

## **APPROVED MINUTES**

**Town of Goshen Planning Board  
Town Hall  
41 Webster Avenue  
Goshen, NY 10924  
March 15, 2007**

### **MEMBERS PRESENT**

Ralph Huddleston, Chair  
Reynell Andrews  
Lee Bergus  
Susan Cleaver  
Mary Israelski  
John Lupinski  
Ray Myruski

### **ALSO PRESENT**

Neal Halloran, Bldg. Insp.  
Joe Henry, Engineer  
Ed Garling, Planner  
Rick Golden, Attorney  
Graham Trelstad, Planner

### **I. CALL TO ORDER**

Chairman Ralph Huddleston called the regular meeting of the Town of Goshen Planning Board to order at 7:30 pm at Town Hall.

### **MINUTES**

Upon motion made by Ms. Israelski, seconded by Mr. Andrews, the Minutes of the 12-21-06 Planning Board Meeting were approved by vote of the Planning Board.

Upon motion made by Mr. Myruski, seconded by Ms. Israelski, the Minutes of the 2-15-07 Planning Board Meeting were approved by vote of the Planning Board.

Upon motion made by Mr. Andrews, seconded by Mr. Lupinski, the Minutes of the 3-1-07 Planning Board Meeting were approved with amendments, by vote of the Planning Board.

**II. PUBLIC HEARING (Continued)**

**Mahoney's at Goshen – 11-1-28 & 11-1-30.1 – 3.65+/- acres**, special use permit located on Rte 17M in the RU zone with an AQ6 & scenic road corridor overlays. Special use permit for restaurant & site plan approval.

Mr. Huddleston opened the continuation of the public hearing.

Present for Applicant: Amador Laput, Jr., Fellenzer Engineering  
Alan Lipman, Attorney

Mr. Laput said the site will need additional parking spaces for the restaurant and banquet facility so there will be additional paved areas, enough for 410 people, or 137 proposed parking spaces.

Mr. Laput said one of the major issues on the site is the septic system. He said the historic record shows that the former restaurant and banquet facility on the site had been approved for 410 persons. The applicant is now proposing to maintain the capacity at 410. He said an excavator has uncovered the existing septic system and identified its capacity and size. He said seven laterals were uncovered that are over 150 feet long and take up part of the one acre lot to the west and that the pipes to the laterals look fine, that the whole one acre field was filled at one time and is good soil, and perked at 17 minutes. The area behind the restaurant was also found to be fill. He said he will be recommending that pipes between the septic tank and some of the seepage pits be replaced. He presented two letters from the Department of Health stating that the septic capacity is adequate to meet the needs of 410 individuals.

Mr. Huddleston asked the Town Engineer to speak with the county health department about the integrity of the septic system.

Ms. Israelski asked Mr. Henry if it was okay to have overflow parking on top of the laterals. Mr. Henry replied that he would be speaking to the Health Department about it. Mr. Laput said the laterals are four feet below ground and that the applicant is proposing to park cars there in overflow conditions only on the busiest weekends.

Mr. Huddleston asked for public comment.

Andre Puerta, of 395 Hudson Street, NYC, said he and others worried about the traffic overflow that the project will have in the community and discussed his experience with the applicant's company in New York City, asking the PB to investigate allegations about the company's past practices and to determine what is good for the people of Goshen. He expressed his view that the company's construction projects in NYC have not been good for NYC, for immigrant families or for working families.

There were no other requests to speak from the public.

Mr. Trelstad said his office had reviewed the landscape plan and would provide the applicant with written comments.

Mr. Henry said he had some comments on the site development plans pertaining to the septic system. He said the applicant is going from 44% coverage of impervious surface to 56% coverage, stating that in the RU zone the maximum allowed is 15%. "This actually constitutes expanding on a non-conforming use and may require ZBA approval," he said. Mr. Laput replied, "We felt we needed to provide the parking and that the existing non-conforming condition could be expanded on, one way we will mitigate that is by providing some rain gardens at the downhill sides of the lot. There is no storm water or water quality on the site currently, and by providing some water quality at the edges of the lot where we will catch the run off, then that can mitigate the additional impervious surface," he said.

Mr. Golden said it appears that the applicant has now indicated on their plans that their proposed impervious surface coverage is increasing substantially over that existing, which in itself is substantially more than what is permitted under the Code. It would require an area variance, he said, and if it goes to the ZBA it will take some time. Mr. Golden recommended closing the public hearing while the applicant seeks a variance from the ZBA. If the applicant comes back with the variance, the PB can decide whether or not it needs to re-open the public hearing for more comments.

Mr. Huddleston asked for comments from PB members:

Mr. Lipman asked if a variance would be needed if the applicant left the area as is, a gravel lot for parking. Mr. Huddleston said he didn't think the gravel parking lot would be a problem, that it has always been parking and wouldn't be adding to the impervious surfaces. Mr. Laput said the applicant would then like to propose that the impervious area remain at the existing 44%. Mr. Huddleston said "that would probably keep you out of needing a variance," and added that it will be looked into to make sure.

Mr. Myruski inquired about the existing well and asked Mr. Henry if 4-1/2 feet of fill on top of the leach field would be adequate. Mr. Laput answered that the existing well is located on the southern side of the lot, in an island protected by concrete bollards and that cars would be parked around it. Mr. Henry said there won't be that much compaction if it is 4-1/2 feet and said if it were shallow, there would be concern.

Ms. Cleaver said she is concerned with snow plowing and removal near the well because of the salt content and told the applicant that that if he is planning to do rain gardens to the right side of the well, he should look into the required set backs and well head protection. Ms. Cleaver said she also is concerned about the large wetland area near the leach field, saying she wants to make sure this will not turn into a place where the snow is piled either. Mr. Laput said he will show on the plans where the snow will be piled.

Ms. Israelski told the applicant to note the caliber and size of trees on the landscape plans and advised that they look at deer resistant plantings, noting that Blue Spruce varieties and Boxwood would have a chance of surviving while Scotch Pine may not. Mr. Huddleston advised the applicant to use the deer resistant list available through the Planning Department and cautioned that the PB is going to require the applicant to maintain the plantings and re-plant if they don't survive.

Mr. Golden stated that in discussing the issue of non-conformance with the Building Inspector, it has been noted that "this structure and use has been discontinued for more than a year and there are provisions in the Code indicating that when that happens they may not be able to re-establish those non-conforming uses, except under certain conditions of the PB which I don't think pertain. So the question is whether they would be restricted going back down to the Code coverage and other requirements." Mr. Golden said he would invite the applicant's attorney to submit "anything he wants with respect to this issue," saying that "in the first instance it is a Building Inspector's interpretation issue and so I will be discussing it with the Building Inspector and will try to come up with an opinion for the Planning Board." He said any input is welcome and that "we will try to come to a resolution as soon as possible."

Mr. Andrews asked if there was a question, would the applicant have to go to the ZBA? Mr. Golden stated the problem as "some of these variances are substantial and so the applicant obviously would like to have a pre-existing non-conforming continuation of those things and so we owe the applicant an answer as to what the Code requires. If it is that they have to go back to those restrictions, then they have the ability to go to the ZBA to ask for a variance or they could try to reconfigure their plan to be conforming."

**VOTE BY PROPER MOTION**, made by Mr. Myruski, seconded by Ms. Cleaver, the Planning Board of the Town of Goshen closes the Pubic Hearing of Mahoney’s at Goshen. Passed unanimously.

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

Mr. Huddleston stated that the public hearing was closed and said he would allow written comment from the public to be submitted to the Building Department within the next ten days to become part of the official record.

**III. AGENDA ITEMS**

**Traskus (a.k.a. – Elm Hill Farms) 18-1-8.22 – 114.54 acres, 38 lot subdivision**  
Located on Arcadia Road in the RU zone with an AQ3 overlay. Conceptual storm water location and design.

Present for the Applicant: Steve Esposito

It was stated that Mr. Trelstad had reviewed the conceptual storm water location and design and the applicant was present to discuss some of the concepts.

Mr. Esposito said the storm water management system originally proposed included two main basins on the southwest side and the north side of the site. He said that during the review process the applicant was asked by the PB to look at an alternative to a centralized concept and to provide rain gardens on individual lots, utilizing additional grass swales and other methods of storm water management.

The plan presently before the PB shows proposed rain gardens on each lot and a slightly smaller main central basin, to be used only as a dry pond and a slightly smaller rear basin, to remain as a wet pond. He said that when the rain gardens were introduced, because there are setback requirements, the lots had to be re-distributed throughout the site in order to meet the separation requirements between septic and rain gardens and separation distances from the grass swales. “When you have low density, low impact management facilities, it is tough to do it in a cluster plan, it requires spreading things out,” he said. “In our opinion, we compromised one of the major goals of the plan,” he said, stating that now there was some development along Arcadia Road and some of the houses have intruded onto the farm parcel. He said that while they were able to reduce the size of the retention basins a little bit, they are still needed to retain. He said he didn’t think they are achieving any

additional ground water recharge because rain gardens aren't a recharge facility, they are a filtration facility, and there still is surface discharge.

Mr. Trelstad said that while he is not an expert on rain gardens, the "initial thoughts on this is that there are perhaps some adjustments that could be made to the plan to make it more closely comply with the intent and spirit of our original comments, suggesting that low impact development considerations be used and possibly even looking at other arrangements for the storm water detention basins so that we are avoiding impacts to wetlands and we think those can be accomplished without having to resort to moving those five lots into the areas preserved for open space. Obviously there are the implications of the separation distances between wells and septic systems that have to be complied with. There might be a way to not have a rain garden on every lot but to have strategically located rain gardens such that you are able to relocate or resize your main detention basins. Lot #26 might be an area to relocate that storm water basin which would allow for eliminating that crossing of the wetlands with a pipe. This is not a complete review. We thought that providing a rain garden on every lot overstates the tradeoffs that you would have to make, which is basically having those five lots moved into the front field, which is something you tried to preserve in the conservation analysis."

Mr. Henry added that he has witnessed over the years that when centralized storm water management facilities are located out of sight, they are also out of mind, and the only time anyone has anything to do with them is when they fail. He said he would prefer putting in smaller detention basins and possibly complimenting them with rain gardens. He predicted that if storm water management facilities are placed on private property, the homeowner isn't going to maintain it. He said rain gardens need maintenance every five years and said while they can be an asset if done right, he favors a mixture of uses, rather than going with something centralized and utilizing a lot of piping. Mr. Golden asked the applicant who would be responsible for the retention pond. Mr. Esposito said the applicant proposes to offer it for dedication to the Town and suggests forming a drainage district.

Mr. Bergus asked how rain gardens work with respect to a surge during heavy rains. Mr. Henry responded that if designed properly, the overflow would be directed into the detention basins. Even with rain gardens, he said, they discharge into the ground surface ultimately.

Mr. Esposito said he believes it is likely that the State will make the applicant size the basin to accommodate the peak flows anyway, "because these are only for treatment," he said.

Mr. Halloran said the Environmental Review Board has reviewed rain gardens and likes the concept. They found information from Orange County Soil & Water saying there is some viable recharge. There are also water quality benefits and a reduction of thermal impact, he said. The ERB has concerns about the new layout as proposed, questioning whether it meets the Code in terms of open space, and whether the homestead for the original property should be included in open space, suggesting that it probably doesn't comply anymore. He said the ERB thinks the plan should be re-done with strategically placed rain gardens, similar to Mr. Trelstad's comments.

Ms. Cleaver said she will provide the consultants with specs of rain gardens of different types and sizes, and for different slopes.

Mr. Trelstad said he didn't think anyone will argue the water quality benefit, but added that the concern is the water quantity and what happens with the water once it comes out of the bottom of the rain garden. "It is going to explode and will find its way to a low point," he said.

Mr. Lupinski said he thinks it's important, "if you are going to have any viability to this farm, to keep those houses as far away as you can." He said a primary concern of his is to protect the integrity of the farm parcel and that the integrity of the parent parcel should be paramount.

Mr. Esposito replied that the applicant is committed to building 1,000 feet of road, at considerable expenses before getting to the first lot and has taken an average density of 3+ acres per unit, clustered them and tried to do the best they could to maximize the open space and preserve the farmstead and taken the best management practices to manage storm water. "If you want low impact you have to take this suburban alternative of one acre lots and go back to three acre lots. You can't have your cake and eat it too. Our goal to keep Arcadia Road open and the farmstead open as best we could. We have both worked hard on that. So we agree with you."

Mr. Huddleston said he liked the original plan but is willing to look to see if there is some less impact, or more attractive method of handling the storm water. He said he'd like the applicant and consultants to try once more to come up with something that works but still keeps the integrity of the farm area and the open space along Arcadia Rd. "I hear real concerns from the board members about the rain gardens and some softer techniques here. Let's take another shot, if the applicant is willing, and see if we can get this in the middle of the road, realizing that there is a possibility that says we tried, but couldn't make it work. We asked the applicant to

look at an alternative of putting a rain garden on every lot. Now we are stepping back and saying maybe there is some middle of the road, maybe we can use larger rain gardens on fewer lots, combining them, and push that back, and maybe get back toward our original plan. I would rather see this wet basin that meets the state standards with one large area that needs to be maintained and keep the open space along Arcadia Road then pushing out into the farm land and reducing the open space.”

Ms. Israelski said that the farm needs to remain free from development and the five lots pushed down to Arcadia Road need to go back to the way it was. She agreed that there needs to be some middle ground.

Mr. Esposito said the applicant doesn't mind “taking another run through this, but we are still waiting for responses to the public comment” and asked for a commitment to include the public comment by the next meeting.” Mr. Trelstad said he would provide it.

**Hendler – 10-1-56.2 & 56.3 – 77.06 +/- acres** located on 6 ½ Station Road and Cheechunk Road, in an RU & CO zone with an AQ6 and scenic road overlay, for a Planned Adult Community with 154 units and 7-lot residential subdivision. Review letter 2/26/07 received from Jayne Daly.

Present for the applicant:

Applicant: David Weinberg  
Jayne Daly

Jayne Daly told the PB that the applicant objects to comments coming in late in the process as well as the extent of the comments that came from Town Environmental Consultant, Karen Schneller-McDonald. The comments were received by the applicant on February 2, after the close of the public hearing on January 4<sup>th</sup> and the public comment period on January 14<sup>th</sup>. Ms. Daly said the environmental consultant's comments call for 20 new studies stating, “we are not trying to set aside all responsibility for studying environmental impact, we did an extensive habitat report that went far beyond the scope, we did a comprehensive study.” She said the SEQRA process acts as a funnel with questions of: “What are you going to study”, “Did we get the studies right” and “Are there any questions based on the studies submitted”. She said that “at this point to have these comments coming in calling for very extensive, expensive, time consuming studies is wholly inappropriate. There is nothing substantive in her letter that says you really need to look, the request says there must be something out there if you looked harder. We looked harder, we went on 15 sites visits over 16 to 18 months, we did our homework. This is way too expansive and not appropriate at this time. We are

asking you to join with us in saying that these comments are inappropriate at this time,” Ms. Daly said.

Mr. Golden told the PB that the applicant’s position is that they should be able to ignore the letter because it is untimely, outside of the scope, unnecessarily burdensome and that it would be inappropriate for an FEIS. He said he didn’t think timeliness is an issue as SEQRA establishes a minimum time frame for public comment and that the environmental consultant’s analysis is not part of public comment, it was additional information as a board consultant so is not subject to the requirement. He also said he didn’t think it is unnecessarily burdensome in and of itself as to what it asks for, “I think more of the problem with her letter or report deals more with what she is asking for in the context of where you are in the process. As far as being beyond the scope, it clearly is in many respects,” Mr. Golden said. “Most of the wetland comments that she states are well beyond the scope of what this Board required to be studied, also with respect to the endangered and threatened species, it goes well beyond the scope of what you required. With respect to the ETS though, they identified and put forth in their data sheets, all the different trips that they took and what they saw and went beyond the minimum requirements you had with respect to their scope. However, in addition to simply doing that, they also went beyond the scope and appeared to study those items of conservation concern, not something that you had asked for, but they in fact in their data sheets indicated that they did study that and indicated that there were none. It didn’t say, ‘not applicable’ but ‘none’, that is a finding. If in fact there is some evidence that there are some, then they ought to be studying and responding to that in the FEIS, because they did study it, it’s a proper topic for them to go ahead and analyze in the FEIS if in fact the statement that they make in the DEIS is found not to be correct, or at least on some basis that it ought to be questioned.

“In general, I think that her letter is an appropriate letter if it was done at the proper time frame in the process, it doesn’t really come out and say we received the DEIS and determine there are some problems with the DEIS, but simply says we ought to have studied more in the DEIS, that is what I think is late in the process, she is not adding and commenting on specific DEIS, she is really commenting on what the scope ought to have been or whether or not the DEIS was complete as to the scope being set forth. Those two questions you have already answered. You have answered as to what the scope ought to be and you decided that the DEIS was complete, ie. responsive to the scope that you had requested,” Mr. Golden said.

“The applicant has indicated a willingness to discuss substantive comments. What I would suggest is that clearly some of the items that were brought up approach that substantive comment aspect, a lot of it does not.” Mr. Golden suggested that the

consultants meet to try to identify some very narrowly focused issues that could have some additional substantive comments addressed in the FEIS.

Ms. Daly said the offer wasn't necessarily as large as it might have been interpreted as, "it was more narrow, if there is something specific you want us to take a look at we will take a look at it, but 20 new studies is over the fence."

Ms. Cleaver handed Ms. Daly some paperwork, saying it contained some written concerns she and Ms. Israelski had previously sent to Susan Roth, concerns about visual aspects of the project and concerns with drainage flowing into the wetlands. Ms. Cleaver said she wasn't sure if Ms. Daly had ever received the comments and she hasn't found where those concerns were addressed. Ms. Daly said she hadn't seen them. Ms. Cleaver said she'd like to attend any meeting of the applicant and the consultants so that she can make sure her concerns are addressed at some point.

Applicant David Weinberg told the PB that when he received the letter from the environmental consultant he was "very, very perturbed" and felt it was unfair to receive at this late juncture. He said he has worked with the PB for the past two years and made tremendous progress over the plan, saying the changes that were suggested were incorporated in the plan throughout the process. "The process worked, the plan got better as time went on," he said. He said the letter "infuriated" him, "because it didn't say anything." He said if the PB has a concern and it isn't addressed in the EIS, "we will address them," he said, "I am not running away from anything. Just don't ask us to do studies for the study sake."

Mr. Bergus said that based on the scope that was presented to the applicant, he feels "they did do a very good job on the analysis, and if there are items like Sue has that should have been incorporated in, they are indicating that they will be incorporated in, but as he indicates to just go out and study just for the sake of studying is a waste of time, effort and money and something we would not be asking every applicant to do."

Ms. Israelski told Ms. Daly she had a problem with the visual impact and talked about lower impact design, the spacing of trees and establishing a larger caliber of trees, and was told by Ms. Daly that such concerns would come out in the FEIS.

Mr. Andrews said he liked Mr. Golden's suggestion that the consultants get together to see if there are areas that were missed and should be re-examined and said that he didn't think the letter from the consultant should just be tossed out without a thorough examination.

Mr. Myruski said his only concern was with the issues raised by Planning Board members that may have been missed by the applicant but said he believed the applicant has done well with everything they had in front of them.

Ms. Cleaver said she agreed with Mr. Myruski's statement and added that she thought there might have been an error made with respect to recharge and impervious surfaces and asked Ms. Daly to look into it.

Mr. Lupinski said he believed that procedurally the applicant complied with all of the time line requirements, adding, "the issue of what is substantive within the framework of the DEIS and those responses are probably within our purview, I think, so that when those questions are answered, we will determine if they are answered to our satisfaction and whether those answers are substantive."

Mr. Bergus said he thought the environmental consultant's report was a good report, but said he believed "that the depth of what she was asking for may be something that this Board needs to consider in future scopes as far as what we are looking for so that there is no misrepresentation as far as the level of detail that would be anticipated in a report, but to go backwards now and expect something that wasn't requested in the first place, I think would not be appropriate."

Mr. Huddleston told the applicant that he believed applicant's consultants did a very thorough job in their evaluation of the site. He said he was asking the applicant to sit down with the PB consultants and Mr. Golden to see if there are some issues that should be addressed in the FEIS, "it may be the issues that are decided upon, are already being worked on," he said, adding that it is important to him "to maintain a tight adherence to the DEIS."

Mr. Daly said she would request that Mr. Huddleston and Ms. Cleaver attend the meeting as well. "The offer was if the Board had an issue they wanted us to study, not if the consultants could come up with more stuff for us to do. If you come back to us, say study this, we will study it." Mr. Weinberg opened the offer to any member of the PB. Mr. Huddleston said he will try to be there.

**IV. OTHER BUSINESS**

Mr. Henry recommended that a Performance Bond relative to Remington Ridge Subdivision Phase II be reduced from \$790,000 to \$268,000. Ms. Israelski asked if she could be told ahead of time on something like this so that she could look for herself. Mr. Huddleston suggested bringing the recommendation back in two weeks.

**VOTE BY PROPER MOTION**, made by Mr. Myruski, seconded by Ms. Cleaver, the Planning Board of the Town of Goshen, moved to go into Executive Session at 9:35 p.m. with no intention of coming out of Executive Session. Passed unanimously.

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

Ralph Huddleston, Chair

Notes prepared by Susan K. Varden