

MINUTES
Town of Goshen Planning Board
Town Hall
41 Webster Avenue
Goshen, NY 10924

August 6, 2009

Members Present:

Reynell Andrews
Susan Cleaver
Ralph Huddleston, Chair
Mary Israelski
John Lupinski
Raymond Myruski

Also Present:

Neal Halloran, Building Inspector
Sean Hoffman, Engineer
Ed Garling, Planning Consultant
Rick Golden, PB Attorney
Kelly Naughton, Esq.

Absent: Lee Bergus

PUBLIC HEARING

A & L Acres – S.B.L. 13-1-34.2 that part located west of Route 17A, 101.452 acres located on Houston Road and Route 17A, in the AQ3 zone with two scenic road corridor overlays and two stream corridor overlays. Proposed 29 lot residential subdivision with construction to be done in two phases. Possible preliminary and final subdivision approval.

Representing the applicant:

Burt Blustein, Esq.

Mr. Blustein said the application is for a 29 lot subdivision to be done in two phases. He said the application underwent three years of SEQRA review and received preliminary and conditional final approval from the Planning Board, after which the Town Board enacted a moratorium which prevented the applicant from getting the map signed by the PB chairman. Mr. Blustein said that since the recession and credit crisis of 2008, it has become almost impossible to find a bank to post a letter of credit for the more than \$1 million bonding for the public improvements. He said if he came in next week with a letter of credit, the applicant could get the map filed, since he has satisfied all other conditions. But the fees to get the bond posted are extraordinary, Mr. Blustein said, costing approximately \$55,000. Since by state law the applicant has one year to get the map signed, and there are no extensions allowed, the applicant has filed a new application and paid new fees and is back for a new approval so he can start the one year clock ticking again, he said. The applicant could then put the road in at his own expense before the map is signed and filed, the performance bond would be lower and the applicant could pay for it outright rather than paying the fees for bonding.

Mr. Blustein said the applicant is asking the PB to reaffirm the SEQRA finding and provide a new conditional approval. He said he is looking for preliminary approval for the entire application and conditional final approval for Phase 1 which is the property located at the corner of Houston Rd. and 17A with the original access and conservation easement. He said that Phase 1 can stand alone if Phase 2 never gets developed.

Mr. Garling said he just received the plans and the County's comments and would like an opportunity to review them. He said the PB may want to discuss the issue of an additional access road.

Mr. Hoffman said he reviewed the phasing plan and issued a memo July 31 which the applicant responded to by incorporating changes to make the phasing work smoother. He said he is satisfied with the plan as is.

Mr. Golden said that by asking for conditional final approval for Phase 1, that once the one year clock runs out (if not finalized within 180 days, two 90 day extensions can be granted) the applicant is back to the same situation where they lose their approvals. On Phase 2, Mr. Golden said, the applicant is asking for a preliminary approval and the PB has the ability to extend that, if necessary, as dictated by the circumstances. It has been approved previously and given a negative declaration, so unless there is something significant that occurred between then and now, the PB is obligated to continue with that SEQRA determination, he said.

Mr. Golden said the PB received the County's 239 Review and the County is making the same recommendations they made the last time, requiring items to be incorporated in the plan that are not there now. He said that if the project is going to be approved again, the PB will have to approve it by a majority plus one. Mr. Golden said that a 239-F Referral to the Orange County DPW will be mailed by the Town Building Department and the County DPW will have 30 days to respond. He said the public hearing tonight was noticed in the newspaper but that notices to neighboring property owners were mailed July 28th, less than the requisite 10 days and said the PB will have to continue the public hearing and send out new notices.

Mr. Blustein said the application's conditional final approval expires before the PB's next meeting and that the applicant did everything possible to get to the PB before the approval lapsed.

Mr. Golden advised the PB that it can discuss the matter tonight and make a determination of SEQRA but that it cannot take a vote on conditional approval tonight. He advised that because the PB previously gave the application a negative declaration and a preliminary and conditional final approval, it is bound by the previous decision, "unless there is something extremely significant that the courts would recognize as requiring a different determination."

Mr. Huddleston asked for comment from the public.

Linda Burrows said she represents the Minisink Chapter of the Daughters of the American Revolution (DAR) who have an interest in the little stone school house on 17A. She said the building has been there since the early 1740's and the DAR doesn't want anything to happen to it. Mr. Huddleston said that the stone house was discussed intensively when the previous plans were reviewed. Mr. Fini said that an extra buffer, in the form of a conservation easement, has been provided around the stone house to further protect it. Mr. Huddleston told Ms. Burrows that the applicant is completely staying out of the general area. Ms. Cleaver asked the applicant if he would also put up Environmentally Sensitive Area (ESA) signs and he agreed.

Mr. Halloran added that drainage will run away from the stone house and that the natural buffer will be approximately 200 ft. from the property line. Ms. Burrows expressed concern about the outhouse on the edge of the property, stating that she doesn't want the responsibility of kids getting in the structure and hurting themselves.

Susan Schumerich, 50 Houston Rd., asked for an explanation of the bond and was told that the bond is the cost of building the roads, approximately \$1.3 million. Mr. Blustein said the applicant is not trying to waive the bond but wants to build the road before he has to post the bond. Mr. Golden explained that the bond is to insure that the road is going to be completed. Ms. Schumerich said she doesn't want to see a road built and nothing else, as happened at Maple and Gates School House roads.

Ms. Schumerich said she is also concerned with the traffic on Houston Rd. and asked what will be done to enforce the speed limit and curtail traffic accidents, stating that these new developments will impact the traffic. Mr. Huddleston said the PB has no enforcing authority with respect to speed limits and Mr. Golden said that it was determined under SEQRA review that overall the project would not have a significant adverse environmental impact on the road system.

Town Supervisor Douglas Bloomfield of Route 17A, said he was present as an individual and neighbor and said that the traffic on Houston Road and 17A is a concern to him also, noting the three recent accidents at the corner. He talked about the possibility of a turning lane to help alleviate the problem. He said the Town has tried to lower speed limits but each application has been denied by the State of New York. He said it is up to law enforcement to enforce the speed limit laws and that he will be speaking to the Police Chief. He said he has confidence that Mr. Fini will do a good job building the development and said he thinks that a quality job is going to be done on this historic property. He said that anything government can do to work with business people today should be done if it can.

Ms. Israelski asked Mr. Fini if he is willing to provide additional land for a right-of-way along 17A for a turning lane. Mr. Fini replied that he could and Mr. Golden pointed out that a road cannot be built in the open space, saying that it will reduce the open space. Mr. Fini said there is 53% open space now. Mr. Halloran said that land approximately 20 to 30 ft. by 100 ft. would be needed. Mr. Golden said that the land will have to be identified and that he can include language in the resolution allowing the State to take what property is needed to construct a turning lane adjacent to Lot #5.

Mr. Golden said that the applicant's prior approval expires next week unless the applicant posts the bond for the road work. The PB can't vote on it tonight, he said, adding that before the next meeting the applicant will have to make a decision whether to bond it or hope the PB is going to approve it in the same way it did last time. Mr. Golden reminded the PB that in the absence of any significant environmental or other change since its last approval, it has the obligation to treat the application in a similar fashion which means another approval.

Alberta Kelsy of the DAR asked if the PB is aware that the old stone school house is on the national and state registers of historic places. Mr. Golden said that the PB typed the application as a Type 1 Action during SEQRA as a result of it being in or adjacent to a national register listing. He said that the SEQRA review ended up with a determination of "no significant adverse environmental impact" from the project and therefore the PB gave it a negative declaration.

VOTE BY PROPER MOTION, made by Mr. Myruski, seconded by Ms. Cleaver , the Town of Goshen Planning Board declares it intent to be lead agency on the application of A&L Acres. Approved unanimously.

Mr. Andrews	Aye	Ms. Israelski	Aye
Ms. Cleaver	Aye	Mr. Lupinski	Aye
Mr. Huddleston	Aye	Mr. Myruski	Aye

VOTE BY PROPER MOTION, made by Ms. Cleaver, seconded by Mr. Myruski, the Town of Goshen Planning Board types the application of A&L Acres as a Type 1 Action for purposes of SEQRA. Approved unanimously.

Mr. Andrews	Aye	Ms. Israelski	Aye
Ms. Cleaver	Aye	Mr. Lupinski	Aye
Mr. Huddleston	Aye	Mr. Myruski	Aye

A motion was made to declare that the application will not have a negative impact on the environment. During the discussion that followed, Mr. Golden told the PB that last time, without the additional land for a turning radius, the PB determined that the traffic would

not pose a significant adverse environmental impact or it wouldn't have given it a negative declaration. "Tonight all you have heard is additional mitigations to even lessen whatever impact there was," he said.

VOTE BY PROPER MOTION, made by Ms. Israelski, seconded by Mr. Andrews, the Town of Goshen Planning Board declares that the application of A&L Acres will not have a negative impact on the environment, thereby issuing a negative declaration. Motion passed five "aye" votes to one "nay" vote.

Mr. Andrews	Aye	Ms. Israelski	Aye
Ms. Cleaver	Aye	Mr. Lupinski	Nay
Mr. Huddleston	Aye	Mr. Myruski	Aye

VOTE BY PROPER MOTION, made by Ms. Cleaver, seconded by Mr. Myruski, the Town of Goshen Planning Board adjourns the public hearing on the application of A&L Acres to August 20, 2009. Approved unanimously.

Mr. Andrews	Aye	Ms. Israelski	Aye
Ms. Cleaver	Aye	Mr. Lupinski	Aye
Mr. Huddleston	Aye	Mr. Myruski	Aye

Mr. Golden said that the Building Inspector will send the 239F Referral Letter to the County DPW.

Battiato – 18-1-13 – 8.8 acres, 3-lot subdivision located on Arcadia Rd in a RU zone with an AQ3 overlay. Discuss with Planning Board possible waivers.

Representing the applicant: Joseph Battiato

Mr. Battiato reminded the PB that he appeared at its last meeting to discuss the road he needs to construct for his application of a three-lot subdivision on Arcadia Road. He said that in 2003 when he started the planning process he understood that a gravel surface would be sufficient for the private road and that he recently learned that private roads have to be paved and is now asking to be allowed to do a gravel common driveway, rather than a paved road.

Mr. Golden told the PB that it has the ability, under Section 9720 of the zoning code, to waive road width (to whatever it believes is appropriate) and to waive the prohibition on common driveways and permit a common driveway, but that the PB has no authority to waive the road specification requirements. He said there are no road specifications for a common driveway.

Ms. Israelski and Ms. Cleaver voiced concerns about allowing gravel road surfaces.

Mr. Battiato said that he doesn't have the money to put in a paved road and that he believes the cost now "probably exceeds what the subdivision is worth."

Mr. Golden said that the PB has, on all applications to-date, followed the town road specs for private roads, telling applicants that is what they must follow. "Generally you are required to be consistent under similar circumstances, but also not held to a prior policy forever, so if you believe there is reason to change the policy, you have the legal authority to do so, but then once the policy is changed, you have to carry out that changed policy equally."

Mr. Hoffman had been asked at the July meeting to compare the cost of paving with the cost of using oil and chip. He said that oil is selling for \$2 per gallon and stone is selling at \$12.50 per ton. He said it might be cheaper to do a Town road with three inches of asphalt at a reduced width of 18 ft. Mr. Hoffman said that if a common driveway is done, it could be 18 feet wide and said he would recommend it be owned by Lot #3.

There was a discussion of problems with common driveways. It was noted that a common driveway can be owned by one party with others having easement rights. Ms. Israelski and Ms. Cleaver expressed concerns with setting precedent. Ms. Israelski said she thought that "setting precedent here is the wrong thing to do." She said that if one property owner is made responsible for the gravel driveway, there are problems if that owner can't afford to maintain it and does not maintain it. It causes conflict and makes the properties unmarketable. "Everyone worries about how it is going to be maintained, and as the property ages, it becomes worse," she said.

Joseph Battiato Sr. said his son is not a big developer. He said that the PB's previous engineer would have allowed him to have a gravel road, but the problem came about when the town's new engineer said he doesn't agree that a gravel road is okay. He suggested that the PB has "a moral obligation" to consider.

Mr. Golden reminded the PB that it can waive requirements for road width or can waive the prohibition of a common driveway and make it a common driveway, which has no specifications.

VOTE BY PROPER MOTION, made by Ms. Cleaver, seconded by Ms. Israelski, the Town of Goshen Planning Board waives the width of the private road on the application of Battiato but keeps the course as required by the town road specifications. The motion was defeated.

Mr. Andrews	Nay	Ms. Israelski	Aye
Ms. Cleaver	Aye	Mr. Lupinski	Nay
Mr. Huddleston	Nay	Mr. Myruski	Nay

VOTE BY PROPER MOTION, made by Mr. Lupinski, seconded by Mr. Myruski, the Town of Goshen Planning Board waives the prohibition against common driveways and allows the applicant, Joseph Battiato, to construct a common driveway with specifications to be determined, width and depth of the gravel, by the PB Engineer. The motion was approved.

Mr. Andrews	Aye	Ms. Israelski	Nay
Ms. Cleaver	Nay	Mr. Lupinski	Aye
Mr. Huddleston	Aye	Mr. Myruski	Aye

Mr. Golden said that the PB waived the prohibition of a common driveway under the finding that the requirement was not requisite in the interest of the public health, safety and general welfare. He said that the details will be worked out to the satisfaction of the PB engineer, but that gravel is what the PB is approving. He said that this is in the context of this particular application, based upon the topography, number of lots and the specific conditions of this particular property.

DeSharnais – 5-1-9.2 – 3.03 acres located at 26 Axworthy Lane in the RU zone with an AQ6 & scenic road corridor overlay. Site plan.

Representing the applicant: Karen Arent, Landscape Architect
Valerie DeSharnais, Applicant

Ms. Arent said the application is for a three-car garage only. It is before the PB because it is in a scenic road corridor, she said. The garage will be 24 sq. ft. by 36 sq. ft and has a loft for storage. There will be no apartment, no water, but there will be electric. Ms. Arent said the garage won't be seen from the road in the summertime and will be fairly invisible from the road in the winter. She showed the PB a photograph of what the garage is to look like.

Mr. Golden said that the application must be referred to County Planning because it is within 500 feet of a municipal boundary, Town of Wallkill, and also a 239-F Referral must be sent to the County DPW who will have 30 days to respond. He said the PB cannot vote on the application unless the County has had an opportunity to review and report. He said the County is supposed to comment on the potential regional impact that the site plan would have.

Mr. Golden said that a public hearing is not required, but if it is waived, the Code states that the application must be referred to the Town Environmental Review Board (ERB).

VOTE BY PROPER MOTION, made by Ms. Israelski, seconded by Ms. Cleaver, the Town of Goshen Planning Board waives the public hearing and refers the application of DeSharnais to the Environmental Review Board. Approved unanimously.

Mr. Andrews	Aye	Ms. Israelski	Aye
Ms. Cleaver	Aye	Mr. Lupinski	Aye
Mr. Huddleston	Aye	Mr. Myruski	Aye

VOTE BY PROPER MOTION, made by Ms. Cleaver, seconded by Ms. Israelski, the Town of Goshen Planning Board declares the application of DeSharnais to be a Type 2 action under SEQRA. Approved unanimously.

Mr. Andrews	Aye	Ms. Israelski	Aye
Ms. Cleaver	Aye	Mr. Lupinski	Aye
Mr. Huddleston	Aye	Mr. Myruski	Aye

New Horizons (Sunset Ridge II) 10-1-28 – 54.2 acres, 8 lot subdivision located on Hampton Rd & Phillipsburg Rd in the RU zone with an AQ6 and stream & reservoir overlay.

Representing the applicant: Michael Morgante, Project Engineer

Mr. Morgante said that since the last meeting he laid out the common driveway between Lots 7 & 8 and showed the grading from the common driveway, on Sheet 3 of 12 of the plans (with a revision date of July 17). He said the common driveway has a width of 18 ft. and that it has been reviewed by the PB engineer. Mr. Morgante said that there is no greater disturbance with this plan than with the previous plan. He said the new plan keeps the driveway further away from Phillipsburg Road (at least 100 ft.) and is overall safer. Mr. Morgante said he recently met with Doug Gogler of the DEC who determined that the wetland delineations have not changed and validated the maps on site.

Mr. Golden said he has prepared the Findings that the PB will need to make in order to approve the application and also some conditions for the resolution of approval. He reminded the PB that at its July 17th meeting, it waived the prohibition on common driveways and permitted a paved common driveway as shown in the plans for lots 7 & 8.

Mr. Golden read the Findings as follows:

1. That in accordance with the requirements for the Stream Corridor and Reservoir Watershed Overlay District, the project will not result in the degradation of scenic character; will be aesthetically compatible with its surrounds and will not result in erosion or surface water pollution from surface or subsurface runoff.
2. That the project presents a proper case for requiring a park or parks suitably located for playgrounds or other recreational purposes, but suitable parks or recreation areas of adequate size to meet this requirement cannot be properly located on the site, requiring a payment of a parkland fee to be determined by the Town Board in lieu of providing such parkland.
3. That the Planning Board waived the Environmental Control Formula as permitted by Section 97-18(D) (3) because the applicant demonstrated, through site-specific soils testing and analysis to the satisfaction of the Planning Board and the Town Engineer, that the lots were appropriately sized and designed to accommodate the individual septic systems proposed.

VOTE BY PROPER MOTION, made by Ms. Israelski, seconded by Ms. Cleaver, the Town of Goshen Planning Board accepts the Findings, as read by the PB attorney, relative to the application of New Horizons (Sunset Ridge II). Approved unanimously.

Mr. Andrews	Aye	Ms. Israelski	Aye
Ms. Cleaver	Aye	Mr. Lupinski	Aye
Mr. Huddleston	Aye	Mr. Myruski	Aye

Mr. Golden read the specific conditions pertaining to the final approval of the project. The specific conditions as read were:

1. Prior to final approval, the applicant must file a petition with the Town Board to create a Drainage District within New Horizons Subdivision, whereby the Town of Goshen will be responsible for repairs and maintenance of the drainage facilities on the premises and charge the costs thereof to the homeowners in the Drainage District. If a Drainage District is not created by the Town Board the owners of the lots containing drainage facilities are responsible for such facilities, and the applicant must offer easements over such property in favor of the Town granting to the Town the right, but not the obligation, to repair and maintain the drainage facilities to the extent necessary to protect Town property or interests.
2. Wetlands and any required buffers are to be marked on individual lots prior to any site improvements. The applicant must use proper Environmentally Sensitive Area (“ESA”) signage where applicable, and have such signage in place prior to any site disturbance.
3. The applicant shall create a Transportation Corporation to operate and maintain the community SDS, which requires approval by the Town Board pursuant to New York State Transportation Corporation Law.

4. The applicant shall place a Conservation Easement over the lots as indicated on the plans, enforceable by the Town, which shall be drafted to the satisfaction of the Town Attorney as to form, including ongoing maintenance standards that will be enforceable by the Town against an owner of open space land to ensure that the open space land is not used for purposes other than open space including, but not limited to, the storage or dumping of refuse, junk, or other offensive or hazardous materials. This easement area shall include that portion of Lot 3 where the SDS is located. No pools, swing sets or recreational facilities may be placed over such portion of Lot 3. Additionally, the applicant shall file an appropriate deed restriction, drafted to the satisfaction of the Planning Board Attorney, restricting the use of that portion of Lot 3 housing the SDS, and referencing the Conservation Easement.
5. The applicant shall place easement over the trail, as indicated on the plans, which shall be drafted to the satisfaction of the Planning Board Attorney, for the purpose of permitting its use by horses and pedestrians.
6. Any and all blasting operations shall be conducted so as to not to endanger the health, safety and welfare of persons and the safety of property, including but not limited to that of adjacent landowners. Any blasting operations shall be carried out in compliance with Chapter 58A of the Town Code. The applicant must post a three-year bond to insure against any potential damage caused by such activities.
7. Prior to final approval, the Stormwater Pollution Prevention Plan (“SWPPP”) must be revised to the satisfaction of the Town Engineer following approved practices as defined in the New York State Stormwater Management Design Manual (latest edition).
8. The applicant shall place an easement over Lot 7, which shall be drafted to the satisfaction of the Planning Board Attorney, for the purpose of permitting its use as a common driveway by Lot 8. A Common Driveway Maintenance Agreement must be filed with the Town Attorney and revised to his satisfaction for that portion of the common driveway of Lots 7 and 8.
9. There shall be a remote telemetry feature required as part of the SDS, which shall notify via e-mail the Building Inspector and Building Department of any warnings or problems with the SDS. This e-mail shall be strictly advisory, and shall not place any obligation or liability on or with the Town to rectify the situation.
10. Prior to final approval, the applicant must comply with the Town’s water testing protocols as required, and demonstrate adequate capacity for the lots as proposed.
11. Prior to final approval, the applicant must comply with all outstanding issues set forth in the memorandum of the Town Engineer dated June 15, 2009 to the satisfaction of the Town Engineer.

VOTE BY PROPER MOTION, made by Mr. Myruski, seconded by Mr. Andrews, the Town of Goshen Planning Board accepts the specific conditions as read by the Planning

Board Attorney to be included in the Resolution for preliminary approval on the application of New Horizons (Sunset Ridge II). Approved unanimously.

Mr. Andrews	Aye	Ms. Israelski	Aye
Ms. Cleaver	Aye	Mr. Lupinski	Aye
Mr. Huddleston	Aye	Mr. Myruski	Aye

Mr. Golden said that the resolution will be drafted, submitted for the chairman's signature and filed with the Town.

ADJOURNMENT: A motion to adjourn the meeting at 9:28 p.m. was made, seconded and approved unanimously.

Ralph Huddleston, Chair
Notes prepared by Susan Varden