

The Deerpark Planning Board met for their bi-monthly meeting on Wednesday, September 23, 2009 at 7:00 p.m. at Deerpark Town Hall, Route 209, Huguenot, N.Y.

The following were present:

#### BOARD MEMBERS

Willard I. (Skip) Wilson – Chairman      Dan Loeb      Dave Dean  
Noel Malsberg      Derek Wilson

#### OTHERS

Mr. Glen A. Plotsky, Town Attorney  
Mr. Al A. Fusco, Jr., Town Engineer  
Mrs. Viola Sinsibaugh, Town Board Liaison  
Ms. Rorie Cooper Corbin, Applicant  
Mr. John Mullo, Applicant  
Mr. Chun Feng, Architect  
Ms. Lana Han, Esq.  
Mr. Anthony Gioffre, Esq.  
Mr. Joshua Grauer, Esq.  
Mr. Sam Han, Dragon Springs Buddhist, Inc.  
Mr. Damien Brady, Esq.

#### THE PLEDGE OF ALLEGIANCE

#### AFTER SCHOOL PROGRAM – PRE-APPLICATION CONFERENCE

Represented by Ms. Rori Corbin & Mr. John Mullo 783-7505, 978-7773

Owner/ Tri-State Christian Camp

Applicant/ Footings, Inc. wishes to establish an after school program in the Tri-State Christian Camps Recreational Building off of Route 209, Port Jervis, N.Y.

It is an HMU Zone

Ms. Corbin said that they would like to rent and use the building for an after school program, and for offices for Footings, Inc.

Skip Wilson said that the building has been vacant for more than one year, so the applicant does have to go through the Planning Board application process. He said that there are several issues. First, the road entrance to access the building, is located on the property of Gary Spears, and an agreement has to be drawn up between the applicant and Mr. Spears, pertaining to maintenance, access. etc. He said that Ms. Corbin would have to get in touch with Mr. Spears.

Skip Wilson said that the second issue is, that there is a lake/ wetlands area approximately 100' from the building, and the children need to be protected from that open water.

Mr. Corbin answered that in speaking with the Health Inspector of New York, it was suggested that the water be fenced in, or an alternative would be for the play area to be fenced in.

Ms. Corbin said that in speaking previously with Mr. Spears, she got the impression that there is a 50' right-of-way, which is still in place.

Dave Dan said that he believes that this is a misunderstanding. He said that the 50' right-of-way does not extend from Route 209, but it's in proximity to the building. He said that whoever uses that building will be driving on private roads, which are maintained by a private individual or company. He said that there should be a discussion between the owner of the roads, and whoever is applying to use that building, pertaining to insurance issues, and a possible maintenance agreement which would include the sharing of costs, such as snowplowing, etc.

Ms. Corbin said that it is her understanding that the landlord who owns Tri-State Christian Camp, already has an

agreement with Mr. Spears.

Skip Wilson disagreed, and said that in speaking with Mr. Spears, he got the idea that no agreement is in place.

Mr. Plotsky said that a prior agreement was in use, but being that the building has not been in use for over a year...

Ms. Corbin interrupted and said that there are new owners of the Tri-State Christian Camp who purchased it within a year or so, and they are the owners that told her that they do have an agreement with Mr. Spears.

Dave Dean said that she needs to get a copy of that agreement, to make sure that it is in place.

Ms. Corbin said that in speaking with Mr. Spears, he had never mentioned that this is an issue.

Mr. Plotsky said that the Board just needs to know that Footings, Inc. will have proper access, in order to approve their site plan.

Ms. Corbin said that it was her understanding, that the people that Footings, Inc. will be renting from, the owners, have an agreement with Paul Butler, that the building has been open, and is still in use.

Skip Wilson replied that the Towns' Code Enforcement Officer has stated that the building has been closed for three years.

Mr. Plotsky added that that is not necessarily that the building has not been used. He said that as a formal "after school" facility, then no, the building has not been in operation.

Ms. Corbin said that Footings, Inc. is a not-for-profit, and that it is 90% Federal and State funded.

Mr. Plotsky told Ms. Corbin what would have to be added to their site plan, such as, access, etc.

Mr. Fusco elaborated, by saying that hours of operation, parking, etc. would all have to be added to the site plan.

Skip Wilson asked Mr. Plotsky and Mr. Fusco, what their escrow fees would be, and explained to Ms. Corbin that those escrows would have to be set up with the Town Supervisors' secretary.

Mr. Plotsky determined that legal fees would be \$1,000 and Mr. Fusco said that town engineering fees would be \$2,000.

Ms. Corbin thanked the Board.

**DRAGON SPRINGS BUDDHIST INC.**

Represented by Mr. Anthony Gioffre, Esq., Mr. Chun Feng, Architect; Ms. Lana Han, Esq.; Mr. Sam Han, and Mr. Joshua Grauer, Esq.

Mr. Fusco had e-mailed a letter to the Board, saying that he and the Building Inspector had conducted an on site visit, of pretty much, the entire facility. He said that there are some issues with the building department that need clarification, and he had discussed these issues on Monday, September 21, 2009.

Mr. Fusco said that one concern is the heavy construction on the property, where the applicants do have building permits for another major structure. He said that it is not too early to start planning for additional sewer capacity, with regard to a SPDES permit upgrade.

Mr. Fusco said that in regard to fire protection issues, there were some plans to set up a fire pump, etc., and these plans have not really been finalized. He said that these plans need to be finalized, because within the next year or so the buildings will be coming on line, and the applicants will be hoping to use them. He said that his office and the building inspector recommended that the Board renew the special use permit for one year, and then take that

year to solidify some of the issues.

Mr. Plotsky said that the correspondence from the Building Inspectors' office indicated that there may be some issues, but that there are no violations outstanding, in terms of the special use permit. He said that the Town Ordinance indicates that essentially, if there are no violations, the special use permit should be extended without a whole lot of review. He said that the applicant has asked at different times, for the permit to be extended anywhere between 2 and 5 years. He said that the Building Inspector and the Town Engineer both have indicated that the extension should be for one year only.

Derek Wilson asked, we're only dealing with the special use permit tonight?

Mr. Plotsky answered yes, the special use permit and the extension thereof, which expires sometime in September 2009, he said he did not know the exact date.

Mr. Plotsky said that the applicant wanted to be placed on the last agenda, however, there was no other business for that meeting date, and therefore, the meeting was canceled.

Mr. Plotsky said that the Board should identify their concerns and grant an extension of at least, 30 to 60 days, to give opportunity to reconcile the issues and solve them. He said that at this point there is no basis, that he himself can see, based on the information received by the Board, and submitted to the Board, to terminate or suspend the special use permit.

Mr. Gioffre said that earlier this year, in speaking with Mr. Plotsky, he recalled that the original special permit, the last formal resolution was June 2006. He said that last year there was a period in time, that the Board granted a 3 month extension, and then granted a one year extension in September 2008. He said that in speaking with Mr. Plotsky earlier this year, he asked if he should make his application in June 2009 or September 2009, and then Mr. Plotsky and himself agreed that it should be made in September 2009, at that time the special permit would run out. He said that he then submitted correspondence to the Planning Board, requesting an extension of the permit in July 2009, so it would give Mr. Emerson enough time to generate his report, and for the matter to be placed on a Planning Board agenda, prior to the September 10, 2009 expiration. He said that since that September 10, 2009 meeting was cancelled, he asked to be placed on tonight's meeting, solely for the renewal of the special permit. He said that technically, the special permit has expired at this point, and he said that he and his clients did request a 5 year permit. He said that to the extent that there are some concerns raised by Mr. Fusco, he respectfully reminded the Planning Board that Mr. Fuscos' concerns are building code issues, and they do not relate to the special permit. He said that there are no violations that currently exist on the premises. He said that he does not believe there have been any violations since the June 2006 approvals. He said that he respectfully requests that the special permit be extended for a longer period of time than the one year recommended by Mr. Fusco and Mr. Emerson. He again requested a 5 year extension.

Dave Dean asked Mr. Fusco, in looking at his August 12, 2009 letter, which points out a few issues, such as some sheds, extra wood burning, etc. And he also asked Mr. Fusco about his September 8, 2009 letter, which also points out some issues. He then referred to a letter from Dragon Springs Buddhist, Inc., dated September 22, 2009, although he said he cannot read the signature on the letter.

Mr. Gioffre interjected and said that the signature is Mr. Sam Han.

Dave Dean acknowledged Mr. Han, and said that this September 22, 2009 letter paints a rosy picture, and basically acknowledges that the issues have all been resolved. He asked Mr. Fusco, is this true?

Mr. Fusco answered that he cannot say that all of the issues have been resolved, because some of the issues are building department issues and most of those have been resolved. He said that he and Mr. Emerson are working forward on those issues. He said that some things still need cleaning up, but he did not take them to heart, as a moderation, so to speak. He said, as the Town Attorney said, it's not considered a violation, even though it wasn't in strict conformance.

Mr. Fusco gave an example, saying that he and Mr. Emerson had seen that one of the fire access' were blocked

with blocks, and a fire truck could have never have gotten through. He said that the applicants had pointed out to him, that it was the other access that was located up further on Guymard Turnpike as the fire access. Mr. Fusco said however, that the bridge was out, going up to that access. He said that the applicants still do not have fire access there today.

Derek Wilson asked, there is still no fire access?

Mr. Fusco answered, that's right.

Derek Wilson said, this September 22, 2009 letter from Dragon Springs, says that they do have fire access.

Mr. Fusco answered, I didn't write that letter.

Derek Wilson read from the letter, saying that it says that the blocks and iron have been removed, and are not blocking it.

Mr. Plotsky said that what the letter suggests is that those particular items were not blocking what is supposed to be the fire access. He said that this is true. He said, however, the difficulty, as he understands it, from what Mr. Fusco is saying, is that the access to what is supposed to be the fire access, is not accessible, because of a damaged bridge. He said that is not the fault of the applicant. He said, however, to get a special use permit that provides for fire access to something that is not accessible, versus, not granting it for that extended period of time, so that it can insure that when the special use permit is granted, that there is fire access.

Mr. Gioffre said that he believes that his client has demonstrated their willingness to work with the staff on a number of issues. He said that obviously, his client can do nothing about a bridge that is off site.

Mr. Fusco interjected and said that the bridge is on site, by the way.

Mr. Gioffre said that he is confident that his client will address this issue, and if there is a bridge that is on site that needs to be repaired, he stated again, that he is confident that his client will address it. He said that if it can be alleviated temporarily, although he hasn't spoken with his client about this issue, he said, if it's just moving some blocks, so that there is temporary and secondary means of egress for fire access, he said that he's sure that can be arranged.

Mr. Fusco said, that that was just answering one of Mr. Deans' questions. He said that what he thinks is the primary concern is that infrastructure is needed to support what is actually being built. He said that he wants to start now, working with the applicant, so that when the time comes, and the applicant is requesting a certificate of occupancy for these buildings, that Mr. Emerson does not say to the applicant, "... well, by the way, where's your fire pump?" He said that he wants to tell the applicant these things now, a year before the applicant needs it, to open that building... and start working on it now, and send some site plans to his office. He said, "show me the plans."

Mr. Fusco said concerning the sewer, that it was anticipated and brought out in that September 21st meeting, that the applicant was considering having more than the 100 artisans and 100 guests. He said that this is even related in the September 22nd letter, without putting a number on it, the applicants are planning certain events. He said that the applicants' SPDES permit does not take that into consideration, pertaining to the sewage. He said that the applicants need to plan on that, so that when people want to use their facility, or when the applicant wants a certificate of occupancy, it's not the last minute to try and get it. He said that now the applicant has a whole year to work on this.

Mr. Gioffre said that that is a point well taken, however, he said that as he understands it, what is being constructed, is in accordance with all approved plans. He referred to his own church, where his church applies for mass gathering permits, for the fall fair every year, he said that he is sure that there are a number of religious institutions or places of public assembly, that apply for those type of permits. He said that the Deerpark/ Minisink Valley Area Museum came before this Board at a previous meeting, applying for a new building, and at that meeting stated that they have pancake breakfasts once a month, accommodating 300 people, and they are

hoping, with their new building, that they can support more. He said that that is over and above what Dragon Springs has asked for.

Mr. Gioffre said that if and when his client applies for a mass gathering permit, they will have to make an appropriate application at that time, which will be reviewed by the appropriate staff, and it will comply with all of the Codes. He said that the point is well taken. He said that he will discuss with his client, whether there are things that need to be done in the immediate future to address some of Mr. Fuscos' concerns. He said, however, all plans and all infrastructure that is being constructed right now, are in accordance with the approved plans by this Planning Board. He asked that the permit just be renewed for a reasonable period of time.

Mr. Gioffre said that last year he had asked for an indefinite extension, for the special permit to be renewed indefinitely. He said that the Board then granted his client a one year permit. He said that he respectfully submits that for a special permit, there is no change to the use on the premises, there has been no violations that have been issued, and the situation with respect to the secondary means of access by the fire department can be addressed. He said again, he respectfully submits that a special permit be granted for more than one year.

Derek Wilson expressed his opinion, that he is comfortable with one year only, because the building is obviously changing and in the process of being constructed. He said that when the Board gets to a point, for a time period longer than one year in a special use permit, that it will be granted essentially when the building is completed. He said that this Board has dealt this way with other applications, where the special use permit was more than one year, only after the applicants' building had essentially been completed.

Dan Loeb expressed his opinion, and said that Mr. Gioffres' point is well taken, however, this plan is still developing. He asked Mr. Fusco where this project is, in relation to the public safety aspect, such as fire protection, as far as it relates to the buildings that are already approved and with respect to this project in the future?

Mr. Fusco answered that more than anything, the fire and safety issues are most important. He said that the applicants do not have a fire protection system for these building now. He said that they do not have a pump, and there's no plans for a pump. He said that the applicant is planning on installing a pump, however, there are no physical "plans." He said that the Building Inspector was concerned a year ago, and brought this to the applicants' attention, and Mr. Fusco said that he also re-inforced the Building Inspectors' position, about the fire protection system, and at that point he and Mr. Emerson were "sluffed off" and told "we bought a fire truck." He said that he has since seen this fire truck, and in speaking with Mr. Han about the fire truck on September 21st, he said that the fire truck does not take the place of a fire protection plan. He said that right now, if there was a fire up there today, the fire department could handle it with two pumpers. He said, however, that setting up two pumpers in theory, to pump water into an empty 10" pipe will take more than 5 minutes. He said, whereas, if there were an electric pump on site, that as soon as the alarm goes in, the pump goes on, the water starts going up, then the water will already be on site, before the firemen get there. He said that without that fire pump, the building will absolutely not be occupied. He said that it's one thing to maybe stretch the sewage for a day, but it's not one thing to stretch the fire protection for even 5 minutes.

Dan Loeb expressed his concern for the public safety. He said that is critical, and said that that is why he supports the one year special use permit.

Derek Wilson said that a one year special use permit, does not hurt the applicant at all. He said that as long as the applicant is always in conformity, they don't even have to show up at the meeting each year. He said that the applicants didn't even have to come tonight, they could've just sent a letter to the Board, requesting an extension of their special use permit.

Mr. Gioffre answered that he thought it was in the best interest of his clients, if he were present tonight.

Derek Wilson said, that the clients didn't have to incur the cost for their representatives to attend tonight, when the request could've been expressed in a letter.

Mr. Gioffre said that it is specifically written in the Town Code, and in the resolution that technically tonight, his

clients are in default, technically the special permit has expired, and that's why he's here.

Mr. Gioffre clarified for the record, that the letter does indicate that the pump is proposed, in addition to the fire truck.

Derek Wilson said that a special use permit is essentially a way for the Town to have a little bit more authority and control.

#### MOTION

Derek Wilson made a motion to renew the Dragon Springs Buddhist, Inc. special use permit for one year, from this date, September 23, 2009. Dan Loeb second.

#### Discussion:

Mr. Plotsky said that September 23, 2010 is the day after the regularly scheduled meeting for the month, which will be held on September 22, 2010.

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

Mr. Gioffre thanked the Board for its' time.

#### DEERPARK VILLAGE ASSOCIATES – DISCUSSION

Represented by Mr. Damien Brady, Esq.

Owner/ Applicant Deerpark Village Associates wishes to create Planned Residential Housing units on property located on Wilson Road, Sparrowbush, N.Y.

It is a Planned Rural Residential Development (PRRD) Zone.

Section – Block – Lot = 23 – 2 – 32.2 & 38.8

Application received August 30, 1993

Mr. Plotsky asked if all the Board members had received his e-mail yesterday, which basically was a cover letter and a proposed stipulation of settlement, with regard to the Planning Board aspect, and the SEQRA review aspect of the litigation that has commenced in White Plains, New York. He said that in sum and substance, it's a proposal to develop a process, so that the application can move forward. He said however, if this resolution is approved or not, the process will move forward in a way that the applicant finds acceptable, and they are hoping that the Planning Board will find it acceptable. He suggested, because it does specifically relate to the litigation, that a more formal discussion be conducted, about the stipulation itself, in executive session. He said, however, just for clarification, the idea behind the stipulation would be, that the applicant would essentially provide additional information, with regard to the FEIS, that would specifically review an alternative to the currently proposed 1,500 units, to review a project with only 900 units. He said that it would analyze the difference, in terms of impacts, between a 1,500 unit proposed project and a 900 unit proposed project. He said that it would set forth a mechanism for the consultants, to co-ordinate the review, to assist the Planning Board in forming their review. He said that that is a general description, as a matter of public record. He said that if, in fact the Board, after executive session, agrees that this stipulation is appropriate, it is his anticipation that the applicant will not be back before this Board, for at least a short period of time, because they will submit that alternative information. He said that the applicants' representative is here tonight, just for the purposes of monitoring this stipulation, and what is happening tonight, prior to it. He said that assuming that there is some resolution, then the applicant would submit an alternative proposal, as well as additional information. He said that at that point, the clock would start again in earnest. He said that it would really be done, after the two consultants have done a co-ordinated review of their own, so that it would be submitted to the Planning Board, after Mr. Fusco had had an opportunity to review it himself, and tried to hammer out the issues with the clients' consultants.

Derek Wilson asked about a letter to the Planning Board from Mr. Sachs, esq.?

Mr. Plotsky answered that Mr. Sachs had drafted the letter for his review. He said that he will be making changes, which were discussed with Mr. Sachs.

Derek Wilson asked, it was written on September 2, 2009, and faxed September 4, 2009, and then the Board only received this letter yesterday, September 22, 2009. He asked, were you working on some possible alterations during that interim of time?

Mr. Plotsky answered yes. He said that he's also trying to co-ordinate it, in terms of considering how it patterns itself, or doesn't, as the case may be, with the discussions with the court, up to this time. He said that he wanted to make sure that it was consistent with what has been discussed.

Derek Wilson asked, will we be discussing traffic tonight?

Mr. Plotsky answered that he does not believe that there will be any discussion of actual issues tonight.

A citizen in the audience asked if any votes will be taken tonight?

Mr. Plotsky answered that the only vote that will be taken tonight, will be in regards to the stipulation.

The citizen asked, that cannot be discussed in open session?

Mr. Plotsky answered that first it will be discussed in executive session, and then there may be some discussion in public. He said however, that the initial discussion will be done in executive session.

#### EXECUTIVE SESSION

##### MOTION

Dave Dean made a motion for the Planning Board to go into executive session for the purpose of discussion of litigation and invite the Town Engineer, Town Attorney and Town Board Liaison. Dan Loeb second. Roll call vote: Malsberg, aye; Loeb, aye; D. Wilson, aye; Dean, aye; W. Wilson, aye. Motion carried.

The Board went into executive session at 7:50 p.m.

##### MOTION

Derek Wilson made a motion for the Planning Board to come out of executive session. Noel Malsberg second. Roll call vote: Malsberg, aye; Loeb, aye; D. Wilson, aye; Dean, aye; W. Wilson, aye. Motion carried.

The Board came out of executive session at 9:20 p.m.

#### ADJOURNMENT

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

Meeting adjourned at 9:21 p.m.

Respectfully submitted,

Barbara Brollier, Secretary