

DEERPARK PLANNING BOARD - SEPTEMBER 28, 2011 - PAGE

The Deerpark Planning Board met for a Special training class on Wednesday, September 28, 2011 at 7:00 p.m. at Deerpark Town Hall, 420 Route 209, Huguenot, N.Y. The following were present:

BOARD MEMBERS

Al Schock, Vice-Chairman Theresa Santiago Bob Vicaretti Mike Hunter Derek Wilson

OTHERS

Mr. Alfred A. Fusco, Jr., Town Engineer

Al Fusco said that the Planning Board is basically the administrator of the Town Zoning Code. He said that the Board makes sure that something bad does not come into the community, or something is made more aesthetically appealing to the community, and other different things.

Al Fusco said that several years ago the New York State Department of Environmental Conservation (NYSDEC) convinced the New York State Legislature to put up a State Environmentally Quality Review, which is called SEQRA. He said that for several years the towns basically did not implement, SEQRA, but now, because attorneys have discovered that this review can sometimes hold up projects that their clients are not in agreement with, the SEQRA review is now looked at on every project. He said that the review cannot stop a project, however, it can hold it up for a period of time. He said that an applicant who does not cross the "t's" and dot all of the "i's", can have their project held up, and even be asked to start all over again.

Theresa Santiago asked about a project where the planning commission stated in writing that they would remove a large water tank, but did not proceed on their agreement?

Al Fusco answered that even though the time period for redress has lapsed, an Article 78 can be filed against the city.

Al Fusco then handed out copies of the Short Form Environmental Assessment Form, referring to the first page, (Part I), which he explained, is filled out for small projects, such as small subdivisions, site plans, lot line changes, lot consolidations. He said that the questions are basic, and one question asks if another permit is needed, such as a NYSDOT, or County permit, and the Board, along with the Town Attorney and himself will determine if it's yes or no, and also if the permit is a modification. He said that the form is signed and dated by the applicant or his engineer.

Al Fusco then referred to Part II of the SEQRA form, which is answered and filled in by the lead agency, which for most projects, would be this Planning Board. He read the first question: "Does action exceed any Type I threshold? (SEQRA Law 6-NR Part 617.4). He explained that the thresholds are "how big a project is."

Derek Wilson added that there are automatic "tripping Points", where the Board has some leeway on smaller projects, but on bigger projects, the Planning Board has to automatically go to a more detailed SEQRA review, depending on disturbance of acreage, or different other thresholds.

Al Fusco said that what triggers a project to become a "Type 1 threshold", and would require the Board to have the applicant fill out a bigger or detailed SEQRA form, but what triggers that is, an adoption of a land use plan. He said that if the Board were to develop a new Zoning Plan, that would require a Type I Action, which would require a long SEQRA form. (He said that he personally is now in the midst of re-creating the Town of Deerpark Zoning Code.) He said that the next thing is "the adoption of changes within a zoning district, affecting more than 25 acres." He said that if an applicant comes before this Board requesting a zoning change, then they would be required to fill out an long form SEQRA. He said that it would also require a co-ordinated review, which is where the Planning Board, wanted to become lead agency, would decide on SEQRA, and would send out a notice of intent to become lead agency, to other involved agencies, which would include Orange County Planning Department, (any project that is within 500 feet of a State road, OCP must be notified- 239 General Municipal Law); NYSDOT (for any project that comes out onto a State road); any neighboring municipality which is adjoining to the applicants' Deerpark property, and possibly NYDEC. He said that the letter mailed to these agencies says, "We, the Town of Deerpark Planning Board want to be lead agency, here's a copy of the application, here's a copy of the plan, do you have any comments?", and the involved agencies have thirty days in which to reply. He said they can either say they have no objection to the project, or they can say that they have no objection, but can the Board look at a particular issue, such as stormwater, sewer, etc.

Derek Wilson said that there is both involved agencies and interested agencies. He said that an agency that issues a permit, such as the NYSDEC would be considered an involved agency. He said that an interested agency, for example, would be the Orange County Department of Planning, because they do not issue any permits.

Al Fusco said that concerning filling out the long form SEQRA, any time someone wants to annex land, that long form would have to be filled out. He said that construction of new residential units eleven or more, the long SEQRA form must be filled out. He said, however, if an applicant is proposing ten or less units or parcels, and there are some real issues and concerns, then the Board can have the applicant fill out the long form, instead of the short form. He said that the Planning Board does have a lot of flexibility. He said that if an applicant is planning on creating their own public water and sewer, they would have to propose no less than 50 units, and must fill out the long SEQRA form. He said that an applicant who proposed 250 or more units of public water and sewer, must also fill out an Environmental Impact Statement, as well as the long SEQRA form.

Al Fusco said, referring to the short SEQRA form Part II, that once a project is identified and the Board lists it as an "unlisted action", then the Board moves forward. He said that one of the questions on the form is "Will the action receive a co-ordinated review as provided for unlisted actions in 6 NYCRR, part 617.6?" He said that most of the time this question is answered "no."

Al Fusco continued to read from the short SEQRA form, Part II: "C - Could action result in any adverse effects associated with the following:

C1- Existing air quality, surface or groundwater quality or quantity, noise levels, existing traffic pattern, solid waste production or disposal, potential or erosion, drainage or flooding problems?

Al Fusco said that if the answer is "yes" then the Board must delve farther into the issues. He said that this would be any action that would be above and beyond the ordinary, that is, anything that can't be handled by the Planning Board and/ or the Building Inspector.

C2- Aesthetic, agricultural, archaeological, historic, or other natural or cultural resources or community or neighborhood character?

Al Fusco said that any project that will change the character of the neighborhood, that there are ways to mitigate that, for example, planting trees, moving the project from near the road to back off the road, etc.

C3- Vegetation or fauna, fish, shellfish or wildlife species, significant habitats, or threatened or endangered species?

C4- A communities' existing plans or goals as officially adopted, or a change in use or intensity of use of land or other natural resources?

Al Fusco said that what this says is, that if a town is absolutely, unequivocally against a certain project, i.e. cell towers, than they will look at this point very carefully.

C5- Growth, subsequent development, or related activities like to be induced by the proposed action?

Al Fusco explained that this says, by virtue of this action, say, for example, an old country scenic road will be made into an eyesore widened concrete road, and the populous in that area would be affected.

C6 - Long term, short term, cumulative or other effects, not identified in C1-C5?

Al Fusco said that each C1- C5 point individually may not be a problem, but if you add them all together, than it may be a problem.

C7- Other impacts (including changes in use of either quantity or type of energy?)

D. Will the project have an impact on the environmental characteristics that caused the establishment of a critical environmental area?

Al Fusco explained that this would be a proposed project in the middle of the Basherkill, which is a critical environmental area.

E. Is there, or is there likely to be, controversy related to potential adverse environmental impacts?

Al Fusco answered that some proposed projects may very well have impacts, and that is the Boards' prerogative.

Al Fusco said, going to the bottom of the form, that if the Planning Board does determine that a project will have an adverse effect on the environment, than they issue this project as a "positive declaration," meaning that the Board thinks that this project will not work.

Al Fusco said that the Board may also declare a "negative declaration," with mitigations. He elaborated that a project may be okay, but, for example, the applicant has to do something with the drainage.

Al Fusco said that if the Board really feels that there is potential for a "positive declaration" for a project, after going over this form, then the Board requires that the applicant must fill out the long SEQRA form.

Al Fusco said that anytime that the Board does review a SEQRA form, the Board should take a few minutes to actually talk about the different impacts, rather than just hurriedly running through the form, and then declaring a negative declaration

Al Fusco said that the long SEQRA form is filled out, if the Board thinks that a project will have a positive impact, and he will guide the Board and give them recommendations on this. He briefly went over the long SEQRA form with the Board, saying that "Part I, Project Information", is generally completed by the applicant, and is a more detailed informational sheet about the project. He said that "Part 2, Project Impacts and their Magnitude" is filled out by the applicant, and the Board goes over it, and can disagree with the applicants' assessment of the impact, and then go to a section for "what degree of impact." He said that if the Board then disagrees with the applicants' impact analysis, the Board can then ask the applicant for an "expanded environmental assessment form," which is a whole different form that the applicant will have to fill out. He said then, if the Board does not accept the "expanded environmental assessment form", saying that they believe that there will be more impacts on the property, the Board can then require the applicant to fill out an "Environmental Impact Statement." He said that that "EIS" will be lengthy, can take up to a year or more to complete, and will have many, many pages. He said that sometimes the Board needs to require an "EIS" because they are not just doing it for themselves, but they are doing it for the community.

Al Fusco went over the long SEQRA form, "Part 2, Project Impacts and their Magnitude" briefly with the Board.

Al Fusco said that after a public hearing, if the Board feels that the applicant should look at some issues more closely, because members of the public stated that they have concerns, then the Board can request that the applicant fill out a "draft environmental impact statement", and after it is submitted, the Board reviews it, and says that it is completed. He said that the Board saying it is completed, doesn't mean that they are approving anything. He said that the Board then takes all of the public hearing comments, all of the involved agencies comments, all of the Board members comments, and tells the developer to answer all of the questions. He said that the applicant then submits their answers to all of these questions as a "Final Environmental Impact Statement." He said that after the Board accepts the FEIS, and deems it complete, it then goes out to the public, posted in the Town Clerks' Office, the Local Library, and the Planning Board Office, etc., and the public has the opportunity to report their comments back to the Planning Board. He said that after a period of time, the public comment period is closed, and the Board takes all comments into consideration and takes a hard look at the project. He said that at that point, the Board puts forth a "Findings Statement", which is basically the Boards' opinion, what the Board thinks, and the Board can say, that with the mitigations proposed by the applicant, there will be no significant affect on the environment. He said that in the "Findings Statement" the Board agrees with the applicants' conclusion, and it gets filed with the NYSDEC, the Orange County Clerk, and things of that nature, and there's a 90 day period for the people that were opposed to it, to sue the town by Article 78, if they don't agree with the Planning Boards' interpretation, and they felt that the SEQRA was lacking.

Al Fusco said that the other scenario is that the Planning Board does not approve the project, because the applicant has not proved that it would not have a significant impact, and the Planning Board has to state why, i.e., traffic is too high, stormwater issues, the project will take up habitat for the bears, etc. He said that the Board just cannot say "no" to a project, they have to state why. He said that the Planning Board issues their "no" response and files it, and more than likely, will get sued by the developer, who will have 90 day to do that.

Al Fusco said that there could also be the scenario of the "middle road", where the applicant has adequately demonstrated that a project of this kind could happen here, but a project of this scope, is a little too large for this area. He said that the Planning Board then can give the applicant ¾ or ½ of what they want, stating why, i.e., the road is too narrow, the recharge of the water isn't enough, the storm drainage is too much to handle in the culvert, etc. He said that at that point, maybe both sides are happy, and maybe they're not. He said that the Planning Board can only decide on what they're given. He said that an important thing is, that the Board cannot ever deny a project because of the economics, or approve a project because of the taxes, or deny a project because it's tax exempt. He said that the Board cannot use monetary aspects as reasons to either approve or deny a project.

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Vicaretti made a motion to adjourn. Santiago second. Roll call vote: Santiago, aye; Hunter, aye; Vicaretti, aye; Wilson, aye; Schock, aye.

Motion carried.

Meeting adjourned at 9:00 p.m.

Respectfully submitted,

Barbara Brollier, secretary