

CONSERVATION ADVISORY COUNCIL MINUTES

June 13, 2006

PRESENT:

John Sussmeier, Acting Chair
Rodney Dow
Andrew Galler
David Klotzle, Wetlands Inspector

ABSENT:

Lew Kingsley
Eric Lind

GUESTS:

Laurence Belluscio - Mastrantone/Giordano application
Russell Cusick – Neighbor, re Jordan application
Steve Ferreira – Gainer/Segarra applicaion
Burton Laux - Mastrantone/Giordano application
Steve Luria – Neighbor, re Jordan application
Michael Priano – Mastrantone/Giordano applications
Councilman Richard Shea
Patty McCormack-Smith – Polhemus Application

The regular meeting of the Town of Philipstown Conservation advisory Council was held on the above date at the Philipstown Town Hall, 238 Main Street, Cold Spring, New York. The meeting was called to order by Acting Chairperson John Sussmeier at 7:40 PM

Applicant: Julisa and Paul Tomizawa

Tax Lot: 17.-3-9

Permitting Authority: Wetlands Inspector

John Sussmeier noted that several CAC members had made a site visit and found that the proposed house site is within the buffer; the septic is outside the buffer; and the driveway is partially within the buffer.

David Klotzle opined that neither the house's nor the septic would threaten the pond and stream, provided proper precautions were taken during construction of the house and driveway.

John Sussmeier noted that the house is only 28 feet from the pond and asked Paul Tomizawa if he would consider rotating the house so it's set back further from the pond.

Paul Tomizawa asked if this would better preserve the pond.

David Klotzle said that since the house is downstream from the pond, rotating it was less important than placing a riparian buffer between house and the pond.

In response to John Sussmeier's question whether this meant that the applicant should submit planting specifications, David Klotzle said he could provide the client with specifications for the buffer.

John Sussmeier asked for a motion to approve the permit with a stipulation that the applicant submit an planting plan in accord with David Klotzle's specifications.

All members present voted unanimously to accept Andrew Galler's motion to grant the permit.

Applicant: Strange

Representative: Robert Strange

Tax Lot: 83.5.-1-24.2

Permitting Authority: Wetlands Inspector

Andrew Galler recused himself.

John Sussmeier noted that at the previous meeting it had been moved that a permit be granted with the stipulations that an escrow account be established and that the project be monitored, but that David Klotzle had been asked to first check with the Town Attorney regarding the modalities for establishing an escrow account and specialist supervision of the construction.

David Klotzle said that he had checked with the Town Attorney, who said that the CAC can request the Town Board to require an escrow deposit and specialist supervision; however, David Klotzle opined that since permits had been granted for a similar applications (i.e. for swimming pool construction) without requiring an escrow account / specialist supervision, he felt that the escrow requirement was unnecessary. Consequently David Klotzle said he was willing to grant a permit but nevertheless would monitor construction.

John Sussmeier said that he agreed, but that since only two CAC members privileged to vote were present he was not sure a motion to approve could be made.

Richard Shea said that a third voting member must be present for the motion to carry, but that a nunc pro tunc vote could be taken prior to next month's meeting.

John Sussmeier suggested voting nunc pro tunc and that if the result was positive, unofficial permission could be granted, with an official vote to approve being taken at the July meeting.

David Klotzle noted that at the May meeting CAC members Kingsley and Lind both had been in favor of granting a permit.

On this basis approval was granted nunc pro tunc, with final, formal approval to be voted at the July CAC meeting.

Applicant: Mastrantone/Giordano

Representative:

Tax Lot: 27.20-1-5

Permitting Authority: Wetlands Inspector

John Sussmeier noted that no new materials had been received since the May CAC meeting.

Laurence Belluscio rose to submit a revised plan for the members to review. (Some of his comments were not audible because of paper shuffling.)

The CAC reviewed Laurence Belluscio's submission.

John Sussmeier noted the plan's contents (cut and fill; soil composition; culvert number, location, and size; mitigation; etc) but said he wanted the opportunity to more thoroughly review the plans and reminded applicants that plans ought to be submitted in advance of scheduled CAC meetings. He asked the applicants' representatives to verbally explain their plans in order to try to expedite the process.

David Klotzle said he would like to more thoroughly examine the plans but that they looked acceptable. He said that the applicants' representatives had done a thorough job of analysis and design.

John Sussmeier said he might want to see that mitigation had succeeded before the project could proceed further; i.e., before driveway construction.

David Klotzle said that although mitigation could be attempted now, its success or failure might not be apparent by August, by which time it would be desirable for the driveway to have been built.

John Sussmeier said that he felt David Klotzle and the other CAC members needed to more thoroughly examine the plans before the next meeting.

David Klotzle said he could talk to the applicant's representatives prior to the July meeting.

Michael Priano asked whether the town required a licensed arborist or an escrow account for the WI to be present on-site.

David Klotzle said that the Town can require an escrow account or a licensed arborist, as per the CAC's request.

David Klotzle also said that the escrow amount is an estimate based on the the amount of time involved, which may be subject to weather conditions.

Noting that this application has been pending for a long time, Andrew Galler said he thought the Council should consider granting a conditional approval; otherwise, the applicants might not be able to begin work this year. He added that conditional permits have been granted for projects with more serious environmental impact.

David Klotzle said he could make a determination within two weeks and the CAC then could grant a permit conditional upon his stipulations regarding a successful, staged mitigation plan (e.g., a one-year plant survival period). David Klotzle noted that this won't be easy but that we could proceed conditionally, in phases, and with a bonding requirement re successful ofmitigation.

Laurence Belluscio said he thought phasing is a reasonable requirement.

Andrew Galler said he thought one year is not a sufficient plant-survivability period to gauge mitigation's success.

John Sussmeier suggested granting a permit conditionally, with David Klotzle to be responsible for specifying and enforcing requirements and stipulations.

David Klotzle said he would rather that the CAC look at a more fully developed set of plans submitted prior to the July meeting and then vote on the matter. He said that in the interim, he would meet with the applicants' representatives to provide a detailed outline of his ideas re timing, bonding, inspections, etc.

John Sussmeier summarized that, although mindful of proceeding expeditiously on this matter, sufficient concerns had been expressed re mitigation to warrant postponing a vote until the July meeting.

*Applicant: Jordan
Representative:*

Tax Lot: 17.-2-87

Permitting Authority: Wetlands Inspector

The applicant was absent. David Klotzle said Mr. Jordan is waiting for a state permit, because he had submitted revised maps to the DEC.

John Sussmeier recognized Steve Luria, a member of the public, who wanted to speak about the application. Steve Luria said he recently had purchased a neighboring property and wished to state his opposition to the placement of a driveway in a wetland. He noted that he had written a letter outlining the reasons for his opposition to Bill Mazzucca and that he had cc'd David Klotzle, John Sussmeier and other members of the CAC. He asked permission to read his letter into the record. The text of that letter, dated 23 May 2006 follows:

I have recently contracted to purchase the property at 541 East Mountain Road North which neighbors a property owned by Robert and Karyn Jordan who reside at 545 E. Mountain Road North. As you know, the Jordan's are applying for a permit to build a driveway on a flag-shaped property (tax Lot: 17.2-87) that they recently purchased which would lead to a proposed house behind their existing home. There is no pre-existing subdivision plan for the house and septic.

I am writing this letter to publicly state my opposition to this proposal. I have copied the following individuals to ensure that they are also aware of my concerns: Mr. David Klotzle, Wetlands Inspector, Mr. John Sussmeier, Conservation Advisory Committee (CAC) Acting Chairperson, Mr. George Cleantis, Philipstown Planing Board Chariman, Mr. Vincent Cestone, Philipstown Zoning Board of Appeals Chairman, Margaret Dke, New York State Regional Permit Administrator for Region 3, and Brian Drumm, Wetland Biologist for Putnam County.

I want to make it clear that part of my reason for purchasing my property is because of the magnificent wetlands that connect to it, the same reasons it seems that the Jordan's purchased theirs according to what is documented in the CAC meeting minutes of what Mr. Jordan has stated. Unfortunately, I have not been able to attend any of the meetings due to work commitments but I have read the minutes for all of the CAC meeting available on the Philipstown webside at www.philipstown.com. I further did some researche with the NYSDEC who told me that they were familiar with this wetland and I was told that an application by the Jordans was not submitted nor could I find an application on the DEC website. When I showed the DEC the pictures of the property they were astonished that anyone would even consider putting a driveway through these wetlands. In fact, I believe that if anyone looked at the wetlands this past winter, they would see how much water is there. Therefore I have attached a picture of the wetland where the exact proposed driveway is. The picture was taken February 2, 2006.

I understand Mr. and Mrs. Jordan's desires to develop land in this valuable real estate market and the rights of property owners, and from what I see from the meeting minutes, Mr. Jordan has stressed the importance of doing work with minimal impact to the wetlands. I do not wish the Jordan family any harm. However, I too, have property rights and the right to protect my property from harmful destruction as well as ensure that as a member of this community, my town protects its natural resources. Although I am not an expert in wetland development issues, based on my own assessment, as well as what I have found out with the DEC, I believe that the proposed development would be in violation of state and town wetland laws. It would harm the wetlands, including the portion of the wetlands that are on my property. Numerous problems could arise including long-term floodwater retention and/or ground water recharge problems as well as serious harm and destruction of important habitat for wildlife. It would have a deleterious effect on my property value as well as cause a significant problem for the part of my property that is not within the wetlands. In addition, because the wetlands are at the top of the mountain, the polluted water running down the mountain could seriously harm the water supply to neighboring properties including my own.

I believe that not only would there be problems by the driveway itself including harm cause during its building, harm would also be caused by the building contractors to build the house and move materials to the site would then use the driveway. The problems don't stop here. Once the house is built, the driveway would continue to be used for perpetuity by any future owner and any visitors including visitors for servicing the house such as oil and gas deliveries, mail services, future construction needs, emergency services, property maintenance, etc. Not only would discharge of normals vehicle exhaust and oil continuously seep into the wetland, the driveway could pose a hazard to vehicles moving right through the wetland and result in even more problems. For example, if one were to look during the last winter at the driveway built on the opposited side of 541 East Mountain Road North by Mr. Padilla, a driveway that does not have NYSDEC approval, one could easily imagine a vehicle sliding off the road right into the wetlands. The road was a slick, muddy, uneven, pothole-ridden mess. What I do not understand is why this was permitted to be constructed without NYSDEC approval.

It should be noted that the Jordan's purchase the property before ensuring that they would be able to develop it and took the risk that they may not get approval. Many people would not take this risk. In fact, I believe that any reasonable person who looks at these wetlands would think that it would probably be illegal to develop it or at the very least, would conclude that it would be a very costly endeavor. By purchasing the land, the Jordans assumed this risk and shouldn't be coming to the town as if their property rights are being violated. Perhaps they made the wrong decision or perhaps there is an alternative that may be better suited to the needs of the Jordans, yet would not trample on my property rights and on the precious wetlands that serve this community and that it would we

within the laws of the state and the town. As any one can see from the enclosed picture, the impact to the wetlands as well as to my property would be huge, will detrimentally affect the value of my property, and would cause significant harm to the wetlands.

Therefore, I would like to ask the town to ensure the following:

- The town does not grant a permit for this application.
- Any permit granted to any property owner including this applicant, would have an application filed and approved by the state first. David Klotzle told me during a telephone conversation I had with him Friday, May 19, 2006 that he would never approve any application filed with the town before seeing that the state approved an application filed with them.
- The letter and intent of all of the laws are abided by.
- No variances are permitted for this application
- Before making an approval for any application for wetland modification, the town ensure that a proper environmental impact assessment is performed as well as an impact study for all neighboring properties.

I would like to thank you in advance for your attention to this matter and for ensuring that our environment and our community are protected from unnecessary harm.

Sincerely,
Steve Luria

Steve Luria then asked the CAC why this matter is even being considered by the CAC, since, in his opinion, the application the proposed construction flagrantly violates the wetlands law.

After explaining that the CAC's task is to balance an applicant's needs with the need to preserve wetlands, John Sussmeier noted that the case currently is in DEC hands and that the CAC will not do anything until the DEC reaches a decision.

John Sussmeier then recognized another member of the public who owns property adjoining the Jordan site, Russ Cusick (RC). RC showed a video of the wetland on his laptop computer.

Steve Luria and Russ Cusick also provided the CAC several hard-copy color photos of the site. (The photos are on file.)

Rodney Dow noted that when Jordan first approached the CAC, he said he wanted to know if he could obtain a permit before purchasing the property, but that he had then gone ahead and purchased the property without learning whether he could in fact get a permit.

Steve Luria and Russ Cusick both closed by reiterating their request that the Town to consider their rights in the matter.

The application is on the July Agenda.

Applicant: Gainer/Segarra

Representative: Steve Ferreira

Tax Lot: 90.8-2-9

Permitting Authority: Wetlands Inspector

John Sussmeier noted that the May CAC meeting had requested David Klotzle to ask Town Attorney Doyle about the feasibility of an making the permit conditional upon an escrow account for a contracting engineer or for the Wetlands Inspector, David Klotzle, for project oversight.

David Klotzle said that Town Attorney Doyle told him that a request to the Town Board is acceptable, and that supervision could be performed by either a contracting engineer or the Wetlands Inspector. David Klotzle suggested that: (1) an escrow account be established; (2) because of the potential impact on Cortland Lake, he inspect the site on a regular basis; and (3) the applicant also be required to retain the project engineer to submit regular reports during the project's construction phase.

In response to John Sussmeier's inquiry regarding the implementation of the above 3 items, David Klotzle suggested that construction phases be made conditional upon both his inspections and upon the engineer's reports.

John Sussmeier asked if this meant that the CAC was in a position to vote on a permit.

David Klotzle said the permit could be granted conditionally upon the Town Board's approval of a formal CAC request that an escrow account be established and upon the project engineer's submission of regular reports, particularly during the construction phases. David Klotzle said he would monitor the wetlands-related matters. He added that the size of the house and of the septic could also be made permit conditions.

John Sussmeier asked for a motion to grant the permit subject to all the above-mentioned conditions.

Rodney Dow said that even with the three above-mentioned conditions he would not make a motion to to approve because he believes the project violates the intent of the Town Wetland law.

John Sussmeier made a motion to approve.

After stating that the engineer (Steve Ferreira) had done an admirable job in trying to meet the CACs requirements, Andrew Galler said that ethically he could not vote to approve the project because it goes against the grain of the Town Wetlands Law and therefore was abstaining.

John Sussmeier said that the motion didn't carry, and therefore the decision falls under the Permitting Authority's jurisdiction.

Councilman Shea said that a second yes or no vote is needed to grant the permit.

David Klotzle suggested taking a formal vote next month, when the two absent members (Lew Kingsley and Eric Lind) are present. He added that he doesn't have a problem granting a permit, but that he could not officially grant one in the absence of a vote from a voting CAC quorum.

John Sussmeier said that the month's delay would provide him time to specify all of the permit's conditions.

The matter is on the July Agenda.

Applicant: Pearson

Representative:

Tax Lot: 38.-3-49-2

Permitting Authority: Wetlands Inspector

John Sussmeier said that the CAC had made a site visit, but noted that: (1) a map showing the wetland and watercourses was needed; (2) the driveway should be sited on top of the dam and bear the weight required; (3) since storms cause spillover from the neighbor's pond, the applicant needed to handle the runoff; (4) a formal plan showing how the second and third items were to be handled is required.

Both David Klotzle and John Sussmeier said such a plan is needed well before the next meeting.

The matter is on the July Agenda.

Applicant: Scherer

Representative:

Tax Lot: 24.-3-5.2

Permitting Authority: Wetlands Inspector

John Sussmeier noted that a planting plan had been received and most CAC members had made a site visit. He added that the proposed deck was not included on the wetlands plan.

Andrew Galler said he was disturbed by the planting plan, because he believes it will result in siltification. He said it would be better not to cut vegetation in order to create a view, otherwise he was not comfortable voting to grant a permit.

David Klotzle noted that some but not all trees could be cut to create a view, but that cutting all of the trees would create a siltification problem. He said that the applicant should provide a staged, partial-cutting plan.

David Klotzle suggested that a skilled expert could produce a plan to allow a view while still preserving most of the existing vegetation.

John Sussmeier pointed out that the slope where the vegetable garden is located is very steep.

Andrew Galler suggested locating the vegetable garden in part in the septic area because it is flat.

John Sussmeier said the CAC needs a topo map down to the stream in order to assess the efficacy of the applicant's erosion-control measures.

David Klotzle summarized by telling the applicant that the current plan was incomplete and that the following items should be added:

- Topo map down to the stream
- Garden plan
- Deck location
- Erosion control measures along the stream
- Planting plan

He also said that a planting/forestry expert/arborist would be needed if the applicant chooses to remove any native vegetation, and that he would be happy to meet with such a person. David Klotzle said he would be happy to meet with the applicant and his expert adviser regarding replanting.

The matter is on the July Agenda.

Applicant: Brown/Wallis

Representative:

Tax Lot: 17.-2.-89

Permitting Authority: Wetlands Inspector

Brown/Wallis were absent. This matter was rescheduled to July.

Applicant: Mackin
Representative:
Tax Lot: 17.-3.-8
Permitting Authority: Wetlands Inspector

John Sussmeier noted that Mr. Mackin had submitted a revised plan developed by Badey and Watson.

Mr. Mackin explained that because of an issue with his neighbor he needed to relocate part of the driveway on his property . He added that the utility pole did not need to be moved because it already is on his property. He said that a wetlands / wildflower mix, as per David Klotzle's recommendation would be created.

John Sussmeier said that the plan needs to specify in detail what will be done to protect the wetland from erosion; e.g., stone wall, gabion, boulders in basket.

David Klotzle agreed with John Sussmeier that all the above-mentioned details should be provided so that he would be able to specify them in his permit.

Rodney Dow suggested granting a permit contingent upon review of gabion details, construction details.

The motion was accepted. The plans will be reviewed at next month's meeting

Applicant: Healy/Graham
Representative: Lawrence Bulluscio (LB)
Tax Lot: 27.-1-21
Permitting Authority: Wetlands Inspector

David Klotzle stated he had no problem with regranting a permit.

John Sussmeier mentioned he would like the culverts to be constructed of concrete.

Motion to grant was approved unanimously.

Applicant: Edgar Polhemus II (EP)
Representative:
Tax Lot: 89.-1-10
Permitting Authority: Wetlands Inspector

John Sussmeier stated that the CAC would like to be able to examine the applicant's remediation plans ahead of its meetings.

Patty McCormack-Smith, used charts, diagrams, and photographs to show the extent of the violation (3800 cubic yards) and her preliminary ideas to protect the stream by using large boulders, a silt fence and trees at the top of the slope.

Patty McCormack-Smith said that she would furnish a detailed plan in advance of the July meeting.

WETLAND INSPECTOR'S REPORT

- The Wetland Inspector got a call from the Town Supervisor's office asking why he hadn't submitted vouchers for Carlson, Padilla, and Drum escrow accounts, all of which had been referred to the CAC by the Planning Board. He had never been informed that Carlson had been granted a permit and construction had started but the Wetland Inspector hadn't been notified. A similar situation exists re the other two applications. Since he hadn't been informed in a timely fashion, the Wetland Inspector had not been able to monitor the wetlands-related issues of the permit. Neither had the Town's reviewing engineer, Bibbo Associates, been notified. In short, the only person who looked at the construction was from the Building Department. The Wetland Inspector suggested that the Planning Department create a list of Town officials who should be notified in cases of Planning Board permit grants, and that construction not be allowed to commence without these officials' formal verification that the permitting terms falling within their area of responsibility had been fulfilled. He suggested working with Councilman Shea on this matter, and Councilman Shea agreed.
- Garrison Institute wetlands delineation was performed; no wetland was present.
- Complaints were reported on the Raju property, but no wetland violation was found.
- Several complaints has been received on the Jackal property. No violation was found.
- Several complaint were received on the Hopkins property on Lanegate. Councilman Shea said Town Board had met with Hopkins, who had torn down a house and built a new one built in it's place. He said that and that in cases like this a re-permitting process should be instituted. The Wetland Inspector said no wetlands issue was involve in this particular case.
- Dempsey had not added material to what already had been placed in violation of Wetland law. A Wetland stop-work order had been issued.
- Percacciolo and Flaherty got massive amounts of fill and placed it in violation of Wetland law. They did, however, put up silt fence. They also need to put up coir

- Goldberg, next to Tomizawa, requested a wetland determination.

CAC Member Rodney Dow's Letter of Resignation

To: Supervisor Mazzuca and Town Board

From: Rodney Dow

Date: June 14, 2006

I joined CAC about ten years ago, shortly after Caroline Krebs was appointed Chair. Having grown up on Long Island and seen the end results of over-development there, I hoped that joining the CAC here would enable me to make a difference for Philipstown. One project I took on was reviewing the state of the Town's largest aquifers. I spent a lot of time going through the files, which I don't think anyone else had done. The reason I did this was that mid to western Suffolk County, where I'm from, developed one of the highest rates of cancer in the country after the well water was polluted, and I didn't want that to happen here. I quickly learned what a challenge making a difference for Philipstown would be when I expressed my concerns to Town Board during a CAC annual review, because Ed Engelbride's response was "Pollution it's inevitable." My response was "It's inevitable if you don't do anything about it."

The next project I worked on was the timber harvest law, but it was not completed until after Harold Lyons had his loggers put a logging road through the wetlands to harvest trees on his property in the Hudson Highlands. We specifically took Steve Coleman to see the violations there and Mr. Lyons got nothing more than a slap on the wrist.

We completed the Open Space Index shortly before Ms. Krebs left town and Suzie Gilbert became chair. At that point I realized that the CAC had no clout and was just fulfilling a state requirement because when I asked Ande Merante, our Town Board Liaison, why CAC didn't become a Board, he responded "No way will this ever happen under the current Town Board." This was his feeling even though around that time, Bruce Barber of the Town of Yorktown made a presentation to Town Board about the positive aspects of having a CAB, one of which was giving clout to 20/20.

Joining WAC and CAC was a good idea, but only wetlands issues are being dealt with. The town agenda is that people pretty much have a right to do what they want to do so I have realized that I can't make a difference as long as people have the right to put roads through wetlands. We request mitigation, but

statistics show that mitigation doesn't work 90% of the time. We will continue to chop up our valuable wetlands and we will continue to have more and more contamination in our well water. Philipstown will become another Long Island, and it will become very costly to get decent water. In the meantime many people will be drinking contaminated water and not even know it. When I think of this, I think of Tim Miller once telling me that every piece of land that can be developed in Philipstown will be developed. Not a wise choice.

I have given a lot of my time to trying to make a difference in Philipstown, but I don't think it's possible with the current agenda, so this is my letter of resignation from CAC. I hope that someday there will be a Town Board that recognizes that conservation is a benefit to the health and finances of the citizens of Philipstown so that people like me, who are willing to put a lot of effort into it, can make a difference. During my tenure some have thought that I have a certain level of hot-headedness and probably should not be serving on the CAC. I think this a misunderstanding of my conviction, passion and belief in doing the right thing. I do not fault the town board for lack of vision and lack of urgency to stop the continued development on marginal land - you have not grown up on a Long Island.

Respectfully Submitted,

Rodney W. Dow

A Resolution to pass previous months minutes was approved.

Motion to adjourn was unanimously.

Meeting adjourned at 10:30 PM