

Minutes
Regular/Work Session of the Planning Board
Village/Town of Mount Kisco
Tuesday June 28, 2011

The meeting was called to order at 7:30 P.M. at the Municipal Building Mount Kisco, New York by Chairman Cosentino.

Members Present: **Chairman Joseph Cosentino**
 Vice Chairman Sturniolo
 Doug Hertz
 Sol Gibbons

Members Absent: **Stanley Bernstein**
 Ralph Vigliotti

Staff Present: **Anthony Oliveri**
 Whitney Singleton
 Michelle Robbins

Staff Absent: **Nanette Bourne**
 Austin Cassidy

Continuing Review

Glenclyff, LLC (Glen August)
151 Sarles Street
PB2011-4

Present: **Edward J. Delaney, Jr., Bibbo Associates, LLP**

From the Public:

Laurence Maisel
45 Carlton Drive
President, Mount Kisco Chase Homeowners
Association

Ed Delaney: In reaction to the comments received at the Public Hearing we have resubmitted a set of plans dated June 21, 2011. Regarding the beech tree, we asked the architect to offer some notes. We added those notes. Other than that, there has been no substantive changes to the plans.

There were no additional written comments submitted to the Board.

Anthony Oliveri: A level spreader needs to be added to disperse flow, which they did, and I am satisfied with what has been done.

Michelle: I was interested in the color of the building.

Ed Delaney: I do not have that information, but whatever color they had is in the minutes of the Architectural Review Board. The only comment the Architectural Review Board had was on the raised trellises need to match the color of the building.

Chairman Cosentino: We have no control over the color, that is the purview of the Architectural Review Board. For those of us who read

the draft, we are not voting on this tonight, of course, but we will put this on the agenda for July 12, 2011. We can go through the resolution of you want.

Whitney Singleton: I have drawn up a draft condition regarding the screening for the Board's review. If agreed, I will adopt it into the final resolution.

Vice Chairman Sturniolo: In regards to the beech tree, I would like to see incorporated somewhere in the resolution a root feeding program at the appropriate time that an arborist would select.

Doug Hertz: You want the least, smallest construction vehicles to be used within those areas to minimize and protect.

Whitney Singleton: I do not ----- compaction of the root system.

Anthony Oliveri: I would request we conduct a pre-construction meeting with the building inspector and village engineer prior to starting any work. We will need to monitor this.

Whitney Singleton: Would you like an additional provision to read, "As set forth in plans, no compaction, equipment movement shall occur at the drip line of the beech tree?"

Ed Delaney: It's not going to happen. The drip line of the beech tree comes with construction of the tennis court. The drip line of the beech tree is an enormous ----- . We have identified on the plan a root protection plan. That's the best we can do along with an arborist providing deep root penetration and everything else that goes with that. I don't know what else to do there.

Chairman Cosentino: We will put this on the agenda for July 12, 2011 for a final.

Ed Delaney: May I give a draft of the resolution to my client?

Chairman Cosentino: I doubt you can before the meeting.

Whitney Singleton: Do you mind if the applicant and/or the public receives it contemporaneous with the Board?

Chairman Cosentino: I have no problems with that. Essentially it will be the same as the copy we have tonight, plus the items that we just discussed. If the draft is completed and approved by Mr. Singleton, I don't have a problem with the client reviewing it.

Whitney Singleton: If you're going to maintain the buffer as set forth in the proposed resolution, how many feet will you designate? The distance between structures and the property line I will leave to Mr. Oliveri.

Anthony Oliveri: I think we had something a little over 200 feet from the tennis pavilion to the property line.

Doug Hertz: The pavilion is closer to 300.

Ed Delaney: Yes, but there are parts of the swimming pool complex that is closer than that existing right now. The rear yard set back at that point on the westerly property line is 50 feet. We have to come up with a number, which I have to get back to my client. I owe it to my client to come back with a number. I don't see the problem with it on a reasonable buffer.

Doug Hertz: Do you know the width of the current forested area?

Ed Delaney: Between the closest part of the property line and the closest part of the wall – between the closest house and the building is close to 430 feet.

Doug Hertz: How much of that is wooded?

Ed Delaney: Two-thirds of that - over 200 feet.

Doug Hertz: If go a little bit north, where the swimming pool pavilion and patio is, that is closer to 200 feet to the property line.

Ed Delaney: More like 150 feet.

Discussion followed.

Ed Delaney: The zoning setback for the building is 50 feet, so I would think that would be an appropriate number. One of the original maps that I gave your board originally showed this. This has shrunk 6 or 8 feet and has moved down a little bit since then. It's about 400 feet between the houses and here. That would encompass the 50 foot buffer.

Chairman Cosentino: Are we happy with that number?

Ed Delaney: The language in this reads that "it is designed to be a mitigation measure that the third party does not have rights over." In other words, the neighbors.

Doug Hertz: I'd like to see more than 50 feet.

Ed Delaney: They have no intent of doing anything here at all, but I cannot give away their rights.

Doug Hertz: The language will also basically say that you have the ability to come back and discuss it.

Whitney Singleton: It will not prevent future applications within the area. It will just make sure they can't cut the trees down without coming back to the Board. Whatever your board feels sufficient to adequately buffer. Also, there is a required buffer on the Mount Kisco Chase Development as well, which will supplement whatever the buffer is on this property.

Doug Hertz: Do you know what that is?

Whitney Singleton: Not off the top of my head.

Doug Hertz: I am seeing areas, based on this topography, it looks like the Chase is cut in parts directly to the property line.

Laurence Maisel: I believe there is a Marsh Sanctuary walking trail.

Ed Delaney: Protecting these interests when it was being developed, they probably demanded some sort of buffer. It was already written into the village code at that point.

Chairman Cosentino: I would like to agree to a number tonight.

Anthony Oliveri: The planting plan notes an existing tree line surrounding the tennis pavilion. Maybe it is a reference to the planting plan and the existing tree lines remain. Any alterations to that existing tree line, come back to the Board for future application.

Vice Chairman Sturniolo: But that would negate the buffer issue.

Anthony Oliveri: It would ensure that the buffer would remain as an existing tree line.

Vice Chairman Sturniolo: But we have not come up with a buffer number yet.

Anthony Oliveri: There is no number. It is showing it on the outside.

Chairman Cosentino: There should be a number.

Doug Hertz: In all due fairness, I think that onerous on the homeowner. We do not require that of any applicant. The fact is that he happens to have a forest on his land. I think that is really too much to ask, to stay within existing tree lines. We would never ask that of anyone. It means anytime they want to put a bocce court down there, they have to come back.

Ed Delaney: The slope is prohibitive. There are a few factors in that.

Doug Hertz: You are not going to develop some of this area, and there are a few spots that are sensitive.

Ed Delaney: This is the westerly property. There is absolutely nothing developable on it. Zero.

Doug Hertz: So suggest something to us.

Ed Delaney: To be fair, I would suggest the same thing the Toll Brothers had. That would be my first reaction, but we don't know that number. This is 50 feet. This is your setback on your building line, so I would suggest 75. It is undevelopable. You're talking about a 150-foot strip that is not developable at all, under any circumstances.

Doug Hertz: I completely agree with you. I think it is more of a question of putting something out that we feel comfortable that, that visual barrier has been removed. I am happy with 75 feet.

Chairman Cosentino: I have no problem with 75 feet.

Vice Chairman Sturniolo: I'd like to see it at 100.

Ed Delaney: It's unprecedented for the Board to do that, I think. I cannot speak for my client now because this is the first I've heard of a buffer. I am sure Toll's was probably 25 or so.

Chairman Cosentino: I don't mind the 75. Mr. Sturniolo, do you mind 75?

Vice Chairman Sturniolo: If everyone wants to go with that number, I can go with it.

Chairman Cosentino: It is agreed on 75.

Doug Hertz: Clearly the buffer is 50 in most spots on the other side of the line as well.

Ed Delaney: The beauty of that is it's never going to happen.

Chairman Cosentino: I would suggest you get together with your client so we can approve this resolution for July 12.

Ed Delaney: 75 feet?

Chairman Cosentino: 75 feet.

Whitney Singleton: Also note that between the two properties that will create at least a 100 foot buffer.

Laurence Maisel: My notes indicate, and I would like to confirm that against the documented minutes that there would be a environmental study submitted and we would receive that 15 days before the next time for comment. We have not received that.

Whitney Singleton: We received an environment assessment. I think our terminology is causing the confusion. The Board has never voted to require the applicant to prepare an Environmental Impact Statement. The applicant is required by law to submit an Environmental Assessment Form, which is what they have done.

Laurence Maisel: I would like to see the minutes from the last meeting. It was my understanding there would be an Environmental Impact Study.

Chairman Cosentino: No one agreed to that, Mr. Maisel.

Doug Hertz: It was discussed, but we did not vote to require it of the applicant.

Laurence Maisel: Then, it was agreed the applicant would submit a 3-D image of the proposed structure from various angles.

Chairman Cosentino: I was the one that recommended it, until I found out that they didn't even have to be before this Board if it was not for a minor steep slopes issue. The structure was nothing. I did not know that then. In knowing that now, the model would have done us no good anyway. Because that would have had to gone to the Architectural Review Board.

Laurence Maisel: That's an excellent point, and I appreciate that. However, we were waiting to receive this information. Nothing was communicated to us until very, very recently as a result of an email that I sent to the village asking where any of this material was, and was told that it was not there. So, we did not have ample time to prepare any commentary before the close of the deadline date. So, we're waiting for this material to come, it did not come, again, your judgment. I have no question about it, but at the same time asking us if we had any comment, we were waiting on documented information to prepare thoughtful responses.

Doug Hertz: A lot of that was discussed at the last meeting. We held open the Public Hearing so that there could be public input.

Chairman Cosentino: No one was present at the last meeting.

Laurence Maisel: We were not informed that there was a Public Hearing.

Chairman Cosentino: We left it opened. We never closed it. Actually, we were waiting for people from Chase to come back. No one came back.

Laurence Maisel: I appreciate that. It was my understanding that we would be informed by email when materials were in and of the next public hearing.

Doug Hertz: It was held open until the next meeting. We hold it open at each meeting.

Laurence Maisel: We were not informed of that. When I received the notice there was a work session tonight, I was entitled to come, but not entitled to speak.

Chairman Cosentino: How did you receive notice of tonight?

Laurence Maisel: Someone from the village sent it to me. Patti Tipa. It was in response to a query whether any of the materials had been received that I sent to the village manager.

Chairman Cosentino: There were no materials to even send, if we had them.

Laurence Maisel: I appreciate that, but not knowing in expectation of waiting for that study in particular, we withheld any comment until we had a sufficient fact base.

Chairman Cosentino: But the comments were going to be based on the information that you received that we did not send you.

Laurence Maisel: I appreciate that. So you see the conundrum. We're waiting to comment on something that we were never going to get.

Chairman Cosentino: But there was nothing to send for you to comment on.

Laurence Maisel: I appreciate that, but our expectation was that there would be a study forthcoming, and that is why we were waiting to submit any additional comments.

Whitney Singleton: I have gone back and looked at the minutes. The minutes state that one member of the Board expressed an opinion that said you would like to see an Environmental Impact Statement. But the only way this Board or any Board in any community can take action is by a motion and a second and a vote on every issue recorded within the minutes. That is the only way they can act. There was no requirement of the applicant to do anything other than what was required by law, and they have submitted their application.

Laurence Maisel: Is that stated in the minutes?

Whitney Singleton: The minutes state that there was discussion of a model, but then as you advanced a page or two in the minutes, you realize that the Board was under the impression that they were looking at an approval of the project rather than an approval to disturb a portion of the steep slopes, and that the structure itself was beyond the purview of the Planning Board.

Vice Chairman Sturniolo: Are you referring the minutes of June 14? I've been looking through the comments on June 14, which may be the wrong minutes.

Chairman Cosentino: I would like to add something regarding this issue. The impact is so minute. A 5,200 square foot area of disturbance out of a 25-acre piece. But, do you realize that regardless of what size it was, we may be doing you a favor? Do you realize the impacts that Chase itself would have if you want to build an addition to your house and there was a steep slope there? We'd have to go through the same thing. Do you know what that cost? It would cost more than the addition. If you do for one, I'd have to do for all of Chase. So, no matter who came in for an addition, with all the steep slopes that you have there, we would have to comply because we did it for Glenclyff so we would have to do it here. It's not fair, because it's so minute. Why would somebody in Chase, in a house worth over 1 million dollars, whatever it may be, that wants to put at \$30,000 addition and spend another \$80,000 on an Environmental Impact Statement?

Laurence Maisel: I appreciate what you're saying.

Chairman Cosentino: It's not fair to the people in Chase.

Laurence Maisel: I do appreciate that. However, the magnitude of the changing of the slope and the potential run off – I am not an environmental engineer. On behalf of our neighbors, we want to be assured by a professionally competent independent environmental engineer that any runoff would not be injurious to the environment and to the property.

Chairman Cosentino: I think it's going the opposite way, anyway.

Anthony Oliveri: The run-off is going to the south.

Chairman Cosentino: It's not even going towards Chase. It would not even affect anything.

Anthony Oliveri: It's going to the Stockbridge property.

Chairman Cosentino: I understand what you're saying and I can appreciate it.

Doug Hertz: Mr. Oliveri spent a lot of time with that, and at the last meeting, we requested additional augmentation to their run-off plan to make sure that it would not affect anyone, but particularly the Stockbridge property.

Laurence Maisel: In the resolution I was listening about, did it stipulate that the run-off goes to the south?

Anthony Oliveri: The plan shows that, and the plan is referenced in the resolution.

Whitney Singleton: One of the things that was done in the draft resolution to supplement was that the chairman asked me to go back and prepare an additional provision, even though the real substance of what we're looking at is the run-off and the impact on the steep slope. He also asked me to prepare something relative to the screening. There is not only going to be a very comprehensive condition in there, and you're welcome to see a copy of it, it's actually going to be a recorded document. I do believe that is probably the most significant impact that was perceived by the neighbors at Mount Kisco Chase. That is the genesis of the chairman's request for that condition. I think between the two buffers, it's a pretty significant vegetative mix, regardless of season, and that should also help if there is any runoff. To make sure there is no impact, and that will be in recorded form.

Laurence Maisel: When could I reasonably expect to receive a copy of that resolution?

Whitney Singleton: The same time the applicant and the board will receive it. You are welcome to a copy of a draft of it this evening, as well as the draft conditions.

At this point, Mr. Maisel gave Mr. Singleton his email address (lmaisel@decisionvu.com) to allow Mr. Singleton to remain communicative with him.

Doug Hertz: This is an unusual application.

Laurence Maisel: I understand that and appreciate your support. A distinction between what rights we have versus the rights of the property owner, and we cannot extend our boundary. But at the other hand, which is very sensitive to environmental runoff issues. My own personal feeling about the application is not important.

Doug Hertz: We don't really get to judge that either.

Laurence Maisel: Thank you very much.

Vice Chairman Sturniolo: Mr. Singleton, will you let us know in advance of the next meeting what the Chase buffer is?

Whitney Singleton: Yes.

As there was no further business to be discussed by the Planning Board, on a motion by Vice Chairman Sturniolo, seconded by Mr. Gibbons, the meeting was adjourned at 8:35 P.M.

Respectfully submitted,

Stanley Bernstein,
Recording Secretary

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