

Minutes
Work Session of the Planning Board
Village/Town of Mount Kisco
Tuesday, June 23, 2009

Meeting called to order at 7:50 P.M. at the Municipal Building, Mount Kisco, New York.

Members Present: **Chairman Joseph Cosentino**
 Vice Chairman Sturniolo
 Stanley Bernstein
 Ralph Vigliotti

Members Absent: **Joseph Morreale**
 Doug Hertz
 Sol Gibbons

Staff Present: **Nanette Bourne**
 Anthony Oliveri
 Whitney Singleton
 Becky Kinal - AKRF

MINUTES:

May 26, 2009

Motion: **Stanley Bernstein**
Second: **Vice Chairman Sturniolo**
Aye: **Ralph Vigliotti**
Aye: **Stanley Bernstein**
Aye: **Vice Chairman Sturniolo**
Aye: **Chairman Cosentino**

June 9, 2009:

Motion: **Stanley Bernstein**
Second: **Ralph Vigliotti**
Aye: **Stanley Bernstein**
Aye: **Ralph Vigliotti**
Aye: **Vice Chairman Sturniolo**
Aye: **Chairman Cosentino**

CONTINUING REVIEW

Buckingham Properties
Morgan Drive
PB2005-19/
Crème de la Crème
Morgan Drive
PB2004-08

Present: **David Steinmetz, Zarin & Steinmetz, representing**
 Buckingham Properties and Morgan Enterprises
 Edward Cohen, Property Owner
 Richard Cohen, Property Owner
 Amanda Goad, Assistant Corporation Counsel, City of
 New York
 Dr. Lorraine Janus, Chief of Water Quality Science
 and Research Division for Department of
 Environmental Protection

David Steinmetz: I have been somewhat out of the loop for a number of months as Mr. Cohen was pursuing discussions regarding the remediation of the property through his environmental counsel, Dean Sommer, and Mr. Sommer has been in fairly active discussion on behalf of Buckingham with the City of New York. I know Whitney has been kept relatively apprised of those discussions, and I am extremely pleased that I was asked to come back before your board tonight together with some representatives of the City of New York. I was apprised of tonight's meeting with the possibility of this discussion, and I asked Whitney if we could be present. I know Mr.

Sommer was trying to encourage the DEP and the City of New York to come forward and meet directly with your board in particular to discuss a letter that was written to you on May 6 of this year from Steven Shindler, the Director of Water Quality. I assume everyone has seen a copy of Mr. Shindler's letter to the board. In essence, the City of New York has been reviewing the various submissions that we made, that the village made. I am referring to the remediation reports that were prepared for Buckingham by Tim Miller's office and ECC Environmental as well as the reports and studies that were generated for the village by C.A. Rich and Becky and Nanette. We are here to have a follow-up discussion with you. The City seems to have concluded, as did our consultants, that in situ stabilization and solidification is a suitable remediation measure to deal with the situation on the Buckingham property. It adequately protects the potential for any impact to the water supply, and as I discussed directly with Amanda. I am delighted that Dr. Janus is here. The City of New York, which obviously stands to have a benefit to 9,000,000 potential consumers of its water supply, has joined in the scientific conclusion reached by ECC and by Tim Miller Associates. I am here on behalf of Buckingham to ask you to reconsider the position that was previously taken. I know your board felt very strongly about making sure that remediation of the site was done properly and it was done in accordance with acceptable scientific protocol. As you all told me directly, you wanted to make sure that the water supply of the City of New York, which is impacted by the Kisco River, is safe. That is why we spent the last year in contact with the City of New York trying to get them involved with this remediation effort. I could not be more pleased that they actually have two critical representatives here. If you have questions, I am pleased that Becky is here in conjunction with Nanette, so we have all the key players here. We ask you to reconsider so we can move forward. Mr. Cohen is most interested to go forward with the development of his property. In light of the physical situation, the remediation situation, the economic climate, it is important that we have this discussion.

Vice Chairman Sturniolo: ECC is who?

David Steinmetz: If you remember going back two years ago and subsequent to that, we were here with Jon Dahlgren of Tim Miller and Rob Wasserman from ECC. They are environmental consultants; it is an acronym for something I do not have. They are from Framingham, Massachusetts.

Amanda Goad: I would like to thank Mr. Steinmetz for clearly introducing the issue and explaining why we are here. I represent the City of New York and relaying again the position set forth in Steve Shindler's letter, which is that after DEP invested some resources in reviewing this plan, and taking into account all possible roots of exposure; DEP is comfortable on a scientific basis with an in situ remediation option. I am not a scientist. Lorraine Janus should be the one to speak to exactly why that is.

Lorraine Janus: We have reviewed the past 15 years of data. We have routine stream sampling sites that are along the brook that runs closest to the site of the wastewater treatment plant. The site of the former plant is here, and we have three sampling sites. Kisco 9 is the headwater site, and it is running this way, down to the reservoir. Our routine sites have given us some background water quality information. We have looked at all the data that we had from the past 15 years. We have looked at silver, arsenic, barium, cadmium, chromium, mercury, lead, and selenium, which are the metals that are listed in the report that was done. We found only very few detections, and wherever there have been any detections of metals, they would not necessarily be from wastewater treatment. Wherever we have found any detection, they have always been a very small fraction of the maximum contaminant level that is acceptable. It would be very hard to say that it was not just a simply naturally occurring detection.

David Steinmetz: Dr. Janus, are you able to speak to the merits of in situ stabilization versus the dig-and-haul alternative?

Amanda Goad: I do not think that is quite Lorraine's area, as a water quality chemist.

Lorraine Janus: I am a water quality expert, and I can comment about the quality of the water in the stream.

Amanda Goad: I can clarify a number of different groups within DEP have looked at this issue, including our Bureau of Environmental Planning and Assessment where

there are environmental engineers who are up on remediation procedures and roots of exposure and those types of concerns. They, too, are comfortable with it.

Nanette Bourne: In trying to put together a lot of information that has come to us over the years, there were two alternatives presented by Mr. Cohen's consultants that are very clear for the ponds. The board discussed that extensively. Post the discussion of the ponds, it was revealed that there was additional mercury stemming from the sludge beds that were originally found on the adjacent property and then coming in. The remediation plan, regardless of the alternative, did not include a remediation plan for the sludge beds. Have you addressed that? Do you know what kind of alternate remediation plan would be required to address the sludge bed issue?

Becky Kinal: These sludge beds were discovered on adjacent properties when a Phase Two was done in 2007. When we looked at the maps, those sludge beds straddled the property line. They were actually also present on the Buckingham site, but had not been sampled as part of the Buckingham site investigation program. They were subsequently sampled and I do not know what the results were for that. The sludge material was found, but I do not know what the mercury levels were in those two samples.

Amanda Goad: Again, I am not a scientist. I had the impression, being somewhat familiar with the site next-door from a non-technical perspective that the portion of sludge bed extending onto the Buckingham property was not a concern, but unfortunately, I cannot quote you the numbers to that.

Nanette Bourne: When you say not a concern?

Amanda Goad: That it did not have mercury in exceeds of the applicable judges.

Whitney Singleton: I think it was the geo-probes and the difference on the Buckingham portion of the property. The point is that there is a component on both sides associated, and that is not what you are proposing tonight. You are solely focusing on the in situ proposal as it relates to the tanks.

Amanda Goad: Right.

Becky Kinal: If this were a wastewater treatment plant that DEP was decommissioning today, would the sludge and sediment be left in place?

Amanda Goad: That is a good question, which is a little bit difficult to answer in the abstract, since we are not in the business of abandoning plants in the same way anymore. But when we did this coordinated review within DEP where both Lorraine's group and in-city engineers, etc., were reviewing it that was our goal, to look at this consistent with the way DEP would handle an in-city facility that it was responsible directly for remediation.

Becky Kinal: So, it is possible that sites that would be decommissioned today?

Amanda Goad: It is absolutely possible. I cannot give you an example of such a site where that has been done or is being done, but it is consistent with the policy.

David Steinmetz: Becky, I do not know if this speaks directly to your point, but it is interesting that Mr. Shindler's letter does indicate what I at least have come to learn from involvement in this. It says, "As one would expect at a site of a wastewater treatment plant, testing has revealed detectable levels of mercury." It seems to be generally accepted by DEP and other scientists that when you decommission or have a wastewater treatment plant, you are going to find mercury. Mr. Shindler certainly was surprised and seems to have concluded, as have other experts, that in situ would be a suitable piece.

Becky Kinal: That is not the question. It is not surprising that there is mercury there. It is how it would be handled.

Nanette Bourne: Following that, one of the issues concerning the in situ was the structural integrity of what would be left. I think the Planning Board brought this up because development is proposed, and construction. The Planning Board was concerned that whatever in situ remediation was provided, how close was the development when construction was proposed to these ponds? There is one claim

that you take care of it and then you leave it and then it is done. What happens if you start digging and banging and driving piles?

Edward Cohen: The first floor is parking on this building and then the two floors above.

Nanette Bourne: I ask DEP as you have the experience and the guidance from other similar projects, when you are constructing on these bases that basically become cement boxes, and you are doing construction, what does that do to the structural integrity of those?

Amanda Goad: Unfortunately, I am not an engineer who can speak directly to that. I can only relay that is the type of thing our Bureau of Environmental Planning and Assessment was looking at. We do have some experience with in-city facilities where something like that, as a stabilization measure, had to be done. Obviously, we had space constraints of the city and the new infrastructure of whatever it may be goes back on top. It is a known phenomenon that has been dealt with before. I do not know exactly what the engineering proposal is here.

David Steinmetz: I do not think there is any question that the city and its various folks who reviewed this all knew what we were proposing to construct on top of it. Mr. Sommer has made it clear repeatedly both to the city and today's memo to the village that we plan of having primarily a parking area over most of the impacted area. It is the position that he has taken with the city and in his letter to you. There really is no basis under CERCLA and a number of federal programs for the village to require the dig-and-haul, particularly if the city is comfortable with the notion of the in situ.

Vice Chairman Sturniolo: Putting aside dollars and cents, why wouldn't DEP want to go the more conservative approach just to ensure that all the T's have been crossed and all the I's have been dotted as opposed to going with the in situ remediation program? Why not overly protect yourself considering there is a source of drinking water a couple of hundred yards away.

Amanda Goad: I think that is the kind of challenge that DEP and the scientific folks in the upstate bureau of DEP are constantly dealing with; that there is a tension between trying to re-develop property in an efficient way and trying to protect water quality. This is an example of a situation where there exist remediation procedures that would go further, but our focus in this most recent review of this particular file has been what the appropriate, adequate measure is? And so, I think Mr. Sommers' memo of today does a good job of running through the roots of exposure. What are the possible problems that could happen? From DEP's review, it seems that there are no concerns left once this in situ proposal is implemented. Lorraine has extensive technical data with her explaining the basis for DEP's belief that there is not a water quality concern from using this proposal, so it does not make sense for us to require something that goes beyond what the science calls for, goes beyond what the law calls for, just because it is existent.

Stanley Bernstein: David, on a letter you sent October 24, 2007, you agreed not to contest the decision by the Planning Board to haul away - you even said the permission to cement the project - which, of course, we were against, is withdrawn, and rather than argue about which is better you're going to comply with what we thought. What brought the change of mind? Money or some other problem?

David Steinmetz: That is an excellent question and a fair one. I have the letter and I have the paragraph right in front of me. There is no question that Mr. Cohen made a decision as we wrote to you in October 2007 to cooperate and accede to what the village had asked for. At that point in time, basically Ed was ready to bite the bullet and swallow it as necessary and go ahead and deal with the remediation. As had been recommended, somewhat vociferously by your consultants over what Ed had been told by his own consultants. I think the mix changed really for two reasons subsequent to that. One, he spent a fair amount of time and money investigating what the law genuinely requires under a number of federal and state programs what is mandated under this situation. Two, we learned from you and your consultants that the reason we were talking about doing dig-and-haul was not because it would be more fun and we can have lots of trucks going in and out and trying to remove this and take a problem of mercury contamination here and bring it to another location and put it there, but we were talking about doing it because your consultants were convincing you that it was better to protect the water supply. Sounded like at least a legitimate interest to study. They were not just making us do

it for the sport of it; they had a basis they were arguing. The thing that became fascinating to Mr. Cohen was when we discovered that the City of New York and its experts studied all of the available data and said, if protecting the water supply is our goal, and it's a laudable goal to try to protect 9,000,000 million folks who drink that water, some of us who are in the city or work in the city, when the City of New York said you don't need to do that to adequately protect the water supply, that became a fairly significant event for Mr. Cohen at that moment. Combine that with the reality of the current state of the economy and his desire to move forward with this project in as efficient fashion as he could, I think all the factors come together and we asked for this meeting with your board. We asked for you to reconsider. We know you had thought at that time a year ago that it made sense to endorse the dig-and-haul approach. You knew all along, Mr. Bernstein, that we did not think it was necessary. But just because it is not necessary does not mean I cannot have clients that will say I'll go above and beyond what the law requires and what science requires. We're here now because we're asking you to reconsider. We're asking you to take into account what the law seems to specifically require and more importantly what science seems to dictate. I think it's fair and reasonable for us to ask you to reconsider. Quite frankly, I think it's totally fair and reasonable for you to say, we are going to reconsider. We appreciate the wonderful technical advice we've got, but we don't need to go above and beyond. There are lots of different ways to build a bridge. You know that better than most.

Stanley Bernstein: We are adjacent to a New York State wetland. How does this impact the wetland? I know that's not your area of expertise, but you must know a little bit about New York State wetlands. The wetland itself impacts the Kisco River, and this project impacts the wetland. There should be some sort of answer on that, a paragraph written somewhere saying that nothing that you are doing will have any effect on the New York State wetland. I think it's a K-12. I think it would be incumbent upon the city to say that.

Amanda Goad: I can only speak to that directly, but it is something that the DEP engineers reviewing this were aware of. It's the type of thing they look for and take into account in considering the accuracy of a measure.

Stanley Bernstein: Also, one of the things we worried about was any kind of impact upon the encapsulation due to foundations, etc. You mentioned even today that the only thing covering it is a parking area, but that really doesn't mean much because there is another building on top of that. Piles may have to be driven. It is not a wetland anymore, but the city filled it in with six feet of fill, and I'm pretty sure, even though nobody wants to admit it that there is hydric soil beneath the six feet of fill. Chances are when your engineers come in, they are going to have to say we have to drive piles, even though parking is above it; there is something above the parking. Columns will be required and so forth. How you plan to do it and how it will impact the encapsulation that you propose is something that should be addressed to us.

David Steinmetz: My understanding is the city and its folks were well aware of the construction, and the design we were planning and placing on the property. I want to just go back a step to the state wetland issue. The little I've gotten on that specific issue from the consultants, they all felt that having Mr. Cohen go forward with in situ stabilization and solidification at the earliest possible date was far better than the condition that that property, the wetlands and the stream has been in for 50 years in having the mercury out there, where it is capable of possible movement and disturbance. What we are proposing is by far a vast improvement over the way this property has remained for 50 years.

Edward Cohen: One other question, since he is going to report this somehow is that the mercury is not significant, as a sense of when you go to numbers.

David Steinmetz: To amplify on what Mr. Cohen is saying is the City of New York has taken the position that the on site soils are not highly contaminated and our robust water quality monitoring program provides no indication that the site is or ever has been a source of contamination to DEP's water supply. It's important for everyone to know there has never been a legitimate fear by the DEP the City of New York of the Village of Mount Kisco I would assume, that there was a fear of contamination to the water supply. People have known about the fact that old wastewater treatment plant has been here for the 50 years the chairman has been out on that property recreating.

Whitney Singleton: To clarify one thing as you're talking about no legitimate fears, you're talking about with regard solely to the water quality of New York City's water supply. There are other associated risk factors with mercury. There are vapors,

which are created by virtue of these hot spots, and the water quality is one aspect of what your board is going to look at. I will concur with David and with Amanda that one of the principal focal points of your board in its prior review was the potential impact that this could have on the water quality for New York City.

Amanda Goad: It is my understanding there was previous discussion of this in 2007, but it wasn't until 2008 that my office, the City Law Department got involved and starting mobilizing folks at DEP to look into the issue. The previous consultant reports that expressed concern about the quality of the drinking water needing to be preserved, while we certainly appreciate others looking out for us, that was not at the time based on consultation with DEP. On its first look at the matter, DEP concluded that this was appropriate.

Whitney Singleton: Do you see the issue being discussed today having any collateral impact on the remediation for an adjoining segment?

Amanda Goad: The short answer to that is no. We do have ongoing discussions with the property owner next door, which I can't get into because of the confidential aspects of them, but I don't think there is any direct connection between what's decided here and what's decided next-door.

Nanette Bourne: In regards to the sludge beds that extend into both sites?

Amanda Goad: The Crème de la Crème property next door.

David Steinmetz: So the record is entirely clear that I am not here this evening in any capacity on behalf of Crème de la Crème.

Vice Chairman Sturniolo: That the sludge beds extend to both sites.

Whitney Singleton: You had originally requested that this review be segmented, and we expressed some concerns as to that and you said you were proceeding at your own risk in that regard. Then you did an about face and you said your client would not move forward without there being a comprehensive determination both on the remediation and the ultimate site plan probe. Is that still your client's position?

David Steinmetz: Yes. In light of the nature and magnitude of the investment and basically the overall state of the economy, whether it's in situ or dig-and-haul, Mr. Cohen feels it is absolutely the prudent course of action before he moves forward with the remediation that he needs to know he actually has a viable project that you are comfortable with and you can approve. Previously he had been interested in moving forward with the remediation at the earliest possible date, and that's why we were presenting segmentation. Whitney refers to it as an about face. It's true. We took one position and we changed it and took another. It was entirely legitimate, tactical decision to do one versus the other. There is nothing unlawful about permissible segmentation. SEQRA allows for it, the law condones it under appropriate circumstances. We changed our minds and made it, in effect, easier for those that would prefer to do a comprehensive environmental review before anything takes place by abandoning that position and making that very clear to you in that same October letter that Mr. Bernstein referred to earlier. We are standing by the position that you could not move forward with any remediation until the project was approved.

Edward Cohen: Look at the reality today.

David Steinmetz: You stand behind the notion, Mr. Cohen, which you do want to pursue the project here in the Village of Mount Kisco; you're interested in going forward.

Chairman Cosentino: This is a complicated issue for us. None of us are scientists. We depend on staff to come back with some answers. What I heard tonight was questions that were asked with lack of answers. I think there weren't many; maybe five or six that I would need answers to. Your presentation was great, Mr. Cohen was great, but I think we need to deal with this more. We have a responsibility to the village. I am going to depend on Nanette, Becky, Whitney and Anthony to come back with something on these answers that we are going to be looking for.

Becky Kinal: If the board does decide in situ is the right way to go, I am assuming there is going to be some kind of formal remediation plan with details and procedures for implementing it, which is going to be created?

David Steinmetz: I can't imagine anything other than that. My only hesitation in my answer is I'm not certain whether we had gotten 50, 75, 95% of the way there in the ECC report from two years ago. I will have to go back and look. I do believe Rob Wasserman had established a pretty detailed protocol, but maybe it's not to the level of construction detail that you're asking for. Sufficed to say, if this board were to approve in situ stabilization and solidification, we absolutely would make it very clear what we're going to do, where we're going to do it, why we don't think pile driving is going to have a negative significant adverse impact on the environment or surrounding soils, water wetland, etc. All that is going to have to be clearly part of my client's environmental review under SEQRA. We're going to document that. You're going to need to have a good record. I understand that.

Nanette Bourne: And modified to include the sledge beds.

David Steinmetz: Understood. At least that portion that is on the property that we would be touching.

Chairman Cosentino: Mr. Cohen has a good record with the village here. He is an outstanding developer. Do we want to work with him? Yes, we do. We just need some answers that some questions were asked and we could not properly get our answers back. The presentation was great and we appreciate it.

David Steinmetz: So you're clear, you're looking for us to supply some more information to staff that they can review, and then we could asked to be placed on a future agenda after we've gotten that material, come back for a follow-up discussion with your board.

Whitney Singleton: I did want to point out there is a significant amount of outstanding balance of professional fees due by the applicant and the adjoining property owner. As I've indicated to David and I've indicated to Amanda, the village will continue to accrue these expenses. It would be my recommendation to your board that there not be any more scheduled determinations and continued application reviews until account balances are paid.

Edward Cohen: Let's clarify that for one moment. We have paid our bills in full. I think you are misleading the board. There is nothing that is owed by us, or a bill that is outstanding by me that I have not paid to the village.

Whitney Singleton: There is an outstanding bill for these two sites, which was represented by your attorney that would be paid, and those fees were accrued as a result of that representation. That bill is not paid.

Edward Cohen: Anything that was sent to me has been paid in full. What you're referring to is a bill that was sent to Crème for payment, and they have not paid, and you are holding us up because of them. This is not fair.

Chairman Cosentino: This is a legal matter right now. Your attorney will have to work it out with our counsel.

Edward Cohen: We tried.

David Steinmetz: We may need some help from the board.

Chairman Cosentino: I cannot go against counsel, and I cannot put this on any agenda until this is straightened out. You have to understand that. It's been my policy, and I can't change it now.

David Steinmetz: Let's see if we can establish a couple of ground rules, if you would, Mr. Chairman, just bear with me a moment. One, I don't believe, Whitney, I've still gotten the allocation between the two jobs that you and Austin indicated to me in writing, I would ultimately get. The board should know, one of the reasons there was difficulty, and I said one of the reasons there was difficulty regarding payment was because the consultants inadvertently or otherwise lumped time charges together that needed to be split between the two properties. Two, Mr. Cohen has constantly said he would pay what could be separately aggregated and allocated to his property, and on a going forward basis without question, we should have no difficulty continuing to pay for the consultants to pay whatever they need to do with regard to this particular site.

Nanette Bourne: Ours are separated.

Whitney Singleton: Everything has been delineated. As David knows from what I sent earlier, the amounts have been delineated, I have asked for a copy of my e-mail to the building inspector for that breakdown to be forwarded.

David Steinmetz: But I haven't gotten it.

Whitney Singleton: I will remind him to do it.

David Steinmetz: I don't want the board to think that my client and I did something disingenuous because we haven't gotten something that we asked for. That was what I think troubled him on the misleading comment, Whitney, because we've been very honorable about asking. Tell us what he owes; he'll pay it. That has got to be clear.

Whitney Singleton: The issue though, that we're being held up for them. There is currently an outstanding subdivision application for this property. It encompasses both properties, not one. As both, we are not going to pay your share and we'll allow you to take your half of the lot. It is one application for both properties. In that regard, that amount has to be paid, and while you may disagree with what was rightfully owed by you and rightfully owed by them, I did sit in a meeting where I was told before the entire board and all of the representatives that the bills would be paid.

Edward Cohen: Whatever I owed would be paid. I can't control my neighbor.

Whitney Singleton: You're actually a joint applicant with your neighbor.

David Steinmetz: With regard to the subdivision, which we understand, and we hope to get the fees relative to that rectified, as you've explained to me.

Edward Cohen: Yes, but I want to clarify something. The filing has nothing to do with the study that subsequently occurred. All the expenses are related to a study that have nothing to do with that filing. I don't know why you're combining the two together, and it really upsets me.

Whitney Singleton: It also upsets me when representatives for Crème and for Buckingham say don't worry about the fees, they will be paid by the clients, and then they're not paid.

Edward Cohen: Not Buckingham. Whatever was billed to me was paid and will be paid.

David Steinmetz: Just so everyone knows, and to the extent that this issue is being aired necessarily or unnecessarily, I think we're talking about \$15-20,000. I absolutely believe the village should be collecting from the appropriate party and may end up collecting from somebody who is not the appropriate party, for no other reason to get this thing going.

Chairman Cosentino: There is only one meeting in July and one is August. Until this is straightened out and counsel tells me that it's a go, there is nothing I can do.

David Steinmetz: We definitely want to be on one of the agendas either in early July or late August. We will do what we can on our end to begin answering the questions that were presented and getting any follow-up technical information that is necessary. I will confer with Mr. Cohen and certainly with Whitney to try to rectify the outstanding invoices.

Chairman Cosentino: I do not know what is on the agenda for July or August. I will do all I can to help, but there is a possibility there is a lot on it now.

Vice Chairman Sturniolo: It boils down to whether Mr. Cohen or somebody else writes a check. We need that total fee paid first, and then we can discuss dates.

David Steinmetz: When we come back, do you want the City of New York present?

Nanette Bourne: It depends on what you are bringing back.

Amanda Goad: We will discuss this off line.

Stanley Bernstein: Nanette, we never did a Determination of Significance for this?

Nanette Bourne: There is a draft scoping that was adopted July 7, 2008, PosDec.

CORRESPONDENCE

- Letter from Anthony Monteleone to Honorable Michael Cindrich dated June 17, 2009 re rezoning-Main Street property adjoining the Mount Kisco Coach Diner with attached memorandum from Ashley Ley, AICP, to James Palmer, Village Manager dated July 25, 2008 re Mount Kisco Coach Diner expansion and rezoning of 262 Main Street.

Chairman Cosentino: I take umbrage to this memo from Mr. Monteleone.

Vice Chairman Sturniolo: I second that, Mr. Chairman.

Chairman Cosentino: There are certain things in it that I have addressed to the attorney and to Mr. Palmer.

- Memorandum with attachments from James Palmer, Village Manager to Chairman Cosentino and Planning Board members dated June 16, 2009 re amendments to Chapter 110-Zoning Floor Area Regulations.

Chairman Cosentino: I spoke to Mr. Palmer today, and we have a meeting on July 1, 2009 at 8:00 P.M. It is a work-session. Nancy will make the agenda to that.

DISCUSSION

Whitney Singleton: I was requested to draft something for the Village Board by the Deputy Mayor to have proposed FAR (Floor Area Ratio) regulations. These are the regulations that would address floor area ratios within each of residential districts, and the proposal is to make it two times the building development coverage for the subject zone. If you're in a neighborhood that allows two and one half stories and a basement, you can either do maximum building coverage over two stories and that's it, or you can do less building coverage and go two and one half stories with a basement. Hypothetically, if you own a house in the RS 12, minimum 6 250 square feet minimum lot size, and they allow a building coverage of 25%, so you're allowed to have a footprint of 1,600 square feet. Right now, there is nothing prohibiting you having 1,600 main floor, 1,600 second floor, 800 square feet third floor and a full basement.

Chairman Cosentino: Doesn't that go over the 1,600 allowable spaces?

Whitney Singleton: Right now, we do everything on a two-dimensional basis, whatever the total area is. This would say we're not just concerned with the footprint of your building; we're concerned with the overall square footage and usable area. It looks at it on a three-dimensional basis as opposed to two. It would put a cap on the amount of square footage that you can have on your lot. Not just the building footprint but the overall square footage, and it will take into account certain amounts of basements and third floors in addition to first and second floors.

Chairman Cosentino: If a person had a house that is 1,600 square feet that was built on that square footage, 6,000, and all of a sudden, he wants to have a family room in the basement, is that allowed?

Whitney Singleton: Yes. He would be allowed to have a family room in the basement, but it would put a cap on the maximum amount of square footage that he's allowed to have between all the usable areas, all the floors. In that particular circumstance, if you were capped at a 1,600 square feet footprint, he would be allowed to have a total square footage within his home of 3,200 square feet.

Chairman Cosentino: So the cap isn't 1,600?

Whitney Singleton: No, it's double the maximum building coverage. Let me give you another scenario. Let's say you're in a 10,000 square feet district with a minimum lot size. You have a building coverage of 25% in the zone. That allows you to build a 2,500 square feet footprint. Right now, without any FAR you're allowed to go the 2,500 square feet for the first floor, 2,500 square feet for the second floor, a 1,250 square feet third floor and a full basement. You're having close to 10,000 square feet on a 10,000 square foot lot. We wanted to say we're tired of these manipulations of our zoning. We're tired of looking at lots that are 10,000

square feet and seeing enormous structures. Because while they technically don't exceed the maximum allowable footprint in the zone, they are making utilization of multiple floors within the buildings.

Chairman Cosentino: So what are you doing essentially?

Whitney Singleton: We are getting people out of attics and basements.

Chairman Cosentino: You just said you can have a finished basement.

Whitney Singleton: You can. But it counts towards your total square footage.

Anthony Oliveri: If you have a 6,250 square foot lot, the building coverage is 25%, so the allowable floor area would be close to 3,120 square feet. With the new regulations, you're allowed 1,490 square feet plus 23% of net lot area in excess of 6,000 then times two; you end up with something like 3,000 square feet. So it's maybe 200 square feet less.

Whitney Singleton: When you're looking at the 23%, you're looking at the building coverage.

Anthony Oliveri: Then you double it for the FAR. You figure your building coverage then you multiply it by two to get your FAR.

Whitney Singleton: Right. If you have a minimum lot size of 6,250, you're entitled to the full 25% building coverage, correct? That's the lot square footage.

Anthony Oliveri: You have net lot area and then maximum permitted building coverage.

Whitney Singleton: If your net lot area is 6,250, you're allowed 25% building coverage. The point I'm trying to make is the maximum square footage that you'll be allowed in the zone is double whatever the maximum is.

Chairman Cosentino: And the reason for this is?

Whitney Singleton: When you build, things are not two-dimensional. They're three dimensional. You can build up, you can build spot buildings. This would address new construction, additions like you've recently seen on Moore Avenue, re-demising of space.

Chairman Cosentino: This is excellent, then.

Whitney Singleton: I don't disagree that the concept of FAR is perhaps overdue in Mount Kisco.

Nanette Bourne: FAR is a very common term for planning in dimension requirements. If you have a 40,000 square foot lot you have an FAR of one, you can build a 40,000 square foot building. If you have a FAR of two, you can build an 80,000 square foot building. FAR is to create a sense of bulk. I've never seen FAR used to capture basement space. I think everyone is in agreement that having some reasonable relationship of lot size to buildings so you don't create these oversized buildings. It's an unusual use of FAR, because it's usually of bulk, not of size. It is supposed to relate to the bulk of development, not the square footage. It's not supposed to limit your square footage. It's supposed to bring some relationship to the size of your lot to the building. So you either have a one story at 10,000 square feet or a two-story with 5,000 square feet on each floor.

Whitney Singleton: Just about every single definition that I've seen after examining almost every community in Westchester, is that the floor area ratio is defined as gross floor area in square feet of all buildings on a lot divided by the area.

Nanette Bourne: That's right, but I've never seen it apply to basements.

Whitney Singleton: Again, the standard definition which I found literally identical in ten different communities includes for one and two family residences any attic space with a floor to ceiling height of 7.5 feet or greater shall be included, and the same for basements.

Chairman Cosentino: I want to see all illegal basements go. I want to see all illegal attics go. There are a lot in the village that is illegal. There are apartments that should not be, as they are fire hazards; if this addresses that.

Whitney Singleton: This does not address what is existing.

Anthony Oliveri: If they're illegal now, they are still going to be illegal.

Chairman Cosentino: This is on new construction and conversions. Is there anyway of adding that now?

Anthony Oliveri: No. If someone builds something illegal and does not get a C.O., it could be for many reasons.

Chairman Cosentino: They are out there now without C.O.'s, and I am finding that you implemented in the village where you have residential inspections, and the people are not letting Al go in there, they are refusing to let him see the inside of the building, because it's not mandatory.

Anthony Oliveri: This will do nothing to address that. It's a different issue.

Whitney Singleton: If someone has an illegal space, they have an illegal space and it's incumbent upon Code Enforcement and the Building Department.

Chairman Cosentino: I thought if you could implement this together with existing, retroactively, you would clean up a lot.

Nanette Bourne: All this is going to do is effect the size of the structure. It has nothing to do with how that structure is used.

Chairman Cosentino: I only wish that it did.

Whitney Singleton: It is going to address the amount of dwell-able square footage within a building. It is going to put a cap on it. This will address these enormous houses that you see on tiny lots.

Chairman Cosentino: Excellent. I am for that. The only reason I brought this up is because if that square footage can address retroactive, it would get everybody that has an illegal apartment, an illegal attic would give you the teeth to go in there and fix it. I wish the village would address something where the code enforcer can go in there and state, this is illegal, I want it stopped immediately.

Whitney Singleton: This has to do with bulk. It doesn't have to do with use. It does not go to family rooms, apartments, or uses. Indirectly, it does address that because it's going to make it less desirable to construct an addition or a home where you have a basement.

Anthony Oliveri: This is going to affect someone who wants to build a large house. They will be restricted by 400 or 500 square feet.

Whitney Singleton: It is going to affect the Certificate of Occupancies. They should now read, "two story single-family dwelling with three bedrooms, three and a half baths, breaking it out by floor, unfinished basement, unfinished attic." And later on, if you want to finish your basement, you're going to have to demonstrate that you meet the floor area requirements.

Nanette Bourne: FAR's are a good idea and communities are dealing with in a variety of ways. It's a community character issue, and that's why FAR's are being introduced to communities in Westchester. You don't want to have a big looming house that takes advantage of every inch, grossly oversized with some 2500 square feet house next door to it. Some communities use the FAR, some communities look at the height of the house, and however high the house is, and the distance from the edge of the house to the next house has to be equal to that. Some look at sun, so that a big house doesn't create shade on the little house. It's a size issue and a bulk issue; it's a community character issue. I don't think it's going to do anything for people who are going to push the law and violate it anyway.

Whitney Singleton: It's going to prevent people from being able to design their properties with a calculator.

Nanette Bourne: It discourages people from maxing out, but it won't do anything to solve the illegal issue.

Stanley Bernstein: It sounds good and we're all in favor of it, but when you look at the big issue, there are not many more lots left to build on.

Whitney Singleton: This is for existing lots on a teardown.

Stanley Bernstein: You have to somehow or other get back to enforcement and put some more teeth in enforcement.

Chairman Cosentino: The village is trying, but as far as I'm concerned, it's not working.

Whitney Singleton: This will put limitations on what they can come to the Building Department to get blessed.

Stanley Bernstein: How many houses in the entire village will this affect?

Whitney Singleton: Have you been on Moore Avenue lately, Lexington Avenue?

Chairman Cosentino: There are more and more houses now being utilized illegally, within the last three or four years than ever before.

Stanley Bernstein: I know that, but this is not going to correct that.

Chairman Cosentino: I get very frustrated when I hear illegal housing. I am part of this village and I have a big stake here.

Whitney Singleton: This is not designed to go after the utilization of the houses. It's designed to go after how much space can be built and demised. This is a very simplified version of FAR. Would you agree with that assessment, Nanette?

Nanette Bourne: FAR is a simple concept that is effectively used for limiting the size of structures.

Whitney Singleton: I am suggesting you solicit comments from Nanette and Anthony with regard to the proposed changes to see whether or not your consultants have any recommendations, as this has been referred to you for comment, we're going to be making a referral back to the Village Board as to what your thoughts are to this proposed zoning. It has impact on the community, so I would suggest there be further discussion on this with questions and comments and whatever your board thinks is appropriate.

Chairman Cosentino: We will read up on this and come back with comments on it.

Stanley Bernstein: Is anything being done for site plan review?

Whitney Singleton: With all due respect, I can't speak for the entirety of the board and I can't just propose things without conferring with Nanette, Anthony and the chairman.

Stanley Bernstein: I thought we decided we were going to go ahead with what was proposed.

Nanette Bourne: We had the items that you sent to the Village Board and public hearings were scheduled. Those are still a week forward.

Whitney Singleton: The one thing that needs to be looked at is are you comfortable with the latest version that went to the Village Board with regard to the Change of Use Permit? I still have my reservations as to whether or not there are sufficient objective criteria to get it back before your board. I think it is a very subjective standard right now, and I think that can be subject to judicial scrutinization by an applicant.

Vice Chairman Sturniolo: Are we running out of time regarding that specific subject, the Change of Use Permit issue?

Whitney Singleton: It's before the Village Board right now, rescheduled for July or August sometime.

Vice Chairman Sturniolo: Are we subject to someone trying to do something while this drags on to July or August?

Whitney Singleton: I'm not aware of anything. The Village Board wants to have multiple public hearings on this, and they put it off. I cannot remember the specific date, but I have relayed to the Village Board that the criteria set forth for major Change of Use Permits is too ethereal. You can't look at it and say, "you have to go to the Planning Board; you don't."

Stanley Bernstein: That's why I say everything should come before the Planning Board except one-family houses, a change of name, etc., and a list of things.

Whitney Singleton: I think you would be on very thin ice.

Stanley Bernstein: Why?

Whitney Singleton: If my firm wants to go out of my office, and an accounting firm wants to go in there, would you want to review that?

Stanley Bernstein: Yes, and we would delineate what the exceptions are, otherwise something is going to get past us.

Whitney Singleton: That would be over reaching by your board. One thing I have been considering is I think it would be appropriate that when ever, and I'm not suggesting this necessarily for your board, you have a site in any degree of non-conformity or non-compliance, that there be special attention paid to that particular site. In other words, where you have a site that has insufficient parking or a site that's too close to the property line, or you have a site where the use is not allowed in that zone, that should undergo some additional degree of review by some board, whether it's the Zoning Board or the Village Board.

Stanley Bernstein: Where does the fish store/sheet rock place come forward?

Whitney Singleton: They had insufficient parking. They would fall under that paradigm that I'm talking about.

Stanley Bernstein: They have insufficient parking right now?

Whitney Singleton: Yes.

Stanley Bernstein: Why did they get a C.O.?

Whitney Singleton: They were a pre-existing non-conformity that was deemed to be not an expansion of that non-conformity. They only had five parking spaces before and they only have five parking spaces now. And it's medical.

Stanley Bernstein: Then they're way below the parking.

Chairman Cosentino: They went to the ZBA and they won it.

Stanley Bernstein: Then there should be some mechanism where the ZBA can't do that. The building permit should not have been issued. That's why items like that should always come before us.

Whitney Singleton: There is much more to that story. Given the fact that the building permit was issued.

Stanley Bernstein: The building permit should have never been issued. That is why items like that should always come before us. When you say something like single tenants demised for four tenants, that has to come before us.

Whitney Singleton: It's not now.

Stanley Bernstein: I know it is not now, but it should be. That is what you are working on to accomplish, aren't you?

Whitney Singleton: I am working on what is presently before the Village Board. I think there are shortcomings in what is presently proposed that need to be addressed. There are other issues that we told the Village Board would be

forthcoming. Other changes, but quite, frankly, in order for me to address those, I need to be able to sit down with Nanette and Anthony.
Stanley Bernstein: We welcome you to sit with them.

As there was no further business, on a motion by Mr. Bernstein, seconded by Mr. Vigliotti, the meeting was adjourned at 9:15 P.M.

Respectfully submitted,

Stanley Bernstein,
Board Secretary

dm