

ZONING BOARD OF APPEALS

August 13 , 2013

MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Tuesday, August 13, 2013 at the Philipstown Town Hall, 238 Main Street, Cold Spring, New York. The work session was opened by Robert Dee, Vice Chairman, at 7:40 p.m.

PRESENT: Robert Dee	- Vice Chairman
Paula Clair	- Member
Bill Flaherty	- Member
Dominic Cordisco	- ZBA Council
Tina Andress- Landolfi	- Secretary

ABSENT: Vincent Cestone	-Member
Lenny Lim	-Member

PLEDGE OF ALLEGIANCE WAS SAID

received
9/30/13 CJM

Robert Dee- Approval of minutes for June 10. Anybody have any changes?

Bill Flaherty- I have no changes.

Paula Clair- Any of the materials we got before the new application, are they going to be you know, applied to anything?

Dominic Cordisco- At this point I would not discard them. My understanding is the applicant formally withdrew request for a variance which was subject to the prior application, after your meeting in May submitted material in June, that was a new application with all the material that they are proposing for a special use permit. I think that the applicant did prepare a comprehensive package of material that should be part of the June submission.

Robert Dee- We had a lot of public hearings that people spoke on, and I don't want to discard that. I don't want to have to do that all over again.

Dominic Cordisco- I am not suggesting that in any way shape or form, and there is prior material for instance the ballon test was done as part of the variance application. The results for that would remain relevant for this application.

Paula Clair- I brought it just in case.

Dominic Cordisco- Don't throw it out. That is my recommendation.

Robert Dee- Do you have any changes?

Paula Clair- No

Robert Dee- I make a motion that the minutes be approved.

Bill Flaherty- I will second

Robert Dee- Everybody is unanimous. Now we have review of completeness for Mr. Gleick on Long and Winding Road for a wind energy conversion system. So during tonight's meeting we are going to discuss the

application, the pre-application meeting, the ZBA waiving certain requirements, and a letter from AKRF regarding the Gleick's special use permit. The goal of this meeting is to review the application for completeness, determine lead agency, vote on completeness and move towards the SEQR process. On July 18 at 8:30 am Kevin Donohue, Town Engineer Ron Gainer, Town Planner Susan Jainchill, Glen Watson with Badey and Watson, Doug Passeri the applicants representative, Tina Landolfi ZBA Secretary and myself attended that meeting. In the comments in the letter that we received from Ron and Susan dated July 1st, stated that based upon the review of materials submitted the requirements should be that the application be accompanied by plans and descriptive information to include (inaudible) This was before we had the pre application meeting (inaudible) is not clearly portrayed as called for in the code. In the recommendations, they wanted a site plan done by an engineer. They had that done. Did you get a copy of that site plan?

Bill Flaherty- Yes

Robert Dee- Do you want to speak to that site plan?

Ron Gainer- At the July Pre application meeting, Badey and Watson came with the applicant. They have submitted (inaudible) for your review tonight. That was also the subject of the material that Susan and I reviewed, and that was the bases for our latest memorandum that you just received yesterday from Susan's office. In terms of our view, they be deemed complete on the basis of that site plan that has now been filed and with support from the other materials you already had.

Robert Dee- Did you get a chance to review the site plan?

Paula Clair- not thoroughly

Robert Dee- Do you have any questions?

Paula Clair- I really don't, but I think it is understood where they are putting this?

Robert Dee- I make a motion that the site plan be approved.

Dominic Cordisco- Well it would be deemed complete.

Robert Dee- Thank you

Bill Flaherty- Second

Robert Dee- All in favor?

ALL MEMBERS WERE IN FAVOR

APPLICATION DEEMED COMPLETE

Robert Dee- Ron, we had spoke about possible waivers?

Ron Gainer- There is no need to take action on any waivers yet. The basics of the site plan requirements have been filled. There are some technical information (inaudible) can be reviewed formally at your next meeting. There is an understanding that there may be some aspects of the code that would normally be asked for in site plans that can be waived in this instance, but that can be discussed later. It is summarized in documents that you have , but no need to take action on that tonight.

Robert Dee- I guess all the information that we need pretty much for this application has been submitted.

Ron Gainer- It is now in your hands You may consider the issue of deeming it complete, that you have done. Now moving forward in scheduling a public hearing.

Robert Dee- Right, and moving forward with SEQR

Dominic Cordisco- The two actions that the board would consider tonight would be in connection with SEQR I want to have a discussion with you, because SEQR provides two alternatives. You can circulate to be lead agency. Circulating to be lead agency sends out notice to potentially involved and interested agencies that you intend to provide SEQR review for the project. I cant think of any other agency that is potentially an approval agency for this project. Since we provided clarification to the board back in May, this board would process the site plan application along with the special permit application, there is no more planning board

involvement with this and we provided that clarification. The only other referral would be to the Putnam County Department of Planning. That is not an approval, it is just a referral for review and recommendation.

Robert Dee- Tina, you would do that right?

Tina Andress- Landolfi- Yes

Robert Dee- OK, so she would take care of that.

Dominic Cordisco- As I see it, there is no need to circulate a lead agency notice, because there is no one on the receiving end that could possibly say, they would rather than you be lead agency for this project. I think rather than going through another procedural step that in this case would be (inaudible) that you just dispense with it, and not circulate at all. You don't have to take any further action in regards to SEQR tonight. The one other thing that you could do in light to AKRF and Mr. Gainer memo is that you should schedule a public hearing on this application for your next meeting.

Robert Dee- Should we declare ourselves lead agency tonight?

Dominic Cordisco- We don't have to. Yu just are lead agency for review, because there is no one else in the room to hear you declare.

William Flaherty- It would not hurt would it if we in fact did declare ourselves lead agency?

Dominic Cordisco- It is not required.

William Flaherty- It is not required by law?

Dominic Cordisco- Right. It does not hurt if you want to make a motion to declare yourselves lead agency.

William Flaherty- I would like a motion to do that. to declare ourselves lead agency.

Paula Clair- I will second that.

Robert Dee- All in favor?

**ALL MEMBERS WERE IN FAVOR
ZBA DECLARED LEAD AGENCY**

Dominic Cordisco- Just to clarify you are not sending around a notice to that effect.

Robert Dee- No

William Flaherty- I would rather be safe than sorry

Robert Dee- On the completeness of the application, we have a memo from Susan and Ron Gainer, and the meeting that we had I feel that the application is complete. Does anybody feel anything missing. Any questions?

NO QUESTIONS FROM MEMBERS

Robert Dee- I make a motion that we deem the application complete.

William Flaherty- I will second

Robert Dee- All in favor?

**ALL MEMBERS WERE IN FAVOR
APPLICATION DEEMED COMPLETE**

Dominic Cordisco- Then you need to schedule the public hearing.

Robert Dee- We will make it the second Monday in September.

Dominic Cordisco- That will be September 9

Robert Dee- Ok. We will schedule a public hearing for September 9.

Paula Clair- A regular?

Robert Dee- Yes, a regular public hearing. We have had other public hearings, but I am sure people will raise their concerns.

Paula Clair- Are we going to discuss the SEQR questioner at that time?

Robert Dee- Yes

Dominic Cordisco-Right now the EAF part one and part two are part of the record. They are available to anyone who wants to take a look at it. The board has not made a SEQR determination yet whether or not the project has significant adverse impacts on the environment. That will be something for you to consider when you close the public hearing.

Robert Dee- Ok, so we did the application is complete now we can move on to any new or old business.

Greta Passeri- Do I need to submit the property owners list for the adjoiningers?

Tina Andress-Landolfi- I do that. I notify all the adjoiningers, and place the ad.

Greta Passeri- Do you have the list from before?

Tina Andress- Landolfi- Yes, that was submitted in your new application, and that will always remain in your file. It is good, because it has the new tax roll.

Robert Dee- Do they have to post a sign on the property?

Tina Andress- Landolfi- They do. They can get the sign from the Town Clerk

Robert Dee- It has to be posted o the front of the property.

Audience Member- Will the public hearing be announced in the news paper?

Robert Dee- Yes

Tina Andress- Landolfi- What was that? sorry

Robert Dee- Would the public hearing be announced in the paper?

Tina Andress- Landolfi- Of Course.

John VanTassel- Due to the public interest in this matter we might move to a larger facility.

Tina Andress- Landolfi- Should I attach that to the public hearing? The change of venue?

John Van Tassel- (inaudible)

Dominic Cordisco- My suggestion would be that if you are going to do that then you do prior to sending out the notices. You don't want people to end up here.

John Van Tassel- We will figure it out in the next few days.

Robert Dee- The town board will take care of that?

John Van Tassel- Yes we will.

Ron Gainer- Mr. Chairman if I may speak to SEQR for a minute.

Robert Dee- Sure.

Ron Gainer- So the board is aware. With the application that has been filed by the applicant they have submitted an EAF a long form part one EAF it is called. That is basic information about the application, and clearly is the applicants document submitted to you for review. It is the boards responsibility to evaluate that information and prepare what is called a part two assessment still following the SEQR regulation. The document is provided to you for your use. Then you rank or rate the relevant impacts of any of those concerns that are identified in part two. Susan and I have have informally reviewed the record, and submitted that part two for you to review. It is only presented for your records now for your informal review in the future and prior to your public hearing. At the close of the public hearing, before you take any action you will be required to make a SEQR declaration, and prior to that you are going to formally review that EAF for completeness and adequacy. If you deem it complete then you will adopt that part two as the boards document.

Robert Dee- The part two, you and Susan Submitted to us?

Ron Gainer-Now it is just submitted for your informal review to be sure that in your view it is adequate and (inaudible) response to those potential concerns.

Robert Dee- The package has a long form that the applicant filled.

Ron Gainer- Correct. The applicant submitted part one.

Robert Dee- that gives plenty of time for everyone to review it.

Ron Gainer- That was our intent.

Robert Dee- Thank you very much. Anything else Ron?

Ron Gainer- No, that covers the basics.

Robert Dee- New Business or Old Business? Wait, there are some people here, but this is not a public hearing tonight. I don't want to shut anyone down. I will give each a couple of minutes if you want to talk, but at the public hearing everyone will have a chance to talk.

Audience Member- Has this been deemed a major or minor project?

Robert Dee- Major because of the height. With all the other things he covers everything. There are no problems. He has 42 acres and was well within setbacks. The only thing is the height. We have asked the Town Board to address the code and give clarification.

Audience Member- (inaudible, back of room)

Robert Dee- I agree, and the Town Board agrees. The town board is looking and knows.

Audience Member -(inaudible, back of room to far from mic) This application be decided, then the town board do (inaudible)

Robert Dee- It would be unfair to stop this one. They have been here 11 months already.

Audience Member- Get the Zoning Code corrected, this is not correct right now.

Robert Dee- The Town Board agrees. It took five years to do, some things were missed. Any body else?

Audience Member- will all four members of the Zoning Board be here for the September meeting? As he said such an important meeting. there are only four members now right?

John Van Tassel- Five

Audience Member- There are five. Im sorry (inaudible) all members of the board.

Robert Dee- As many members that are here that day will be here.

(inaudible)

Robert Dee- Any other questions?

Greta Passeri- I presented a letter to the Town Board, and then also to the ZBA . This letter came about, because of what happened in July. The cancellation of the July meeting and then having a special meeting on the 18th of July for the pre application meeting, and everybody having a chance to be there. Concerns were raised so I put this together, because I thought this was important, and still think it is important. After taking the time to read back over emails and my notes I would like to ask that Mr. Cestone recuse him self for the rest of the Gleick small wind application, and abstain from further participation during this process.It is my belief, as well as the Gleick's, that Mr. Cestone can no longer be fair and impartial in his decision making regarding this application.Mr. Cestone has stated he has resigned as ZBA Chairman, which leads me to believe he no longer has the residents best interest at heart or the desire to provide support for this application.It was made know to me that the ZBA Secretary was told by Mr. Cestone " that if Doug Passeri, of HVWE had just listened to him, Doug would not be in this situation".We have been listening to Mr. Cestone for many months as you well know; and have gone round and round with no solid direction from the ZBA on this matter.A comment such as that has no justification especially when both the applicant and the board have been working diligently to come up with the best way to properly adhere to the towns

code. I also feel that there have been inappropriate emails and communication, and a lack of tact and diplomacy on the part of Mr. Cestone.

I do understand and appreciate that Mr. Cestone has served for numerous years, and in fairness to him, commend his dedication to the town and its residents. However, as agent for the Gleick's, I am no longer comfortable that the powers and duties bestowed to Mr. Cestone as a member of the ZBA can and will be treated with a bias nature as deemed essential when holding such a position.

Robert Dee- Thank you. I guess that Mr. Cestone would have to be here.

Dominic Cordisco- Mrs. Passeri's letter is properly worded if you read at the very beginning that Mr. Cestone recuse himself. That is a decision that he has to make. The board does not have the authority or the jurisdiction to remove another board member because of actual or perceived bias or pre determination on an application. That is something

Robert Dee- My next question would be at our next meeting in September if Mr. Cestone is there, do they approach at the beginning before this all starts?

Dominic Cordisco- Certainly

Robert Dee- So he can make a decision one way or another. Now he does not have to recuse himself correct?

Dominic Cordisco- He does not. The thing is that there are ethical considerations, and there are case law on this point that show in prior instances that show what pre determination or pre judgement on an application may be, and he might want to be guided on that. My office did prepare a memo on the subject, and that is something that we could forward to him as well.

Robert Dee- Would you do that?

Dominic Cordisco- Certainly. We can forward that to him and he can take a look at what we prepared, and it is a decision he would have to make.

Robert Dee- What options would the applicant have if he refused.

Dominic Cordisco- They have two. One would be that the Town Board make a referral to the Ethics Board for consideration of action by the ethics board. It is the Ethics Board that has the authority over this subject. They Can hear these kinds of complaints. Not anyone can make a referral to the Ethics Board, only the Town Board can make that kind of referral. Of course the applicant feels that after the application has been decided with bias or pre determination and is un happy

with the results of the application and the vote and the approval, always has the option to bring an article 78 proceeding in State Supreme Court.

Robert Dee- Does that answer any questions?

Greta Passeri- Yes

William Flaherty- I find this to be somewhat damaging to Vinny's reputation. He has been a member of this Board for 17 years. I know he has done a good job here to be perfectly honest with you.(inaudible) I find this letter, I don't know how appropriate it is, it may very well in your judgement be appropriate. In my judgement it may be inappropriate. I don't know all the circumstances, and what motivated you to write a letter such as this, and I find can be damaging to his reputation. I just feel that to a degree the letter is inappropriate, although I don't know all the circumstances under which you wrote this letter. I am saying that just based on the contents of this letter. I know Vinny and I have known him for a few years, and he can be sharp at sometimes, there is no question about that. He is well meaning under any circumstances. We could take this letter at face value, but we cant take any action on it.

Dominic Cordisco- What I would suggest is that I forward this letter together with my offices memo on this subject to Mr. Cestone. If he is here at the September meeting then he can address it. He is not under any obligation to address it. It is his decision on whether to recuse himself or not. The applicants like I said have the other options available to them.

William Flaherty- That would be fair enough.

Robert Dee- He would have to make the decision at that meeting, but he could do that before the start of the meeting correct?

Dominic Cordisco- He does not have to make a decision. It is the kind of thing that if he thought there was merit to these accusations then he could recuse himself, but it is not as if that step has to happen prior to the Board taking action in September and opening the public hearing.

Robert Dee- Anything else?

William Flaherty- I would like to make a motion to adjourn the meeting.

Paula Clair- Do we need to hear public comment at this time.

Robert Dee- This is not a public hearing. This gentleman would like to speak.

Audience Member- Is there a date for the Public Hearing?

Robert Dee- September 9th. The Town will let you know where it is going to be, because they expect a bigger crowd. We have a lot of people who have spoken on it, and we have all those minutes. People have had a chance. We have had around 5 or 6 public hearings. This would be the final public hearing. Considering that it has been a year it is certainly over due.

Audience Member- Can we ask the Town Board that it is adequately noticed. On the Town Website it says that this meeting was not happening, I made a call to Tina(Town Clerk) asking her.

PCNR Annie Chesnut -It did appear in the legal notices. I can confirm that.

Audience Member- The legal notice I did find in the paper. Who reads those?

PCNR Annie Chesnut- I do.

AUDIENCE MEMBERS RAISED HANDS AND ALSO CONFIRMED THAT THEY DID AS WELL

John Van Tassel- We will pick a venue and post it as soon as possible.

(inaudible)

Robert Dee- What you are talking about is going to have to be another large meeting as far as going down the road.

Audience Member- No the public hearing.

Robert Dee- At the public hearing you can speak to this.

Audience Member- This board is going to decide this application.

Robert Dee- And this board can only decide with the zoning ordinance we have before us.

Audience Member- The public has a right (inaudible)

Robert Dee- Of course they do.


Audience Member- Im just saying the Town Board needs to make sure that the word is put out. This meeting was not put out. If you all would have continued the public hearing from the previous meeting (inaudible) My comments were about very deep concerns about the process. Thankfully this was more of an administrative meeting, and it is great to have this on path (inaudible)

Robert Dee- Anybody else? Meeting Adjourned.

MEETING CLOSED AT 8:10 PM

NOTE: These minutes were prepared for the Zoning Board of Appeals and are subject to review, comment, emendation, and approval thereupon.

DATE APPROVED: 9/9/13


Respectfully Yours,
Tina Andress- Landolfi, ZBA Secretary