

## **CONSERVATION ADVISORY COUNCIL MINUTES**

July 11, 2006

### **PRESENT:**

Andrew Galler, Acting Chair  
David Klotzle, Wetlands Inspector  
John Sussmeier  
Lew Kingsley  
Eric Lind

### **GUESTS:**

Laurence Belluccio - Mastrantone/Giordano application  
Mike Gibbons, Planning Board  
Steve Ferreira – Gainer/Segarra applicaion  
Bill Florence – Wassil Application  
Hugh Moss – Scherer Application  
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 Andrew Galler at 7:35 PM

*Applicant: Wassil*

*Representative: Bill Florence*

*Tax Lot: 17.-2-40*

*Permitting Authority: Wetlands Inspector*

Bill Florence summarized the application as follows: The property is a 7.5-acre single parcel. The original application had been approved years ago, but the driveway relocation currently being requested had not been approved. The problem is that the Planning Board will require the applicant to pave to the point of the driveway, which would make the original driveway location so expensive as to outpace the ultimate value of the parcel as a building site. Also, there are two places where water drains toward the pond, and it would make better business sense to cross these drainage areas using corrugated metal pipe.

Andrew Galler: The rationale of the driveway siting as approved on the original application was to do minimal damage to the intact wetland. So question is, does the change requested mean that a completely new application is required?

Bill Florence agree, because the issue of access to Crest Road didn't exist originally. Subsequently, the neighboring owner, Salvatore, sold ther neighboring parcel to purchasers who immediately got building permits, but the Wassils did not know the rules and therefore did not apply in a timely fashion. They subsequently learned they are ninth nine on an eight-house road, and therefore require PB approval for access to their site.

Andrew Galler addressed the following question to PB representative Mike Gibbons: Is the PB going to take over as permitting authority?

Mike Gibbons responded that the PB wanted CAC advice; that the PB had said that road-widening was acceptable, but that the type of paving to be used had not been determined; that question of going in over lake versus coming in over main road remained. This is a drainage issue that falls under the CAC's purview. The fundamental issue is the validity of going in over the lake versus coming in closer to the main road. This is why a CAC determination on this issue is needed.

In light of Mr. Gibbons remarks, Andrew Galler asked CAC members their opinions on whether this is a new application.

John Sussmeier said he thought it was a new application.

David Klotzle concurred.

Summarizing the situation, Andrew Galler said that if the Wassils did not want to use original plan as approved, then a new application is required. If, on the other plan, the original driveway siting were used, then the existing application could be renewed. He also pointed out that the CAC's primary interest is wetlands protection, not the applicants' financial issues.

Bill Florence said that, ultimately, the applicant needed to be able to use the property in a fashion that would justify the expense.

Andrew Galler replied that the CAC does work with landowners to try to develop satisfactory solutions.

David Klotzle pointed out that the original plan had been upgraded to include a gabion, core logs, and fabric liner, and that he thought the original driveway location is the best one possible from an environmental perspective.

John Sussmeier agreed.

Bill Florence said he would talk to the applicants' engineer re relocating the driveway and submitting a new plan. He conceded that from a wetlands perspective the already-approved driveway location was best, but that the applicant might request the CAC's judgement as to whether a new one is acceptable.

David Klotzle said reflagging, a drainage study, and a wetland evaluation would all be required for a new application.

Andrew Galler added that CAC also would want to know the amount of wetland that would be lost and the amount of mitigation.

David Klotzle suggested that Bill Florence or an engineer contact him to discuss the matter further; that engineer ought to check the new wetland law; that mitigation issues be addressed, and that the proposed driveway location be flagged.

Andrew Galler noted that the sooner a new application received was received the easier it would be for the CAC to study it and schedule a field trip to look at the property.

The matter will be revisited at the August meeting.

*Applicant: Flaherty/Percacciolo*

*Representative: Anthony Percacciolo and Robert Flaherty*

*Tax Lot: Tax Lot 27.-8-1-4*

*Permitting Authority: Wetlands Inspector*

Mr. Flaherty noted that the applicants had filled the property over the past several years and that after receiving mail from the Wetlands Inspector advising them that they were in violation of the wetlands law and might need to apply for a permit. In the meantime, they had attempted to address the violation by using plantings, silt mats and an erosion fence.

David Klotzle asked about state-mandated drainage pipe.

Mr. Percacciolo and Mr. Flaherty noted that state had made them extend the existing culvert pipe; that although they had not known they needed to apply for a permit they had maintained a 75-foot setback.

David Klotzle told them the new wetlands law mandated a 100-foot setback.

Andrew Galler noted that 75 feet would have been OK in the original permit.

David Klotzle said the applicants had done a good job in correcting the problems thus far along the embankment, using silt fence, hay, mats, seeding; although there might still be a problem where the culvert pipe went in and the earth was depressed.

Mr. Percacciolo and Mr. Flaherty said they intended to put hay bales there, although very little storm water reached that pond.

Andrew Galler asked whether this is a permit application or a remediation process.

David Klotzle said currently this is remediation, but that if they want to top off the site, a permit is needed, which would require their map to have a setback line, which would require wetlands flagging.

Andrew Galler asked whether a drainage survey also was needed to determine the type of silt that might go into the creek.

David Klotzle said that he was discussing this issue with Mr. Percacciolo and Mr. Flaherty.

John Sussmeier asked whether the topography in the map had changed over time.

Mr. Flaherty and Mr. Percacciolo said it had changed, by 4-6 feet in some spots.

John Sussmeier asked whether the fill had moved closer to Clove Creek.

Andrew Galler asked the other CAC members what they thought was needed from the applicants.

John Sussmeier said he would like a revised map, an up-to-date topo, and a 100-foot buffer by a wetland scientist, rather than a surveyor.

The matter will be discussed at the August meeting.

*Applicant: Strange*

*Representative: Robert Strange*

*Tax Lot: 83.5.-1-24.2*

*Permitting Authority: Wetlands Inspector*

Approval had been granted nunc pro tunc at the June CAC meeting, with a formal approval vote to be taken at the July CAC meeting.

Andrew Galler recused himself and asked the remaining members to take a vote.

John Sussmeier made a motion to approve. The motion passed unanimously

*Applicant: Mastrantone/Giordano*

*Representative: Laurence Belluscio  
Tax Lot: 27.20-1-5  
Permitting Authority: Wetlands Inspector*

John Sussmeier asked the size of the culverts.

Laurence Belluscio said they were 2-feet square. He also noted that the revised spec sheet showed the second crossing, as per CAC request.

John Sussmeier noted that the driveway going up to the house was steep and asked whether the CAC ought to see precisely what was being proposed to stabilize it.

Laurence Belluscio said a typical procedure, involving pitching and rip-rap, was being followed so that runoff wouldn't discharge into the wetland.

John Sussmeier reiterated his concern about the possibility of erosion on one particularly steep section of the driveway. He asked whether paving would be a good idea.

David Klotzle suggested using gabion as well.

David Klotzle said that temporary silt barriers and or hay bales should be emplaced nightly to protect the wetland during construction.

Laurence Belluscio said he had no objection to Mr. Klotzle's proposal regarding runoff during construction, and that he doubted there would be any problem after the driveway was constructed.

Andrew Galler suggested that the CAC ought to have a construction narrative for the upper driveway, specs for the gabion wall, and a cross section. He then asked whether, in view of the many months this application had been pending, the CAC ought to vote to grant a conditional permit.

David Klotzle suggest that a conditional permit would be acceptable as long as it included an escrow account for three years of monitoring and a satisfactory mitigation plan, in addition to the additional documentation suggested by Mr. Galler.

Lew Kingsley asked about whether a mitigation study had been performed.

David Klotzle said that preliminary mitigation information had been provided, but that this would have to be reexamined as construction proceeded.

Andrew Galler said that if a conditional permit were granted, a photographic record ought to be maintained in order to establish what works and what doesn't in cases situations like this came up in the future.

John Sussmeier said the question is, how much detail ought the CAC be provided with, in view of the 25 percent driveway grade, but that the CAC also needed to bear in mind that this had been a long-running application process.

Mr. Giordano noted out that application had been pending for eight months.

John Sussmeier said he would accept granting a conditional permit, as long as it provided for paving the critical section of driveway.

The motion to pass a conditional permit passed, with Lew Kingsley voting no.

*Applicant: Jordan*

*Representative:*

*Tax Lot: 17.-2-87*

*Permitting Authority: Wetlands Inspector*

David Klotzle said that Mr. Jordan had not called, and that the Jordans still were awaiting a DEC permit determination.

*Applicant: Gainer/Segarra*

*Representative: Steve Ferreira (SF)*

*Tax Lot: 90.8-2-9*

*Permitting Authority: Wetlands Inspector*

David Klotzle said the escrow account request was on the the Town Board's upcoming meeting Agenda

Andrew Galler noted that at the prior month's CAC meeting he had abstained and Rodney Dow had voted against, so there a vote to permit could not be taken. He then asked for a new motion to approve, in view of Rodney Dow's resignation and Eric Lind's and Lew Kingsley's absences from the June meeting.

Steve Ferreira said that his client's application had been pending for 8 months and that everything possible had been done to satisfy the CAC's recommendations re location of the house, the septic, and the driveway, and that there was no place else to put the house and the driveway.

Noting that the applicant had done everything possible to satisfy the CAC, John Sussmeier moved to approve the application.

Eric Lind seconded.

Lew Kingsley voted against approval.

Andrew Galler abstained.

Andrew Galler asked David Klotzle to contact the Town Attorney, since he thought three votes are needed for approval, and that if pressed to vote, he would vote against.

David Klotzle said he would ask the Town Attorney if he had the power to grant a permit, subject to his stipulations regarding the driveway.

*Applicant: Pearson*

*Representative:*

*Tax Lot: 38.-3-49-2*

*Permitting Authority: Wetlands Inspector*

Mr. Pearson pointed out that the flagging was incomplete on the map.

David Klotzle noted that he could not understand the map regarding the driveway's location. He said that a more accurate map was needed, one showing details of roadway/berm reinforcement and the weight-bearing capacity of the dam. He also said that a core test was needed to establish weight-bearing capacity, and that a reinforced masonry wall was needed to secure the roadway/berm..

John Sussmeier noted that it was important to know that the roadway could support a heavy vehicle, such as an oil truck.

Andrew Galler mentioned the possibility of using rip-rap on the pond side to help stabilize the driveway.

John Sussmeier said that additional cross-sectional detail was needed both before and after.

Eric Lind asked whether the septic was in the buffer.

Mr. Pearson said he thought it was 100 feet from the pond.

Andrew Galler disagreed, saying that the buffer goes right through it. He said that on paper it does not look like the septic can go outside the buffer, and that a permit has never been granted in such cases, although expansion fields had been.

Mr. Pearson responded that the county health department had already permitted the septic location.

Andrew Galler said that granting a Wetlands permit was the CAC's responsibility, not the county health department's. Therefore the applicant's engineers needed to place the active part of the septic field needed to go outside of the buffer.

Mr. Pearson responded that it had been approved years ago.

David Klotzle noted that he had looked into a self-contained septic within a wetland, that had been granted in Carmel and had the manual but that the actual permit could not be located.

John Sussmeier said he had spoken with Joe Paravoti who works for the county, and that Mr. Paravoti told him that such systems were not being considered.

Andrew Galler asked for suggestions regarding what more data Mr. Pearson needed to supply.

John Sussmeier said he did not understand why the Board of Health had granted a permit for the septic in its proposed location in the first place.

Andrew Galler said that the CAC needed to be supplied with the Board of Health permit as well as a revised engineer's plan.

John Sussmeier asked David Klotzle for ideas regarding septic mitigation.

David Klotzle said that the entire site is a wetland, and that therefore the only thing you could do is improve the character of the wetland vegetation or make some improvements for wildlife, because there's no possibility of creating additional wetland.

John Sussmeier said that a section of the driveway was his main concern.

Lew Kingsley said that this meant that a cross-section of the driveway would be needed.

Andrew Galler said he was more concerned about seepage or damage to the lower wetland than about its proximity to the upper lake.

John Sussmeier asked whether the existing stream is shown.

Andrew Galler said that what's shown is a runoff. He then said that the CAC needed to see a revised plan showing the driveway construction cross section and the entire septic location. He noted that it might not be possible to fully relocate the septic but that at least the working part of the septic should be outside the buffer.

The matter will be reconsidered at the August meeting.

*Applicant: Scherer*

*Representative: Hugh Moss  
Tax Lot: 24.-3-5.2  
Permitting Authority: Wetlands Inspector*

Mr. Scherer brought in a revised plan showing the items requested by the CAC at its previous meeting.

After examining the plan, Andrew Galler asked whether Mr. Scherer's plan was to continue construction of the deck, but without touching any of the vegetation.

Mr. Scherer said yes.

Andre Galler asked for other CAC members' opinions.

Eric Lind said he thought the plan was acceptable.

David Klotzle noted that he had asked for a double row of silt fence and this was shown in the revised plan and that existing vegetation on the wetlands side of the house would be essentially preserved. He also said the new construction would involve minimal disturbance to the buffer.

John Sussmeier said that was acceptable to him.

Andrew Galler said he would like to see a construction narrative specifying where machinery to construct the deck pilings will go, because he wanted to be sure that it does not go too close to the buffer.

Mr. Moss said no machinery would be used for planting.

Mr. Galler said he was concerned about machinery used to construct the deck.

Mr. Moss said the only machinery would be a concrete truck, which would be on the driveway side of the house, which was protected.

Andrew Galler's motion to grant a conditional permit stating that no machinery would be used on the wetlands side of the house was passed unanimously.

*Applicant: Brown/Wallis  
Representative: None  
Tax Lot: 17.-2.-89*

*Permitting Authority: Wetlands Inspector*

Mr. Wallis provided a NYS DEC permit, a revised plan, and site map.

John Sussmeier asked what's different on the revised plan just submitted

Mr. Wallis noted that everything requested had been supplied three meetings ago: core logs, gabion, culvert.

Andrew Galler said he would prefer that cedar or steel rather than pressure-treated timber be used on the larger of the two culverts, which is going to be used as a bridge.

Lew Kingsley asked whether the destroyed wetland will be resurrected or whether it will stop where it is.

Mr. Wallis said that it will stop where it is.

David Klotzle pointed out the plan includes concrete culverts and gabions.

Andrew Galler asked whether a drainage survey had been submitted.

David Klotzle replied in the negative, but said that everything else had been included.

Andrew Galler asked whether the 15-percent grade was acceptable in terms of driveway and construction runoff.

David Klotzle replied that the steeper grade is outside the buffer.

John Sussmeier asked about blasting.

Mr. Wallis said that he intended to do as little as possible in order to keep the site as pristine as possible.

Eric Lind asked whether coir log placement as indicated in the plan would impede stream flow.

David Klotzle said it would, and that therefore they ought not to completely obstruct the flow of the stream and that at least the center portion of the core logs should be removed..

John Sussmeier asked whether a flow-rate analysis was needed, in view of the fact that it's basically the same as on the neighboring Jordan property.

Andrew Galler asked whether the CAC was comfortable with moving forward and taking a vote to grant permit.

Eric Lind said he was, provided that coir logs were removed after construction and that pressure-treated lumber not be used on the culvert.

John Sussmeier's motion to grant a permit passed unanimously.

*Applicant: Edgar Polhemus II*

*Representative:*

*Tax Lot: 89.-1-10*

*Permitting Authority: Wetlands Inspector*

Patti McCormack-Smith showed photographs of the site that had been taken on the day of the CAC meeting and noted that a planting schedule had been submitted earlier; that a silt fence had already been constructed; that a plan to put in topsoil, trees and a stone wall as a protective barrier at the top of the slope had also been submitted. She also said that the stream currently is clear and stable and that all work done since the last meeting was over 100 feet from the creek.

John Sussmeier asked who owns the property at the left of the map, since this is where a great deal of the fill had taken place.

Patti McCormack-Smith said it was a Polhemus Construction Company property.

John Sussmeier said that this meant that two properties were involved in the violation, since Edgar Polhemus II does not own the property on which some of the filling to place. In fact, the bulk of the infraction is on property owned by someone who is not present.

Andrew Galler said that since another landowner is responsible for a large part of the violation, the CAC needed to find out from the Town Council and/or the Town Attorney how to proceed.

Patti McCormack-Smith said she works for both landowners and asked whether the application could be amended to apply to both..

David Klotzle and Andrew Galler said that two separate applications might be required.

David Klotzle said he would review how to proceed with the Town Attorney.

The matter will be considered at the August CAC meeting.

## **WETLAND INSPECTOR'S REPORT**

- Considerable time had been spent directing the Flaherty/Percacciolo efforts to repair the slope they had filled in. He said he thought they had done a good job.

- Considerable time also was spent at the Scherer site, discussing whether to remove the vegetation on the slope; at the Wallis site; and discussing the Polhemus violation with Ms. McCormack-Smith.
- A new violation had been detected at the Montoya property, 236 Albany Post Road and a stop-work order issued. (A stone wall was being constructed close to a wetland.)
- Good work appears to have been done on the Armstrong property on Lake Celeste. Coir logs had been installed.
- The Hopkins property had been reinspected and determined to be purely a Building Department matter.
- At her request, a wetlands determination had been done on Ms. Cox's property (Staff Farm) north of Lake Celeste. No wetlands are present.
- The Walter Hoving Home pond will begin being cleaned and filled
- American Tower Corporation wants to put a cell tower 101 foot from a wetland. The location is 2261 Old Albany Post Road.

**The June minutes will be considered at August Meeting.**

**A motion to adjourn was unanimously accepted.**

**The Meeting adjourned at 10:30 PM.**