

Philipstown Planning Board  
Meeting Minutes  
May 19, 2011

The Philipstown Planning Board held its regular monthly meeting on Thursday, May 19, 2011 at the VFW Hall on Kemble Avenue in Cold Spring, New York. The meeting was opened at 7:30 p.m. by the Chairman.

Present: Anthony Merante, Chairman  
Kim Conner  
Michael Gibbons  
Michael Leonard  
Kerry Meehan  
Pat Sexton  
Steve Gaba, Counsel  
Ron Gainer, Planner

**Constance Bakall – Request for Return of Escrow Balance**

Mr. Merante asked Mr. Gainer if there was anything outstanding.

Mr. Gainer said no.

Ms. Conner made a motion to return the escrow balance. Mr. Leonard seconded the motion. The vote was as follows:

Anthony Merante	-	In favor
Kim Conner	-	In favor
Michael Gibbons	-	In favor
Michael Leonard	-	In favor
Kerry Meehan	-	In favor
Pat Sexton	-	In favor

**Chris Buck (Winter Hill) – Request for Return of Escrow Balance**

Mr. Gainer asked if the Board had received anything from the Wetlands Inspector.

Several Board members said yes.

Mr. Meehan said that it said the Board should retain some of the escrow because it's not complete.

Mr. Gainer that he has expectations and he'll be doing the inspection for the site plan, which is fine.

Mr. Watson said that he thought that was an entirely different matter. He said that he thought the escrow funds were specifically collected for review by the Planning Board. Mr. Watson said that he thought it would be an inappropriate re-use of those funds for that purpose and the Board would be putting itself in jeopardy in doing it.

Mr. Gaba said that there is a difference between a maintenance bond and money that's put in for paying consultant's fees. He said that Mr. Watson is correct – you can't take one and use it for the other.

Mr. Meehan made a motion to return the escrow funds. Ms. Sexton seconded the motion.

The vote was as follows:	Anthony Merante	-	In favor
	Kim Conner	-	In favor
	Michael Gibbons	-	In favor
	Michael Leonard	-	In favor
	Kerry Meehan	-	In favor
	Pat Sexton	-	In favor

**Garrison Station Plaza – Request for Return of Escrow Balance**

Ms. Conner made a motion to return the escrow funds. The motion was seconded. The

vote was as follows:	Anthony Merante	-	In favor
	Kim Conner	-	In favor
	Michael Gibbons	-	In favor
	Michael Leonard	-	In favor
	Kerry Meehan	-	In favor
	Pat Sexton	-	In favor

**Public Hearing**

**Jung Wang & Ming H. Wang – Approval of 2-lot subdivision – Jaycox Road, Cold Spring: Discussion**

Ms. Conner and Mr. Gibbons recused themselves and left the meeting.

Mr. Merante said that the Board received a letter from the CAC regarding this application. He read the letter aloud.

Mr. Watson said that the Wangs own the property on Jaycox Road, which contains about 80 acres, including fifteen acres of Jaycox Pond. The property does have some wetlands. They've identified a small wetlands along the Jaycox Road frontage about a third of the way up from the south end. Mr. Watson said that they show another small wetlands in the southern portion of the property – south of Jaycox Pond. He said that the application is to subdivide the property into two parcels – one of fifty acres, including fifteen acres of pond, and one of thirty acres, which does not include any of the pond. Mr. Watson said that their hope as he had mentioned, is to have a conservation buyer for the fifty acres, which is adjacent to state owned property that runs from the easterly end of the Wang property to Route 9 and has all the frontage along Route 9 just north of 301. Mr. Watson said that at this point, they have identified a conservation buyer, but they're not certain of that. So they're applying for a two-lot subdivision that will theoretically allow two houses to be built – one on the thirty-acre parcel and one on the fifty-acre parcel. He said that based on the comments he received a copy of the Wetland Inspectors memo before, they've kept well back from any wetlands. Mr. Watson said that the approval does not

approve any of the building lots and if anything's over 3000 square feet, they would be back to the Planning Board if one or the other of the lots were going to be developed. Mr. Watson said that to avoid the expense of flagging and surveying all of the wetlands, they've been very generous in their separation distance of any of the proposed areas from the wetlands boundaries.

Ms. Sexton said that when Mr. Watson said that there's a lot of separation, the proposed septic tank is very is very close to the pond.

Mr. Watson said that it is over 100 feet.

Mr. Leonard said just a little bit, right?

Mr. Watson said yes, he would stand corrected.

Ms. Sexton said that they show two houses, but those houses, when push comes to shove, can be put anywhere on those pieces and she asked if that was not true, so long as they fell within the building blocks. She said they're really not approving the positioning of those houses, and then asked if they were.

Mr. Watson said that they are not approving the positioning of the houses – that's correct.

Ms. Sexton said, and this is nothing more than a residential subdivision.

Mr. Watson said yes, that's correct.

Ms. Sexton said in other words, this whole piece of property is strictly residential zoned.

Mr. Watson said that's correct.

Ms. Sexton said that there is no industrial zoning on the property whatsoever.

Mr. Watson said that's correct.

Ms. Sexton said that the only thing you could put on there is residences.

Mr. Watson said well, that's not quite correct. He said that first of all, they have a new zone...what they call residential zoning is not strictly residential zoning, so someone could probably buy it and build a church.

Ms. Sexton said, or a Hilton.

Mr. Watson said no, not under today's zoning, and he didn't know as much about the new zoning that's going to be effective at the end of the month, but did not think you could put up a hotel.

Mr. Merante asked if that road would preclude that – the constraints of Jaycox Road itself.

Ms. Sexton said that was why she was asking. She said that she wanted to know what could be put on that. Ms. Sexton said that whatever's done here, it is just a two-piece subdivision. When they come back in the future, would they want to subdivide one piece of property, and then the conservancy doesn't work on that piece of property, etc. Ms. Sexton asked what they could put on this piece of property.

Mr. Watson said that anything that comes before the Planning Board today would be under the new zoning. He said that for any kind of regular subdivision – what's considered a conventional subdivision the new zoning requires fifteen acres. Mr. Watson said that this he thought was a conservation residential district and this is also one of the large lot parcels, so it's overlaid with the new overlay zone that basically dictates conservation subdivisions and it says that when you're in this situation, if you want to do a "regular" subdivision, you've got fifteen acre zoning. If you want to do a conservation subdivision, there are two methods for subdividing this property for determining what you could put on this piece of property in terms of a regular single-family residential. He said you could do what's called a yield plan and you could do what he was going to call a yield calculation law, one of which is basically to design a five-acre subdivision completely, and that means a lot of engineering and a lot of drainage calculations, soil testing, etc. Mr. Watson said that you actually have to get it to a point where you could virtually build from the plans that you do. He said he did a yield calculation one, which basically is that you take off the wetlands, take off the steep slopes over twenty percent he believed, take off a couple of other things and you then take off twenty percent for roads, etc, and divide it by five acres and come up with the number of lots. So under those two scenarios, the one he did yielded seven lots, and the other one yielded six lots – one of which will be gone. So the most that this could theoretically be would be five or six lots. Mr. Watson said that he would tell the Board without any hesitation, that when you do all of the engineering and you do all of the wetlands and steep slopes, the yield is going to go down. The wetlands will grow – one, because they know there's a little strip of State wetlands coming off to the side. Those restrictions invariably grow if that were the case. But that's not the case and it's really not what they're discussing. Mr. Watson said that they are discussing a two-lot subdivision. He said that he thought there was an allowance for an estate family compound-type estate, where you could have multiple dwellings of a single lot in a new zoning, but you can't do that under the zoning that's in effect until the end of the month.

Ms. Sexton asked how the roads were.

Mr. Watson said that under the new zoning, it's going to be very difficult. He said that even the consultants to the town, in their yield plan, came up with something like a thirty percent drop in the number of units of housing that could be built in the Town using single family dwellings. Mr. Watson said that with this piece of property, if you look at the other maps they submitted, you have significant areas of steep slope and wetlands,

and all of those things contribute to reduce the density to a far greater extent than it did in the previous zoning law.

Ms. Sexton said so with the new zoning, there are more lots than (inaudible).

Mr. Watson said no – it's a hundred percent opposite of what it should say. He said if he misled the Board, he was sorry. Mr. Watson said that the new zoning is going to yield far fewer lots than the old zoning period.

Ms. Sexton said, but Mr. Watson said that he needed fifteen acres unless they use the overlay.

Mr. Watson said that with the conservation subdivision, he believed the Board had the power to at least require a study. He said that if you want to do something like a two-lot or three-lot subdivision that's on a fifteen acre zoning, and go through and do the calculations under the new zoning, that gives you a yield of number of lots, then you have to identify where you can place those houses and if you're doing that, he thought that it was eighty percent of the land that had to remain permanently protected if you do a conservation subdivision.

Ms. Sexton said that if they did it classifying and you gave them fifteen acres, you wouldn't get all those extra houses.

Mr. Watson said right.

Ms. Sexton said, so that doesn't make the new zoning less.

Mr. Watson said that across the Board, the new zoning, no matter how you cut it, is going to result in fewer lots. He said that's what Green Plan reported to the Town and was one of the justifications for the zoning law.

Ms. Sexton said that yet, Mr. Watson was saying you'd only get two houses subdividing this under fifteen acres. She said that if you needed fifteen acres, you only get two houses.

Mr. Watson said that Ms. Sexton was comparing two options in the new zoning and saying the fifteen acres is the new zoning. The conservation subdivision is also the new zoning. He said that she's not comparing the new zoning to the old zoning. Mr. Watson said that this is a forty thousand square foot one-acre lot.

Ms. Sexton said except for the fact that if they subdivide it into two pieces now, they have to come back under the new zoning to subdivide it again.

Mr. Watson said absolutely and that he thought Ms. Sexton was comparing what you can do under the old zoning to what you can do under the new zoning.

Ms. Sexton said that under the new zoning, she was still not understanding that you can put a church there.

Mr. Watson said that he thought so.

Ms. Sexton asked what else could be put there.

Mr. Watson said that he'd have to read it. He said that he could not recite the list, as he didn't know it well enough yet. Mr. Watson said that he did not understand why they were having the conversation because they're trying to do a two-lot subdivision and have no other plans other than that.

Ms. Sexton asked if on the other piece there was any plan to put a conservation easement or something to protect the pond.

Mr. Watson said that there is a plan there. He said that if they've identified the conservation buyer, and hope they'll be able to sell the property to a conservation buyer and they hope that eventually it will become State land.

Mr. Merante said that's the fifty-acre – lot two.

Mr. Watson said fifty-acre, yes.

Mr. Merante said that Ms. Sexton was asking about lot one.

Mr. Watson said that she was asking to protect the pond.

Ms. Sexton said yes...in other words, there's no plan now to put a conservation easement on and it's just a hope that it will be sold to someone who will help (inaudible).

Mr. Watson said that's correct. He said that if this deal falls through and the conservation buyer walks away, they'll have one building lot on the fifty acres.

Ms. Sexton asked if it could be further subdivided.

Mr. Watson said that he did not think it could be further subdivided on the new zoning based on the study that they did, because what they have is wetlands and a lake, steep slopes that run up virtually all of the sides, and no access.

Ms. Sexton said that in order to protect the pond, why wouldn't they put a conservation easement on. She said that if the State doesn't buy it, then it's open to somebody else putting something else on it.

Mr. Watson said that if this Board makes putting a conservation easement on this piece of property, it becomes part of the price of getting a subdivision approved. He said that it also changes the assessed value of this piece of property because it's worthless because it

can't be developed. Mr. Watson said therefore, the conservation buyer would not be able to pay what's been talked about. So it's a little bit of a catch-22, but it's a real issue. Mr. Watson said that if the Board makes them do that, it would kill the deal.

Mr. Merante asked Mr. Gaba to enlighten the Board, as he was a little confused on the point Mr. Watson made.

Mr. Gaba said that he did not see a basis for the Planning Board to require the conservation easement on the second lot. He said that it's a two-lot subdivision. Mr. Gaba said that it's suitable for a conservation, but that doesn't mean the property owner has to do it.

Mr. Merante said that he saw some of the restrictions Mr. Watson talked about – the size of the pond, the buffer around it, and access too.

Ms. Sexton said that she was just concerned with what else they could put there and the Board doesn't have an answer. She said that she would like to know.

Mr. Watson said that other than a single family dwelling on this – and even that's limited, any other use that comes to the Board for this property he believed requires either a special use permit or a site plan approval from the Planning Board. Mr. Watson said that he'd go even further...if the building has a footprint of greater than 3000 square feet (he thought), they're coming to the Board for site plan approval even for the single family dwelling under the new zoning.

Ms. Sexton said that Mr. Watson said that they'd have to come back just for site plan approval unless they put it where it's indicated.

Mr. Watson said no.

Ms. Sexton said or they can build it anywhere within the property as long as the Building Inspector says it meets all requirements.

Mr. Watson asked which piece Ms. Sexton was referring to.

Ms. Sexton said either one.

Mr. Watson said that it would be much easier to relocate the house on the thirty acres than from the place that is shown (on the plan). He said that he would go out on a limb and say it's going to be pretty impossible to put another house that generally is located in the general area where they were all on when they took the site walk. Mr. Watson said that the reason he said that is because there are steep slopes, a stream you have to cross, more steep slopes, and a big pond in the way. He said that as a practical matter, somebody might theoretically come in and get a building permit for this spot (pointed out) and even here (pointed out) they might not be able to do it because there's a second

overlay on the road – a protection overlay, which requires site plan approval within 250 feet of the road.

Ms. Sexton asked how the way they stand now meets that standard of approval.

Mr. Watson said it doesn't.

Ms. Sexton said not at all.

Mr. Watson said it isn't a design – it's a demonstration and it requires a landscaping plan.

Ms. Sexton said so in other words, since the delineation is only done by map and was before Mr. Klotzle, it should be more delineated because of the rise and fall of the pond.

Mr. Watson said that he disagreed with Mr. Klotzle regarding that. He said that he was hearing an awful lot of concern and to be perfectly frank, and the concern he was hearing is way too theoretical for what's before the Board.

Ms. Sexton said that she guessed she just wanted to make sure this was a two-lot residential simple subdivision.

Mr. Watson said that's all it is.

Ms. Sexton said, and they'll not end up with even a church in the middle of the piece of property where there are residences all around. She asked if there was going to be an access into the pond somewhere and any public access to the pond.

Mr. Watson said it depends on who buys the property. He said this subdivision application does not propose that.

Ms. Sexton said so there's no...(did not finish sentence).

Mr. Watson said no public access being proposed as a part of this application. He said that there were lots of things talked about, but there are no plans.

Mr. Merante said that Mr. Leonard had an observation that Mr. Gainer included in his comments. He asked if it was about the integrity of the dam.

Mr. Leonard said yes, that was raised when they went out there. He said that there was some concern with height of the actual pond itself. Mr. Leonard asked Mr. Gainer if there was anything they had to do about the dam at this point.

Mr. Gainer said that the present owner and future owner were going to have issues to deal with pursuant to State regulation that there's an issue with dam.

Mr. Meehan asked Mr. Watson if it was on the Open Space Index.

Mr. Watson said yes, that's what made the fifteen-acre...(did not finish sentence).

Mr. Meehan said even if you chop it in two.

Mr. Watson said yes. He said that the way the Open Space Index is worded is that there's a map that's adopted and if you're in it, you're in it. Mr. Watson said that you can't get out of it by subdividing it into something less than thirty acres.

Mr. Meehan said that he did not understand the significance of that – being on the Open Space Index. He asked if that was figured out automatically. Mr. Meehan said that he asked that question a couple of times and nobody answered him.

Mr. Watson said it gives you the authority to require that it be looked at. It becomes a tool in the Board's toolbox.

Mr. Gainer said that he generated a memo based on several comments he obtained from the Highway Department.

Mr. Merante opened the discussion to the public.

Mr. John Milner of 55 Dry Pond Road introduced himself. He said that once the buyer has it, there's nothing to prevent the buyer from subdividing it.

Mr. Watson said that if a private individual were to buy the property, there would be nothing to prevent an individual from making application to further subdivide his property. However, it will be under the new zoning, which will mean a minimum of fifteen acre lots, so if this thing were a prairie, you might get the three houses and if you were to consider the steep slopes and wetlands, he believed it would be impossible to subdivide the fifty-acres.

Mr. Milner asked what the maximum number of lots was that you could put on a seventy-acre lot.

Mr. Watson said that based on the preliminary tests they've done, they've studied the possibility of maximizing the number of units on the lot. He said that one of the ways you do it, and what he did, was calculate seven for the whole eighty acres. Mr. Watson said that the other way they do it, which Mr. Valdina's engineer was hopeful when working on the property, was...he came up with six. So, in theory, they took one of the seven and got five or six. Mr. Watson referred to a section of the plan and said none of it counted.

Mr. Milner said, so if the new owner wants to go five or six, then it would have to be passed by the Planning Board.

Mr. Merante and Mr. Watson said yes.

Mr. Milner asked if the public would have any say.

Mr. Merante said that the Board would hold a public hearing on it – sure.

Mr. Milner said that it would only be if a certain amount of the second smaller lot were now a conservation area, so it would be a smaller area with possibly up to five. He asked if his understanding was correct.

Mr. Watson said yes. He said that if they did what is called a conventional subdivision, you could theoretically get two fifteen-acre lots. Mr. Watson said that if you do a conservation subdivision, the design under the Zoning that will become effective on the 31<sup>st</sup>, the design would require permanent protection of at least eight percent of the area, so it's cluster zoning.

Ms. Sexton asked how many acres were required between the houses if there are five houses.

Mr. Watson said that the new zoning makes the standard for a lot equal to the standard per lot in the hamlet/village zone.

Mr. Meehan said that if they (inaudible) your well and water, you could shrink that cluster.

Mr. Watson said that if someone were to put up a well here (pointed out) to serve five houses, you could probably get the lot down.

Ms. Sexton asked if there was anything to guarantee that the property doesn't end up with something that doesn't belong there. She said that she's really concerned about that.

Mr. Gainer said in terms of density, the property is zoned residential, so it's permitted in the residential zone.

Ms. Sexton said that since they really don't know all the new zoning, what the older ways are and nobody can really tell them this minute, she guessed that was a concern of hers – to wonder what's going to go on this property. She said that right now, nobody can tell her what can go on this property.

Mr. Gaba said that he understood, but that would be the case whether or not this was granted as a two-lot subdivision. Anybody could come in and propose further development down the line, which perhaps wouldn't be appropriate, but the Planning Board is kind of the safeguard against that happening. Mr. Gaba said that anything that comes back here is going to be subject to site plan review at a minimum, it's going to have to go through full SEQRA review and the Planning Board is going to have a big say in what goes on there ultimately, regardless of what the zoning may allow on it.

Mr. Meehan said plus, the Board has a say in the size of the house too now.

Mr. Gaba said yes, that's under the new zoning.

Mr. Christian Ott introduced himself and stated that he lived on Dry Pond Road. He said that right now, there is an open space layer over this property. Mr. Ott asked if it got subdivided would that open space layer be (inaudible).

Mr. Watson said no.

Mr. Ott said, so the same law would apply to it.

Mr. Watson said that there's an index of what's in the open space and it doesn't change that. He said that the magic number is 38. Mr. Watson said that if that were possible – and it's not possible, you'd have to get something down below thirty acres. He said that both the lots are going to be over thirty acres. Mr. Watson said that there's an overlay district map that identifies all the parcels that were over thirty acres as of January 1, 2010, so whatever that piece was on that day is what it is.

Mr. Ott said that it seemed to him that with the open space layer, they can (inaudible) the lots for five acre lots within the hamlet. He said that it seemed to him they are doing for the five and ultimately, they're going to end up with five acre lots or less.

Mr. Watson said no – he never said that. He said that there is no plan. Mr. Watson said that he'd been asked a bunch of theoretical questions about what might happen with this and he'd been trying to give honest answers, but didn't want Mr. Ott to infer from that that they have a plan for anything.

Mr. Merante said that right now, it's just a two-lot subdivision, and for anything else they wanted to do, they'd have to come back to the Planning Board.

Mr. Watson said that if anyone were to come in and want a cluster and want to get those five acres, it would have to be done in a way that made twenty-four – eighty percent of those thirty acres, and twenty-four acres permanently protected from development. Mr. Watson said that otherwise the only option that would be open to this person in terms of residential units would be a two-lot subdivision of the thirty.

Ms. Sexton asked Mr. Watson if ultimately the conservation group would turn this to the State or sell it to the State.

Mr. Watson said that he understood that to be the plan. He said that what happens with all of the conservation groups is that they step in and have access to funds and health from people who (inaudible) the money and they see a threatened or desirable piece of property that the State just doesn't have the budget to buy and the State wants the property. He said that they know the State wants this piece of property.

Mr. Merante asked if it was connected to the Hubbard property.

Mr. Watson pointed out the old Hubbard estate on Route 9 and said up until 1975 or 1976 it was the same part.

Mr. Meehan asked if that was the last piece of connecting property.

Mr. Watson said no, he thought another connection needed to be made...it's closing in.

Mr. Gainer said that if the Board had no further comment, the public hearing could be closed.

Mr. Merante stated that anything that was going to happen on this would come back to the Planning Board.

Mr. Meehan made a motion to close the public hearing. Mr. Leonard seconded the motion. The vote was as follows:

Anthony Merante	-	In favor
Kim Conner	-	Recused
Michael Gibbons	-	Recused
Michael Leonard	-	In favor
Kerry Meehan	-	In favor
Pat Sexton	-	In favor

Ms. Conner and Mr. Gibbons joined the table again.

### **Adjourn**

Mr. Meehan made a motion to adjourn the meeting. Mr. Leonard seconded the motion. The meeting ended at 9:15 p.m. The vote was as follows:

Anthony Merante	-	In favor
Kim Conner	-	In favor
Michael Gibbons	-	In favor
Michael Leonard	-	In favor
Kerry Meehan	-	In favor
Pat Sexton	-	In favor

Respectfully submitted,

Ann M. Gallagher