 letter as part of the record, and in its' place an opinion letter that he will submit, which will be limited in its' comment to the first comment articulated in the letter, which relates to the terms and conditions of the 1992 settlement and the discussion with the Hunting Ordinance.

Mr. Plotsky agreed and said that certainly the two issues that make that Law inapplicable to the application; that is, the fact that it is being pursued pursuant to a Court determination, and the fact that the Law was enacted so long after that.

Mr. Onofry said that in reviewing the legislative history of the initial settlement, the judicial local law, and the adoption of Local Law #3 & #4 2006, the intent, the thrust of the legislation was to ensure that the development would not have impact on the local school population. He said that those provisions are recognized, they are clear and explicit in the statute itself, they must be adhered to. He said that as a corollary to that question...the question was posed by Mr. Gainer and Mr. Plotsky as to how his client would proceed to insure that these occupancy restrictions would be implemented, and his response to that is, that it is his clients' intent that in the deeds of conveyance there would be covenants and restrictions that would include a verbatim reproduction of what is required by the statute; and/or a comprehensive set of covenants and restrictions that would govern the entire development, which would include the same occupancy restrictions, and which would be incorporated in any deed. He said that typically, how that is handled, is that in the deed the grantee would acknowledge those covenants and restrictions and agree to be bound by them. He said that that is the private aspect of it. He said that in terms of the development itself, the covenants and restrictions would also contemplate two private modes of enforcement; one, a right of action from the other owners, which is typically provided in the covenants and restrictions; and secondly, a right of action in enforcement in the Homeowners Association.

He said that the Ordinance does address the timing when these must be in place, and they must be in place, in form and content, essentially at Stage Three, which is the formal site plan. He said that they are at the development stage, and are not quite at Stage Three yet. He said that that is the enforcement mechanism from the applicants' side. He said that separate and distinct from that, and even more of an enforcement mechanism, is that the nature of the application, this is a condition set forth in your Ordinance, your Ordinance already provides for a mechanism for enforcement. He said that there is a special section in the Ordinance that when there are zoning violations, the Building Inspector has a right to enforce those zoning restrictions, and there are fairly severe penalties that the Ordinance provides for levying of fines for the first, second, and subsequent offenses, and further provides that each day that any Code violation is in effect, constitutes and separate and distinct violation that triggers a separate and distinct fine.

He said that he views this certainly as a zoning restriction, although this is an issue that his client would clearly refine at the formal site plan approval Stage Three section. He said that clearly what is envisioned, each independent unit is going to have a C/O, and there would be a variety of remedies that would be afforded to the Building Official in terms of enforcement, revocation, the thing that you would be able to utilize, in respect to single family dwellings. He said that that is separate and distinct from the enforcement rights that would arise from the other owners, and the Homeowners Association.

David Dean asked if “Unit A” runs afoul of the covenants, and there are three stages of fines, is the fine directed toward the occupancy of that unit, or is it directed toward the facility as a whole?

Mr. Onofry answered that this would be a function of how the final approvals will be crafted, which seems to be conceptually. He said that if there are individual units that are going to, in turn, require the issuance of individual C/O’s and individual owners, it would seem that the fines would be directed at the occupancy. He said that is why there is the other provision that would provide the other owners would have an independent right to commence the action, which they do under the Towns’ Zoning Code, that is, they can file a private complaint and the Building Official can move forward on it, and the Homeowners Association. He said that he has discussed with the applicant what is an effective method to use, supplementing the Towns’ penalty system, and that is a separate and distinct mechanism for the imposition of penalties that constitute liens on the property. He said that typically a lot of subdivisions have that mechanism, where they have fines and penalties that are liens on the property that prohibits the sale of the property, unless they are discharged. He said that it is his experience that Title Companies regularly require a certification from the Homeowners Association or the entity, to say, “are they clean on their common charges?” “Are they clean on their assessments?” He said that that is the mechanism in the private sector.

David Dean said that situations arise where one person is running afoul of the covenant and appears before a judge that might say, “well, it’s the holiday and yada, yada, yada...” He said that it can be a bad situation, and the Board would need some kind of indelible time frame and teeth to enforce this.

Mr. Onofry said that in the Ordinance itself, at the final stage, there is a provision that those covenants and restrictions must be in a form and content satisfactory to the Board. He said that that is clear. He said that there is a unity of interest with the Town and with the development that it will be squeaky clean.

Ron Gainer offered to summarize where this project is. The Board recognizes that several months ago they received a supplemental draft Environmental Impact Statement which was filed, and there has been discussion as to what it should contain to be deemed complete. He said that there have been site visits and much correspondence with the Board and the applicants’ consultants.

He said that there has been revised filings, which the Board has seen and commented on. He said that two weeks ago he filed a document to give the Board his technical summary of what he thought needed to be committed to in the SDEIS, so that original document that the Board saw could be deemed complete upon insertion of all of that information. He said that he was prepared at that point, if the Board was comfortable, the Board could conditionally deem it complete, upon the insertion of that information. He said that his office then, on the Boards’ behalf, would make sure that that information got inserted, so that the applicant could start the distribution of that document. He said that just in the last day various things have transpired. He said that yesterday he got a statement from the applicants’ Planning Consultant who seemed to question every comment that his staff had raised in the recent Stantec memorandum, which his staff had thought had already been put to bed. He said that there were also legal documents filed. He said that he attempted to talk with the applicants’ Planner to understand his objections, and that culminated just this afternoon with the receipt of a short e-mail which he handed out to the Board. He said that this is the last document that he has received, but he is unsure exactly what is now being committed to.

Robert Onofry said that this e-mail essentially rescinded the prior comments, “We have no objection to the retention of all comments.” He read the e-mail into the record, “To clarify my May memo, Item #1; Other than the exceptions in Item #2 and #3 below, we have no objection to the retention of all of the comments, subject to and

understanding that the required response is to add text to the DEIS, which will establish a point in the future review process at which the requested information will be provided. #2 With respect to the traffic comments, the comments would remain on the table and would be responded to in the FEIS. #3. There are three comments that relate to legal questions, that is the occupancy restrictions, the enforcement mechanism and the revision of the other issue.”

Mr. Onofry said that the letter that he passed out to the Board this evening is to address the restrictions on the occupancy and the enforcement issue. He said that the Gun Club issue will be revised and will be delivered tomorrow.

Ron Gainer said that he has been attempting from the beginning, to get further technical information so that the Board understood the overall project scope and potential impacts and, once the document was accepted or deemed complete, then the public would get to see the scope of the project. He said that at this point, most of the technical questions that they are attempting to resolve, are merely attempting to get the applicant to define for the Board when they propose to give the Board more technical information. He said that would be in terms of accurate topography, and any number of other technical items. He said that the applicants at least now appear to be agreeing, to say that they will add text to at least identify when they propose additional technical information. He said that the Board will still be permitted to comment on it after it is circulated, and the Board may raise objections to the timing offered by the applicant and seek to have this information in the FEIS which will later be developed to respond to an comments raised to the SDEIS upon its circulation.

Mr. Onofry said that the hope this evening is to conditionally deem it complete, subject to the final revisions between Mr. Gainer and Mr. Parish, to be finalized prior to distribution.

David Dean said that personally he would not like to see anything else transmitted, until everything is in place, and that nothing be distributed until it's ironed out enough that the Board can read it in a complete fashion and then decide whether or not it is deemed complete.

David Dean said that this property abuts the State Wildlife property, and some kind of mitigation should be in place to mitigate the impact that this development is going to have on the lack of public use for hunting on that public property. He said that even though the Town has a Gun Club Law that protects the next door neighbors from their right to use the Gun Clubs' property, so as a public citizen, and the fact that that property is open for hunting, that is going to infringe and impede the use of the property, wherever the applicants' property abuts the DEC lands.

Mr. Onofry answered that that question is more appropriate for the final document.

Ron Gainer said that when the Board identifies a document as complete, they then establish a public comment period, of no less than 30 days, and have to determine if they want a public hearing on the DEIS itself.

Ron Gainer said that the EIS was filed in August 2006, and discussions have been ongoing with the applicants' Planning Consultant in terms of information that he sought to see in the document ever since.

The secretary was instructed to put the discussion of this application on the next agenda.

COMMUNICATION AND CORRESPONDENCE FROM THE CHAIR

R.V. SALES - ROUTE 6

MOTION

Derek Wilson made a motion for the Board to renew the R.V. Sales special use permit for three years. Theresa Santiago second. Roll call vote: Santiago, aye; Malsberg, aye; Loeb, aye; D. Wilson, aye; Dean, aye; W. Wilson, aye. Motion carried.

TRIPLET LLC

MOTION

Derek Wilson made a motion for the Board to renew the Triplett LLC special use permit for one year. Theresa Santiago second. Roll call vote: Santiago, aye; Malsberg, aye; Loeb, aye; D. Wilson, aye; Dean, aye; W. Wilson, aye. Motion carried.

DRAGON SPRINGS BUDDHIST INC.

Board member Noel Malsberg asked about the original description of the multi-purpose building, was the word “stage” submitted in that description?

Mr. Plotsky said that he recalled that the word “stage” has never been used in any of their applications.

Skip Wilson said that he will get the minutes and the copy of the resolution to the Board members.

ADJOURNMENT

Derek Wilson made a motion to adjourn. Theresa Santiago second. Roll call vote: Santiago, aye; Malsberg, aye; Loeb, aye; D. Wilson, aye; Dean, aye; W. Wilson, aye. Motion carried.

Meeting adjourned at 9:30 p.m.

Respectfully submitted,

Barbara Brollier, Secretary