

The Deerpark Planning Board met for their bi-monthly meeting on Wednesday, July 23, 2008 at Deerpark Town Hall, Route 209, Huguenot, N.Y. The following were present:

#### BOARD MEMBERS

Willard I. Wilson - Chairman	Dave Dean	Noel Malsberg
Theresa Santiago	Gary Spears	Dan Loeb

#### OTHERS

Mr. Glen A. Plotsky, Town Attorney	Mr. Al Fusco, Town Engineer
Mrs. Viola Sinsabaugh, Town Board Liaison	Mr. William A. Onofry, Esq.
Mr. Chad Martel, Applicant	Mr. Chuck Utshig, P.E.

#### THE PLEDGE OF ALLEGIANCE

#### MARTEL HOLDINGS LLC - PHASE II

Section - Block - Lot : 23 - 1 - 62.32

Represented by Mr. Chad Martel & Mr. William A. Onofry, Esq. 856-5178

Owner/Applicant - Martel Holdings L.L.C. wishes a 16 lot subdivision on property located off Wilson Rd. and Hawk Mountain Rd., Sparrowbush, NY

It is in the Recreational River Corridor (RRC) Zone.

Application submitted October 11, 2007

New application submitted July 9, 2008

Mr. Onofry said that at the last Planning Board meeting, his client was given some directives: including submission of a revised subdivision map that depicts:

an enlarged conservation easement; and

an enlarged cul-de-sac of 100'.

In addition, Mr. Martel was instructed to contact Mr. Flynn of the Sparrowbush Fire Department to discuss whether or not a pull-off

or a bulge (turn-around area in the cul-de-sac) is necessary, and to review the submission with the Fire Department for review and comment.

Mr. Onofry reported that Mr. Martel met with Mr. Flynn.

Mr. Onofry further reported that the submitted revised Planning Board application contains Mr. Flynn's comments. Mr. Flynn apparently indicated that a pull-off or bulge is not necessary. Mr. Flynn requested that Mr. Martel look into creating a dry hydrant that would be fed by a small pond located above the property. Mr. Martel reported that Mr. Flynn determined that a 100' wet down at the end of the cul-de-sac would be more than sufficient.

Mr. Onofry said that the conservation easement now depicts an easement over 36.69 acres. He said that the conservation easement will now include the back portions of Lots #2-9 and #2-10. He said that the revised submitted maps also show the other changes. Mr. Onofry reported that a map was submitted to the Sparrowbush Fire Department in order to discuss the many concerns as to whether fire trucks could get up and down the cul-de-sac and turn around, etc.

Dan Loeb asked what is the current length of the cul-de-sac?

Mr. Onofry answered that it is now calculated by the applicant's consultants to be One Thousand Four Hundred Seventy-Five (1,475') Feet.

Mr. Martel responded to the Town Engineers' comments, dated July 23, 2008. Mr. Martel indicated that the comments are complied with, and there are several

other items that he can still address.

Mr. Martell noted that comment #26- requiring a “pull-off at 800 feet” is opposite to what Mr. Flynn is requesting.

Al Fusco answered that the Board had requested the turn/off turn around area at 800’ into the cul-de-sac, but will take Mr. Flynn’s recommendation into consideration.

Dave Dean said that Mr. Flynn did speak with him, and that Mr. Flynn had verified that in his opinion that there was no need for any type of bulge or pull-off on the cul-de-sac. Dave Dean reported that Mr. Flynn did say that a dry hydrant or some type of means of providing water is still needed.

Mr. Martel agreed and said that he and Mr. Flynn had talked and Mr. Martel agreed to establish some form of providing water.

Mr. Onofry said that Mr. Martel went to lot #2-4, where there would be provided a 20’ wide easement and a dry hydrant established. He said that the dry hydrant would be created at the location where lot #2-4 meets Martel Drive.

David Dean told Mr. Martel that he should put a line on the map, indicating some type of agreement between himself and the lot owner to maintain that hydrant; that is, to provide some type of maintenance agreement concerning the dry hydrant.

Mr. Martel answered that he wasn’t sure if he could incorporate the dry hydrant into the right-of-way of the road, so that the Town would always have access to it, and was not sure of the proper language yet, to which Mr. Onofry answered that that language will be done. He said that a final map will be submitted to the Board.

Al Fusco said that he would like to see more details concerning the subdivision on the final map.

Mr. Onofry asked for a waiver of the subdivision regulations as they relate to the number of lots that may be serviced by a cul-de-sac, and the length of a cul-de-sac.

Gary Spears asked if this waiver would set a precedent?

Mr. Plotsky answered probably yes, however the question is whether or not the distinctions for this particular parcel, based upon topography, and layout, the desire of the Town Highway Superintendent, the negotiations with the Fire Department, the fact that 1/3 of the acreage is being put into a conservation easement, and all other issues that are factored into the Planning Board’s decision relative to the waiver are enough to distinguish it from other requests for a similar waiver.

Mr. Plotsky said that in discussing this waiver with his partner, Mr. Bill Bavoso, his partner’s viewpoint was that this would set a precedent. He said that the applicant’s attorney, Mr. Onofry’s viewpoint is that this will not set a precedent, because of the particular circumstances of this application.

Mr. Plotsky said that he tends to agree with Mr. Onofry that the property and circumstances could distinguish this request from a subsequent request from another property owner, but Mr. Bavoso disagrees. Mr. Plotsky advised that ultimately a court could distinguish whether this is a precedent or not, and the Board should be aware of that fact.

## MOTION

David Dean made a motion that a public hearing be scheduled for

August 27, 2008 to entertain the waiver of the cul-de-sac length and the number of lots created on a cul-de-sac. Theresa Santiago second.

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

Mr. Plotsky said that the Board would have the public hearing and at that time also have a skeletal draft of a proposed resolution.

The Board would identify the factual findings as they are presented on August 27, 2008, but the Board would not vote on a Resolution or adopt the factual findings until the September 10, 2008 meeting.

**BASHERKILL SUBDIVISION:**

SECTION - BLOCK - LOTS : 8 - 1 - 1.3, 23.1 & 23.21

Represented by Mr. Chuck Utshig, P.E.

Owner/Applicant Orange County Holding Co., LLC wishes to create approximately 300 single family homes on property located off of Route 211, Cuddebackville, N.Y.

It is in the RR & HMU Zones.

Application received April 4, 2005.

Board to decide whether or not to deem the DEIS complete.

Mr. Utshig said that the last time he was before the Board, there was a discussion of deeming the DEIS (Draft Environmental Impact Statement) complete, and getting it into the review process. He said that the Town Engineer had some questions and issues that the Engineer wanted addressed in the DEIS. This has been done as reflected in Mr. Fusco's comment letter.

Mr. Utshig asked the Board to officially deem the DEIS complete, so that it can be circulated, posted on the internet, a copy submitted to the Port Jervis Public Library and go to public hearing.

Al Fusco said that he had a completeness review comment letter and a technical comment letter. He said that the completeness is addressed.

Mr. Fusco said that the applicant had submitted revisions to the DEIS which had addressed most of his comments. Mr. Fusco said that there are still some technical review comments that had been previously listed that have not been addressed, and there are also a few items that he wanted to bring to the Boards' attention tonight.

Mr. Fusco said that one of those things is that he didn't receive an alternative plan, although the alternate plan was explained to him. Mr. Fusco said that he was not completely satisfied with the total density calculations, sewage treatment plant request for subsurface disposal pertaining to the school, fire and police, as well as other socio-economic impacts. Mr. Fusco said, however, that he believes that those can be further explored through the remainder of the process, as long as the Board is aware of them.

Mr. Fusco said that he has no issue with proceeding, and deeming the DEIS complete, if the Board is so inclined. He said that basically the issues have been identified, and will be brought up again through the process, until the Board is satisfied, particularly with those socio-economic impacts that would impact the schools. He said that he is satisfied that everything was touched upon, but that some issues need to be investigated more fully.

Dave Dean asked, if the Board deems the DEIS complete, then what is the time frame?

Chuck Utshig answered that the Board would open the public hearing, and allow the public hearing to

stay open for whatever length of time the Board deems necessary and reasonable, in order to solicit all of the input necessary.

Al Fusco said that the Board now needs to schedule a public hearing date, and the applicant would have to type that public hearing date on the front of the new DEIS. Mr. Fusco said that public hearing notices will have to be mailed out, and notices placed on the internet, etc.

Mr. Fusco said that that would give everyone at least 30 days to peruse the DEIS and make comments. He said that that public hearing would not be closed immediately, but would be left open for written comments, and possibly a second session or even a second public hearing would be held.

Mr. Fusco and Mr. Utshig agreed that once the public hearing is closed, then the clock would begin ticking.

Chuck Utshig said that the Board would establish a length of time for submission of written comments after the public hearing was closed, and once that time has expired, then the Board will say to the applicant to take all of the comments that they have received (in person and written) and write a FEIS (Final Environmental Impact Statement) and then come back before this Board.

Mr. Utshig also pointed out that the Deerpark Town Board has to be plugged in to the PRD (Planned Residential Development) issue at some point in time.

Dan Loeb asked, with respect to the school impacts, and the Board deeming the DEIS complete, is the Board on solid ground with that?

Al Fusco answered that basically the applicant has said that based upon the discussions with the Town Assessor, and based upon the applicant's calculations, there would be a certain amount of school revenue, and those calculations come up with a certain number of students.

Mr. Fusco said that one of the things that was commented upon in his review, is that the revenues would exceed the local share of the cost, but not necessarily the total cost of the student. He said that the total cost that the school identified was \$15,000 per student, plus or minus; and the local share would be approximately 1/2 of that, and the developers proposed taxes would be somewhere between the two.

Al Fusco said that concerning school bus service, some schools would pick up within the project on private roads, and others will not, and the Board would have to look into demanding a bus shelter on one of the Town and/or County roads.

Al Fusco said that one of the aspects of the density issues, if the applicant does get the PRD designation, is that it is a 20% issue right there.

Dave Dean asked, does the Planning Board first supply the Town Board with a recommendation?

Al Fusco answered that he believes that the Town Ordinance states that the Town Board would be looking to the Planning Board for their direction, and the Town Board then takes appropriate action, after which the Planning Board does the final approvals. Mr. Fusco said that the Planning Board can still make changes or additions to mitigate certain impacts; e.g., the Planning Board can reduce the density or change the layout, look for alternative layouts, etc. Mr. Fusco said that if the Town Board votes in such a manner that the PRD designation is not approved, then the applicant and Planning Board would have to look at ways that the plans can be changed to fit the existing zoning.

Chuck Utshig said that there cannot be any official action by any Board until the SEQR (State

Environmental Quality Review) process has been completed. He continued that the applicant has to go before the Town Board and convince them to allow the overlay zone, cluster-type development that they are seeking.

Noel Malsberg stated that this project does not meet the minimum contiguous acreage requirement according to the Zoning.

Chuck Utshig answered that's correct. He said that the way that the Deerpark Zoning Code appears to be written, is that in essence the Town Board makes the decision on the application of the overlay zone, for the location for the cluster, the PRD.

Mr. Utshig said that the Zoning Code says that there is a waiver provision on the acreage, so by taking an action, whatever it may be, the Town Board would decide that issue. The Town Board can approve the overlay notwithstanding the shortage of contiguous property.

However, Mr. Utshig continued that the Planning Board is the Board that covers SEQR. As a result, although the Planning Board may not necessarily overturn the Town Boards' decision, the Planning Board could say for environmental reasons, the Planning Board sees an issue that cannot be mitigated, and the Planning Board can steer their findings toward that. He said that the Town Board actually takes the action on the PRD issue, but the Planning Board can still impose restrictions based upon a finding of an environmental issue concerning some particular issue.

Mr. Plotsky said that basically the Town Board can say that the overlay should be available to the applicant, but when the Planning Board is actually applying SEQR rules and density calculations, the Planning Board can make limits even in the overlay district based upon environmental considerations.

Mr. Utshig said that the Planning Board cannot say that the overlay cannot be applied, but they can modify the overlay in the context of SEQR. He said that by changing the conditions in the findings statement, the Planning Board can require the end net result that they are looking for, as an off set to that acreage issue to satisfy environmental concerns.

## MOTION

Dave Dean made a motion to deem the Basherkill Subdivision DEIS complete and schedule the first stage of the public hearing for September 10, 2008 at 7:00 p.m. at Deerpark Town Hall. Gary Spears second. Roll call vote: Santiago, aye; Malsberg, aye; Loeb, aye; Spears, aye; Dean, aye; W. Wilson, aye. Motion carried.

Mr. Utshig said that he will submit enough copies of the DEIS for all Town Board and Planning Board members plus Town Clerk, etc. within 7 to 10 days. He asked that the Boards' secretary supply one to the Port Jervis Public Library and the Port Jervis School District.

He said that he will bring 20 copies to the Town. He also said that there will be discs for every 3 hard copies. He said that he will supply a list of all agencies who did receive the DEIS.

Mr. Utshig asked for a copy of a resolution, just stating that there is an acknowledgment of the Board's vote, including the date.

Mr. Plotsky answered that he will get that resolution to Mr. Utshig.

## HIGHLAND OPERATING SUBDIVISION - DISCUSSION

Skip Wilson said that this applicant has asked for a 6 month extension of their preliminary subdivision approval. He said that there is a problem in that the applicant, Vincent Biagini owes over \$5,000 in town engineering fees and legal fees.

## MOTION

Gary Spears made a motion that Mr. Biagini has to pay the fees within 30 days, and then the Board will grant him the 30 day extension. Dave Dean second. Roll call vote: Santiago, aye; Malsberg, aye; Loeb, aye; Spears, aye; Dean, aye; W. Wilson, aye. Motion carried.

Mr. Plotsky said that the preliminary approval expires on August 27, 2008.

The secretary was instructed to write a letter to the applicant with Mr. Plotsky's assistance.

## AMENDED MOTION

Gary Spears amended the previous motion and made a motion that a letter be written to Mr. Biagini or his consultant that he has until August 27, 2008 to pay the fees, and if he does so, the Board will grant him the 6 month extension, either at the August 27, 2008 meeting or at some meeting thereafter. However, if the fees are not paid by August 27, 2008, the Planning Boards' approval will expire at that time. Dave Dean second. Roll call vote: Santiago, aye; Malsberg, aye; Loeb, aye; Spears, aye; Dean, aye; W. Wilson, aye. Motion carried.

## BOARD DISCUSSION

### MARTEL HOLDINGS LLC

Gary Spears said that the conservation easement for this applicant is 36.69 acres, and asked what was the original conservation easement for this project when it was owned by Don Hunt?

The Chairman said that he will research the files and get this information to the Board.

Mr. Plotsky said that he will notify the applicant concerning this discussion.

## DRAGON SPRINGS - DISCUSSION

Mr. Plotsky said that he had gotten in touch with the Building Inspector this week and asked for something in writing in regard to this applicant, so that the Board could address the special use permit issue. He said that Mr. Emerson did tell him that there is no current violation, although he said that he will attempt to put some input in, with respect to the duration, and he may ask for a shorter duration than the applicant requested, and that is primarily because of the fact that the fire prevention provisions have not been fully developed.

Gary Spears expressed his opinion that until this project is built out, in his mind this project is not fully functioning, so the Board does not have a true read on what their operation truly is. He said that his opinion is that he will not vote for more than a one year special use permit, until the applicant is totally built out with no open permits, and they're in operation, so the Board can see the number of occupants, traffic flow, etc.

Mr. Plotsky said that he will notify the applicants' attorney because the applicants had brought a building permit to Mr. Emerson to basically change approximately 3 shack storage areas into a building.

He said that when the applicants were told the building permit fee, they withdrew their building permit and said that they would instead, build the building in the Town of Mt. Hope. Mr. Plotsky said that there is a provision in the SEQR and in the Resolution of approval on 2006 for this applicant, that says that “all development will occur in the Town of Deerpark.”

David Dean read a letter from the Dragon Springs Buddhist, Inc... “Well room configuration: Dear Mr. Wilson and members of the Board. We are about to construct the approved well room. The proposed size is smaller than the size approved by the Board. Ron Gainer and Andy Barone of Stantec (Engineering) had directed us writing this letter, advising the change in configuration as shown, the attached sketch. The proposed configuration is well within the footprint of the approval.”

Mr. Plotsky explained that the applicants had brought a change in the plan to Ron Gainer, and he said that since it is smaller than what had been approved, Mr. Gainer told them that he could not approve the change, but advised them to write a letter to the Planning Board apprising the Board of the smaller change.

#### AMERICAN CAMPGROUND - DISCUSSION

Viola Sinsabaugh asked if the Board had been approached by this applicant?

Skip Wilson answered that he had met with the Town Supervisor and the applicant at the location, and they discussed the issues, and the applicant was advised by the Town Supervisor to apply to the Zoning Board of Appeals, because the applicant already has apartments on the campground property and he wants to subdivide them off.

Skip Wilson said that the applicant however, does not have the 200’ road frontage required by the Town Zoning Law, to subdivide, which will require a variance from the ZBA. Chairman Wilson said that he told the applicant that the applicant cannot have both a campground and apartments on the same lot. Mr. Wilson reported that the applicant believes that he is “grandfathered” in.

Skip Wilson also reported that the Town Highway Supervisor, Ed Hughson, also has an issue with the property.

Al Fusco explained that he had met with Ed Hughson and was told that on the other side of the road that runs along the property there is a “wet hole”. The Highway Department is trying to drain it and get an easement through the property. In return for such an easement, the Highway Department is proposing to put in a couple of culverts on the subject property.

#### ADJOURNMENT

David Dean made a motion to adjourn. Gary Spears second. Roll call vote: Santiago, aye; Malsberg, aye; Loeb, aye; Spears, aye; Dean, aye; W. Wilson, aye. Motion carried.

Meeting adjourned at 8:21 p.m.

Respectfully submitted,

Barbara Brollier, Secretary