

DEERPARK PLANNING BOARD - JUNE 13, 2012 - PAGE #

The Deerpark Planning Board met for their bi-monthly meeting on Wednesday, June 13, 2012 at 7:00 p.m at Deerpark Town Hall, 420 Route 209, Huguenot, N.Y. The following were present:

BOARD MEMBERS

Bob Vicaretti, Co-Chairman Theresa Santiago Derek Wilson Craig Wagner Mike Hunter Willard Schadt

OTHERS

Mr. Alfred A. Fusco, Jr, Town Engineer Mr. William Onofry, Town Attorney  
Mr. Victor Roussos, Applicant Mr. Richard Guertin, Esq.

THE PLEDGE OF ALLEGIANCEVICTOR ROUSSOS - PRE-APPLICATION CONFERENCE

Represented by himself 754-7727

Owner/ Applicant Mr. Roussos wishes a subdivision on property located on Laviclin Dr., (off of Galley Hill Rd.), Cuddebackville, N.Y.

It is an RR zone. Section - Block - Lot = 31 - 1 - 48.22

Mr. Roussos handed out maps to the Board and indicated the lot lines, and where he wanted the new line for a subdivision. He said that he owns the lots across the deeded right-of-way, except for the front parcel. He said that he does not have 200' of road frontage however. He said that there is a mobile home on the back of the piece that he wishes to subdivide. He indicated on the map where his house is.

Al Fusco said that a flag lot may have to be created.

Derek Wilson said that the zoning states that to get a flag lot, the applicant has to start with 250' lot width, and 50' has to be taken off of that, to then end up with 200' lot width, which is the requirement.

The Board said that if the applicant can acquire the other front lot, across the deeded right-of-way, then he can also do a lot line change, and then a subdivision.

Al Fusco said that the front lot appears to be 225', and the applicant takes 50' off of that, then it'll not be wide enough. He said that the applicant can go before the ZBA for a variance for the lot width.

William Onofry said that the applicant would have to purchase the front lot on Galley Hill Road, so that he could have the 50' back.

The Board agreed that the lots are non-conforming and would have to go before the ZBA for several area variances. They recommended that Mr. Roussos employ a professional engineer or surveyor, to draw up a correct map, and he will know all of the variances that the applicant will have to apply for.

HUGUENOT ASSOCIATES LLC - #12-0403

Represented by Mr. Richard Guertin, Esq.

Owner/ Applicant Huguenot Associates LLC wishes to create a mining operation on property located on Big Pond Rd., Huguenot, N.Y.

It is an HMU zone. Section - Block - Lot = 38 - 1 - 110

Application received April 17, 2012

Mr. Vicaretti informed the members of the public that this meeting tonight is not a public hearing, so there can be no comments or public input on this application this evening. He acknowledged the submission of a petition handed to the secretary, of signatures of citizens opposed to this project, and said that the petition will be placed in the official file in the town clerks' office. He told the audience that the town website, [www.townofdeerpark.org](http://www.townofdeerpark.org) will keep them informed of the minutes of the meetings and agendas, so that they can be kept up to date.

Mr. Fusco said that basically the application before the Board at this point, is for a mining permit. He said that in this instance, the procedure is a little different, from any of the Planning Board meetings that the public may have followed in the past. He said that in this case, it is a mine reclamation permit which is needed from the New York State Department of Environmental Conservation (NYSDEC). He said that what happens, when you have a State agency, such as the NYSDEC, who has that much involvement in the project, very often they take over the environmental review. He said that there is the State Environmental Quality Review Act (SEQRA), which they handle. He said that in most instances, the Town involved, their Planning Board, would be the lead agency, that is, the Town would do the majority of the environmental review. He said that if, in fact, in certain circumstances, if there is a question of who should become the lead agency, the NYSDEC can always trump the town, and take over the project for the environmental review. He said that in this case, under most mine land reclamation applications, the NYSDEC takes the lead agency. He said that in this case, the NYSDEC will perform the environmental reviews. He said in the meantime, the Deerpark Planning Board will perform their own reviews, and will look at the NYSDEC's reviews, and comment to them, what this Board feels is appropriate. He said that at that some point there will be documents from the NYSDEC, and those documents are public documents. He said that what the procedure is here, under the current zoning, the Planning Board can issue a site plan approval and special use permit. He said that those will be conditional, upon the NYSDEC review, and their permit as well. He said that the Planning Board will be working hand in hand with the NYSDEC. He said that the applicant has already made presentations to the NYSDEC, and has given copies of those presentations to this Board, which have been reviewed. He said that the applicant has also made application to the Town of Deerpark for a mining permit and special use permit on this property. He said that towards that end, his office has made some preliminary comments, and the applicant has given answers, and then the Planning Board has made some more comments, and this will be going back and forth during the process. He said that one of the things that the Town is going to look heavily upon, is the NYSDEC's recommendation and the work that they are providing to this Board. He said that the procedure will be, that at the point, where the Board feels that it has all of the information that is needed, the Chairman will then schedule a date for a public hearing, which will be noted in the newspaper, noticed on the website, the adjoining landowners within 200' will get a public hearing notice in the mail, and the public can speak at that meeting. He said that

the applicant will make a little more formal presentation at that public hearing, with maps and answers to the questions, and then at that point, the Board will ask any citizens to make any comments or pose any questions, and then the questions that can be answered, are answered at that time, and if not, it will be reported back, at a later date, the answers to the questions that were asked. He said that this all becomes part of the public record, and a copy of the public record will be sent to the NYSDEC, and their public record will come back to this Board. He said that any comments that are made either directly to this Board, or directly to the NYSDEC, those comments will all be made privy to both agencies. He said that as time goes on, this Board will be asked to make a decision, in relationship to this application, and this Board will look at the mitigation measures that the NYSDEC may have proposed. He said that the Board may have proposed mitigation measure as well, or have asked the applicant to provide mitigation measures, and at that point, the Board would be in a position to make a decision. He said that again, that any decision would be subject to the NYSDEC review as well.

William Onofry said that in terms of notification, the local laws require that anyone who lives within 200' of the property lines will get those public hearing notices prior to the public hearing. He said that it is the responsibility of the applicant to mail those notices within a specified amount of time, prior to the public hearing, and then present proof of those mailings to the Board, at the public hearing.

A citizen asked if mining is a use in this area or zone?

Both Mr. Fusco answered that it is a special use permit, that is, a special use.

Derek Wilson asked if the NYSDEC has to hold a public hearing?

Al Fusco answered that the NYSDEC may choose to work through this Board, for a public hearing for the SEQRA process. He said that they may choose to involve this Board with them, or they may choose to act independently. He then said that citizens will be notified by mail, if they are within that 200' of the property lines, but if a citizen is not within that certain distance, and still has concerns, obviously the public knows that this applicant will be coming before this Board, so they can check the town website for the agendas, and that way they can tell when the meetings will be held that will have this applicant on the agendas.

Mr. Onofry said that the freedom of information act says, that if a citizen wishes to obtain paperwork from the town, he/ she will be required to fill out a form requesting whatever information, and to anticipate that he/ she just cannot walk into the town clerks' office and say "give me the copies today" and don't expect to be given the information immediately. He said that there is a process, and the citizen will eventually be provided the information.

Mr. Guertin introduced himself, and said that he is representing his client for a special use permit, and is a 43 acre parcel on Big Pond Road. He said that this will obviously be a long process, and there is a lot of material that will have to be reviewed. He said that it will be reviewed primarily by the NYSDEC, but the Town of Deerpark has that special use and site plan component that has to be addressed. He said that he has submitted copies of the documents that were submitted to the NYSDEC, to the Town Planning Board, Town Clerk, Town Attorney and Town Engineer. He said that they are on file, and there has been a couple of responses already from the NYSDEC, and then responses back to the NYSDEC from his client. He said that they are not far along in this process, and still have a long ways to go. He said that there are maps included with the documentation, and there are some preliminary addressing of the environmental issues that will be of concern, and he said that he knows that they can't think of everything, and that's where a public hearing comes in, where the public can bring up issues that his client may have not thought to bring up. He said that at this point, there has been comments that he has submitted for his client, and the Town Engineer has written back his comments to them, in a memo given to him today. He said that obviously his client will now be responding to these (today's) comments.

Derek Wilson said that the NYSDEC handles the environmental review and the Planning Board handles the site plan review, and asked, does the NYSDEC and the Planning Board hold a joint public hearing? He said that it is his understanding that this Planning Board holds a public hearing for the site plan, special use permit after the NYSDEC makes a decision on the SEQIRA process, which has its' own public hearing requirement. He then asked for clarification.

Mr. Guertin answered that this Board has its' own public hearing, and as of yet, has not been advised by the NYSDEC of their intent to hold a public hearing, if and when. He said that his client is still working with the NYSDEC to find out what they want.

Al Fusco answered that the NYSDEC may ask for the Deerpark Planning Board to become involved, because it is an involved agency. He said that the NYSDEC may ask to become involved with this Board on some public comment, but as of yet, they have not indicated their intentions. He said that public comment is always appropriate to the NYSDEC on an application. He said that he does not know if this applicant has a complete application before the NYSDEC yet, that is, if the NYSDEC deems the application submitted is complete. He said that correspondence that he has had back from the NYSDEC, relates to the SEQRA process, and it says "the application cannot be deemed complete, until the lead agency issues a negative declaration or a subsequent positive declaration." He said that the NYSDEC is the lead agency, so this Board needs to follow their lead. He said that this Board also needs to have the clerk or himself contact the NYSDEC, and let them become privy to this Boards' records as well, so that they know of this Boards' concerns, as an involved agency.

Derek Wilson asked, an application of this size of ground disturbance, doesn't it automatically become a positive declaration?

Al Fusco answered that the NYSDEC has regulations under the mine land reclamation, which allows phasing, that is, at any one time you can have five or ten acres, and rotate it on a phasing basis.

Derek Wilson asked, so if twenty acres in disturbed, that doesn't necessarily automatically trigger a positive declaration?

Al Fusco answered, that is correct. He also said that the NYSDEC does not accept an application as complete, until the SEQRA is done. He said that until the NYSDEC gives a negative or a positive declaration, with mitigation, they are not saying that their application is complete. He said that this whole process is very different, from what this Planning Board is used to.

Bob Vicaretti asked, when does the Final Environmental Impact Statement (FEIS) come into play?

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Mr. Guertin answered that that is part of the process. He said that his client has submitted the Environmental Assessment Form (EAF), and the NYSDEC has had some questions on it, which this Board has seen, and this back and forth is part of the process. He said that the Board can do an Environmental Impact Statement (EIS), and get a negative declaration, but it will still have to be reviewed by all involved.

Al Fusco said that the NYSDEC procedures are a little different. He said that the NYSDEC is involved in the environmental decision making, and they will say what mitigation measures are required, pertaining to the environmental, with this Boards' input. He said that they make the environmental determination, but this Board still makes the "land use" evaluation, the site plan and/ or special use permit.

Derek Wilson said that there are time frames at different points, and it sounds like the NYSDEC's process is different for mining applications, over the general "other" applications.

Al Fusco said that this is all written down in the SEQRA book, part 614, of the NYSDEC's regulations. He said that in the past, the NYSDEC has always wanted to be lead agency on mining applications. He said that anytime there's lead agencies, part 614 of the SEQRA regulations, it's stated right in there, how they act, and the time frames that they act within. He said that the only thing that he's not quite clear on, is whether or not they have the public comment period, the public hearing.

Al Fusco referred to his technical memo, dated June 8, 2012:

"1. In relationship to the culvert crossing, we do not have that sufficient information correctly available to determine the extent the Town will be able to repair the culvert crossing on Big Pond Road that was damaged in the declared disasters Hurricane Irene and Tropical Storm Lee.

We do however believe, that the FEMA allocation may be short of funds necessary to create a new H25 loaded culvert crossing of sufficient size to prevent future crossings.

This item is of extreme necessity since we do not recommend the heavy truck traffic detour through the residential neighborhood north of the site."

Al Fusco commented that representatives from the Town are meeting with FEMA this week and will hope to get some additional insight into this crossing.

"2. The NYSDEC's requirements and permit conditions regarding rattlesnakes, the topsoil program and the pre-blast surveys, hours of operation, noise ordinance, well performance and monitoring all need to be addressed. I believe these items, along with the rest of the NYSDEC Mine Land Reclamation Law and permits must be answered before the Town has a public hearing, and considers a request for a mining approval. We should require a NYSDEC permit and SEQRA Neg. Declaration before this Board could take action on this project. The Neg. Dec., if given, should have mitigation measures to protect the Town and neighborhood."

"3. Regarding StormWater Pollution Prevention Plan (SWPPP) and an erosion control plan, this is a major component of approval without this document the Town nor NYSDEC can act. This would be based on the projected plan not the status quo."

"4. Sanitary facilities are to be provided when in operation, not today. The project will require sanitary facilities and they should be planned for now and shown on plans."

"5. We do not require a washing station for the facility now, but we need one planned for the operation. Of course, we can wait until the plan is complete and NYSDEC requirements are made, but the Town would not consider approval without one."

"6. We have reviewed the AASHTO chart submitted and the sight distances are on the boundary lines. We will further review and possibly recommend mitigation measures for the safety of the public and employees. We need additional review and information specifics on the traffic analysis for both th existing and proposed."

Al Fusco said that the AASHTO chart, is for vehicles safely going in and out of the property, safety for the public and also for the employees.

"7. We understand the the NYSDEC's comments and requirements will answer many of our concerns, so I suggest that we move forward with the understanding that these details need to be addressed for Planning Board approval. We can continue to review NYSDEC and applicant submittals, but any public hearing or approval would be premature without all of the NYSDEC data and approvals."

"8. Investigation and report on issues regarding falling rocks as per comments at the meeting, together with any mitigation."

Al Fusco added that any Board comments or questions now may be appropriate.

Derek Wilson asked about the Town Attorneys' letter to the Board concerning the distance required in the HMU Zone, from a mining activity.

William Onofry answered that the question from the Board was, if there was any minimum distances from neighboring residences that had to be met. He said that David Bavoso researched it, and said that the interpretation of the Zoning Law, and extractive uses is defined that the use is a special use in the HMU zone, and Section 230-4 of the Zoning Law defines that special use. He said that it is a use that requires individual consideration for site plan review because of its' unique characteristics. He said that the definition states that it also may require a meeting of certain conditions and safeguards before being permitted. He said that it was David Bavoso's opinion, based upon the current conditions in the Zoning Law that a setback from existing residents can and may be imposed, as an appropriate condition or safeguard of any special use permit. He said that this is an opinion, based upon the way that the Zoning Law is written.

Mr. Guertin said that his client will be responding to Mr. Fusco's latest technical memo.

Willard Schadt asked about the applicants' time frame.

Mr. Guertin answered that he does not know, as he cannot say about the NYSDEC, when they will act. He said that he will check on it and when the NYSDEC will be having a public hearing in New Paltz, N.Y.

DEERPARK VILLAGE

Al Fusco said that he is still waiting to hear back from the Deerpark Village representative and will notify the secretary when this applicant is to be put back onto the agenda.

EXECUTIVE SESSION

Schadt made a motion to go into executive session for discussion of pending litigation. Hunter second. Roll call vote: Santiago, aye; Wagner, aye; Hunter, aye; Wilson, abstain; Schadt, aye; Vicaretti, aye. Motion carried.

The Board went into executive session at 7:52 p.m.

Schadt made a motion to come out of executive session. Wagner second. Roll call vote: Santiago, aye; Wagner, aye; Hunter, aye; Wilson, abstain; Schadt, aye; Vicaretti, aye. Motion carried.

The Board came out of executive session at 8:14 p.m.

ADJOURNMENT

Wilson made a motion to adjourn. Wagner second. Roll call vote: Santiago, aye; Wagner, aye; Hunter, aye; Wilson, aye; Schadt, aye; Vicaretti, aye. Motion carried.

Meeting adjourned at 8:15 p.m

Respectfully submitted,

Barbara Brollier, secretary