

The Deerpark Planning Board met for their bi-monthly meeting on Wednesday, October 27, 2010 at 7:00 p.m at Deerpark Town Hall, 420 Route 209, Huguenot, N.Y.

The following were present:

BOARD MEMBERS

Willard (Skip) Wilson, Chairman Theresa Santiago Noel Malsberg
Mike Breitenfeld Willard Schadt Mike Hunter-alternate member

OTHERS

Mr. David Bavoso, Town Attorney Mr. Alfred A. Fusco Jr., Town Engineer
Mr. Dave Dean, Town Board Liaison Mrs. Minzie Pan, Dragon Springs
representative
Ms. Lana Han, Dragon Springs, Esq. Mr. Damian Brady, Deerpark Village,
Esq.

THE PLEDGE OF ALLEGIANCE

DRAGON SPRINGS BUDDHIST, INC.

Applicants' 30 day extension of their special use permit, expires on October 28, 2010.

Skip Wilson said that this applicant had gotten its site plan approval in June 2010, and since, as of today, they did set up a third party escrow.

Al Fusco said that one issue pertaining to the revised site plan, is that the applicant had received a letter from the NYSDEC, which wrote a concern about the applicants' stormwater pollution prevention plan. He said that in reviewing the letter, he feels that there needs to be a few changes in the applicants' SWPPP, basically on some of the permanent facilities. He said that another concern of the NYSDEC, is that they did not like the SEQRA resolution that was put forth. He said that this Board declared a negative declaration, but the NYSDEC wants a full form SEQRA, which he said that he would have to prepare, which will take approximately two weeks. He also said that the applicant needs to address a "Heritage Survey", which had mentioned bald eagle activity on the property. He said that the applicants' engineer or design professional/ architect/ or environmentalist needs to supply the Board with some information about this issue. He said that all of this information should be submitted, before the Chairman stamps the maps, because it all pertains to the site plan application approval.

Al Fusco said, concerning the special use permit, that it does expire in one day, and he recommended that it be renewed for a one year period.

Minzie Pan, a Dragon Springs spokesperson said that the hold up at the NYSDEC is because their caseworker there had retired, and now their point person is located up in Albany (New York), and has not gotten up to speed on this project.

Al Fusco said that he has agreed to the NYSDEC's request for a Type I action, and the Board does not have to re-declare itself lead agency, so the Board doesn't have to wait for the 30 days. He said that if the applicant sends him the information that he needs, then they can be placed on the next agenda, where the Board will declare a new SEQRA resolution.

MOTION

Theresa Santiago made a motion for approval of the Dragon Springs Buddhist, Inc. special use permit for one year. Noel Malsberg second. Roll call vote: Santiago, aye; Malsberg, aye; Breitenfeld, aye; Schadt, aye; Hunter, aye; W. Wilson, aye. Motion carried.

Willard Schadt asked, the NYSDEC did not like this Boards' SEQRA declaration?

Al Fusco explained that this Board did a SEQRA resolution, and made a motion to declare lead agency, and made a motion for a negative declaration. He said that the NYSDEC wants a written, actual SEQRA resolution on a form, which shows what this Board looked at, what was reviewed, etc. He said that the official resolution will be signed by the Chairman, and then submitted to the NYSDEC.

The secretary was instructed to put this applicant on the next agenda.

DEERPARK VILLAGE - DISCUSSION

David Bavoso had distributed a letter from Town Attorney Glen Plotsky to the Board members, which says that Mr. Plotsky is doing research, as to the ethics issue on this application. He said that Mr. Plotsky will have a determination to this Board before the next Planning Board meeting.

Noel Malsberg asked for an explanation of the ethics issue?

David Bavoso answered that there have been concerns, because two Planning Board members live near to the project site. He said that there is questions as to the Attorney Generals' opinions in the past, regarding whether or not, those individuals can actually hear or vote on the application, or whether or not they have to recuse themselves. He said that the applicants' attorney, Mr. Brady, has provided some opinions, which Mr. Plotsky is currently reviewing, as well as doing his own research.

Mr. Brady said that in speaking with his client this afternoon, he had asked Mr. Brady to relay the following concerns to this Board. He said that first and foremost to start, in the past, members of this Board have been very quick to point out that certain delays were attributable to the applicant, which he said that he has disputed in the past. He said that in this particular situation, it is clear that the delay in this particular case, is clearly and wholly, that of the Boards. He said that a meeting took place with the Board in mid-September, and it's now close to a five week delay, which his client feels is a violation of the spirit, if not the substance of the stipulation of settlement that the applicant entered into. He said that this has to get done, and it has to get done quickly. He said that it has to get moved forward. He said that before, there have been members on this Planning Board that have pointed out certain things that they thought were unacceptable delays, and has let the applicant know that they thought it was an unacceptable delay. He said that in this particular circumstance, that if the burden is going to be placed on his client, in this particular fashion, it's got to be placed on the Board, in this particular fashion. He said that if there are any other issues that come up, he said that he is sure that they will be dealt with by himself and Mr. Sachs (attorney for Deerpark Village), Mr. Bavoso and Mr. Plotsky. He said that the Board needs to be aware of this, as how his client is feeling. He said that, in addition, he has also spoken with Mr Plotsky, regarding this ethics complaint. He said that it is a bit of a moot point, because the two Planning Board members that are the substance of that particular complaint, are not in attendance this evening. He said that however, his client and himself is requesting that at the next meeting, these two Board members need to state their reasons for not recusing themselves. He said that he is asking for them to state on the record, whether they are going to stay on the Planning Board during the pendency of the ethics investigation, or if they are not. He said that he has conveyed his concerns, that if his client is to proceed forward, during the pendency of the ethics investigation, and these two members are sitting on the Board, and there are certain decisions that were made, that there could be a concern that all of those issues, positive or negative, would have to be re-reviewed by the Board, because they would be under the taint of the ethics violation.

Mr. Brady said that Mr. Plotsky and himself are in agreement that there was a submission from Ron Gainer, who was the former Town Engineer, representing the Planning Board at their meetings with this applicant, and had made comments on this project. He said that Mr. Gainer has recently been retained by the Wilson Road Coalition. Mr. Brady then requested that any submission by Mr. Gainer on the Coalitions' behalf, outside of the fact that it's outside of the standard comment period, be stricken from the record, and not be distributed to Board members, because of a clear ethics conflict.

Skip Wilson stated for the record, that he has not distributed any correspondence

from
Mr. Gainer, concerning this project.

Noel Malsberg said for the record, that he had refused Mr. Gainers' e-mail concerning this application.

Mr. Brady said that any e-mails that he had received from Mr. Gainer, concerning this project, he has forwarded to Mr. Plotsky.

Noel Malsberg said that at a past Planning Board meeting, Mr. Plotsky had stated that he was basically unprepared to discuss this application at that meeting. He said that as a Planning Board member, his name is on the lawsuit, and he stated that he resents that he would be held liable, because the Town Attorney was not prepared for a meeting.

Mr. Brady said that this is not an attempt on his part, to put undue pressure on any member of the Board, except he said that he has a responsibility toward his client, and this is the position that was discussed, and that his client has taken, and as a result, he is relaying it to the Board.

Willard Schadt asked, concerning the stipulation of settlement, it is his understanding that at one point, wasn't there a fail-safe, or a fall-back, or there are issues that cannot be agreed upon, that it would go back to the judge? He asked, are we at that point? He asked, what is the trigger for that?

Mr. Brady answered that the trigger could necessarily be the disagreement between the parties, and one party or the other can bring it up, depending on their discretion. He said that he doesn't want to be put into a position that it looks like he is threatening further civil litigation, for the purpose of forcing the Board into a decision.

Mr. Schadt said that it is his understanding, that it is part of the existing order, that the court reserve the right to resolve any final issues that cannot be agreed upon.

Mr. Brady agreed, and said that there is that option, and certainly if necessary, that option can be explored by either the Board or the client.

Al Fusco said that basically it was up to the applicants' engineer, Mr. Parish, and himself to basically revise the FEIS, which they did. He said that based on differences that Mr. Parish and himself had on a few items, the two respective attorneys were supposed to work on those details. He said that barring that happening, then it would go to the judge or the clerk, to resolve any unresolved issues. He said that what did happen, was that Mr. Parish and himself got down

to verbiage on eight issues, which were handled here at Planning Board meetings, and then there were substantial differences on two issues. He said that Mr. Parish and himself, and Mr. Plotsky and Mr. Sachs all got together twice, and both times they all came to an agreement amongst themselves on all, but those two items. He said that the two items are basically monetary issues, that needed further discussion and/ or negotiation. He said that that there are only these two open issues right now.

Willard Schadt said, if there's only two issues, why do we keep going on and on and on, and why can't the court just resolve it?

Al Fusco said that they all are hopeful that these can still be resolved within the two respective parties. He agreed yes, they have been discussed to death, but he still wants to bring the Boards' position to the applicant, in new language, so to speak. He said that most of the disagreement stems around the improvements to Wilson Road, which is the main issue that needs to be resolved.

Willard Schadt said, then if it isn't resolved, let's not go another six months beating the issue to death, let's give ourselves a deadline to resolve it, and if not, then go the way of the courts.

Al Fusco agreed, and said that he thinks everybody just wants one more chance to resolve this, and it just hasn't happened where Mr. Plotsky and himself were able to sit down with the Board and discuss it, in depth, with the Board. He said that Mr. Parish and himself talked about a reasonable middle ground, and Mr. Plotsky and Mr. Sachs talked about a reasonable middle ground, which the Board has a right to hear.

Willard Schadt said that that is fine, but that he would like to see a time, where the Board says, "okay, this is it, if we don't have it by now, we're done, let it go to court," that's why it's in the stipulation.

Al Fusco said that that might have happened, but it has now gotten muddled up with the ethics issue and the Gainer issue, which Mr. Plotsky is working on, and has not had a chance to get together with him and subsequently the Board to address the final unresolved issues.

Willard Schadt asked, do you foresee the Board in agreement with the applicant on this final issue?

Al Fusco answered that he believes that reasonable people can resolve reasonable disagreements.

Willard Schadt answered that that is fine, but all he wants is a deadline.

Al Fusco said that as a Board, they can make a decision and have the Chairman issue an edict, now, if they wished.

Skip Wilson stated his opinion, that the Board should state exactly what they want, bend if they can, and then that's it. He said that this Board needs to approve their version of the FEIS, and then go from there.

Everyone agreed.

Mr. Brady said that there are eight out of ten issues that the two parties can agree on, and they haven't even been discussed yet, and in the past, there have been meetings between the applicant and the Town, and there have been disagreements about what is reasonable language. He said that the applicant wants to get this resolved as quickly as possible.

Noel Malsberg said that that this Board has not even been privy to the discussions between the engineers and the lawyers. He asked, how can you say that this Board is delaying?

Mr. Brady answered, because you are the Board, and the Town Attorney and the Town Engineer are the Boards' employees.

Noel Malsberg said that this Board is listening to feedback from the Town Engineer.

Mr. Brady said that they are your employees, and that is the Boards' responsibility. He said that this is not directed at individual people, he said that he's just saying that these are the concerns, and this is what has been happening, and that's what he is relaying.

Noel Malsberg asked, hasn't the ethical issue been running parallel to negotiations that the Town Engineer has been working on, it hasn't stopped his progress.

Mr. Fusco said that he had reviewed all of the items with the Board, and if the Board recalls, Mr. Plotsky was not at that meeting, but at that meeting he presented it all to the Board, and the Board had concurred with most of the items, with a few words. He said that he then reviewed again with Mr. Plotsky the words that the Board had inserted and deleted, and it was also discussed with Mr. Sachs and Mr. Parish, and it was getting geared up to finalize it, but then the ethics and Gainer issues popped up. He said that if the Board can sit down with Mr. Plotsky and himself, then it can be worked out.

Skip Wilson said at the next meeting or the meeting after that, if the Board can come up with the FEIS that they want it to be, can they then vote on it, or do they have to wait for the ethics issue decision?

Al Fusco said that he cannot discuss the ethics issue, because he doesn't know where that is going.

David Bavoso said that his office is in the process of researching it, and hopes to have an answer by the next Planning Board meeting.

Willard Schadt asked that the Board members receive all of the information that had gone between the attorneys and the engineers before the next meeting, information that the Board has not been privy to yet, and receive that information before the next meeting, so they will have time to review it, before coming together again on November 10th?

Al Fusco said that he will take the time tonight, or if the Board orders a special meeting, to go over that information with them.

Mr. Brady said that the discussion between the applicant and the agreement was that the last time that they had done this, Mr. Parish had prepared notes which did not match with Mr. Plotskys' notes, and that became part of the problem. He said that the agreement was that Mr. Plotsky would prepare the sum and substance of what had been agreed to, send it to the applicant and the Board in advance, so that everybody would be prepared to review it. He said that that is where the hold up has been.

Mr. Brady said, with respect to the ethics issue, that this complaint was submitted to the Deerpark Board of Ethics, which is a separate and distinct Board from the Planning Board, and it's not his clients' intention to draw this into a discussion in front of the Planning Board. He said that this is something that is completely separate, and for the purpose of the record, everyone present knows who the members who live on Wilson Road are, but he doesn't want to mention their names, because it is an ethics investigation, which is being conducted separately. He said that he and his client had asked for a voluntary recusal during the pendency, so that it didn't advance things either positively or negatively, that may have to be reviewed, if there was a decision by the Board of Ethics, that these people could not serve.

Mr. Brady told the Board that he was in communication with Mr. Plotsky within the last couple of days, and Mr. Plotsky did indicate that he will have the information for the Board and Mr. Brady by the beginning of next week. He said that he will have the applicants' engineer come to the next meeting.

The secretary was instructed to place this applicant on the next agenda.

COMMUNICATION FROM THE TOWN BOARD LIAISON

Dave Dean said that the NYSDEC Commissioner is no longer with the agency, and also have laid off a lot of people, and this will now delay projects even further. He said that the Board may want to prepare for even more delays when it comes to the NYSDEC.

BOARD MEMBER QUESTION ABOUT TRAINING

Willard Schadt asked if Mr. Bavosos' office will be having a training course for Board members?

Al Fusco answered that someone from Mr. Bavosos' office will be doing half of the training, and himself will be doing the other half, but a date has not been set, but it will be before the end of the year.

ADJOURNMENT

Willard Schadt made a motion to adjourn. Theresa Santiago second. Roll call vote: Santiago, aye; Malsberg, aye; Breitenfeld, aye; Schadt, aye; Hunter, aye; W. Wilson, aye. Motion carried.

Meeting adjourned at 8:00 p.m.

Respectfully submitted,

Barbara Brollier, Secretary