

A regular meeting of the Town of LaGrange Planning Board was held at the LaGrange Town Hall, 120 Stringham Road on Tuesday, September 18, 2014. Vice-Chairman Robert Straub called the meeting to order at 7:00 PM. Board members John Gunn, Dennis Rosenfeld and Mark Komorsky were present. Stacy Olyha, Frank Sforza, Tony Brenner and Joe Zeidan were absent. Also present was Wanda Livigni, Administrator of Planning & Public Works, Greg Bolner of CPL, Walter Artus of SMC and Ron Blass of VanDeWater & VanDeWater were also present.

Mr. Straub stated that Mr. Komorsky, alternate board member, would be a voting member in the absence of several board members.

Mr. Gunn made a motion to accept the minutes of August 21, 2014, seconded by Mr. Rosenfeld and the motion carried unanimously. MINUTES ACCEPTED.

PUBLIC HEARINGS:

DALEY FARMS DEVELOPMENT – Proposed subdivision and site plan located between Titusville Road and Colleen Court containing 233.36 acres (Grid No. 6360-03-081270, 099220, 229310); adjournment

Mr. Gunn made a motion to adjourn the public hearing, seconded by Mr. Rosenfeld and the motion carried unanimously. PUBLIC HEARING ADJOURNED.

PARAGGIO SPECIAL USE PERMIT – Proposed Special Use Permit located on Locust Crest Court

Mr. Paraggio said this is for an apartment for his mother-in-law in the basement of his home. He said it's a two story colonial house with a full basement that they want to sheet rock and add a bedroom and small kitchen area and a bathroom. It will have a separate entrance from the outside along with an entrance from the inside.

Mr. Straub declared the public hearing open and there were no comments. Mr. Rosenfeld made a motion to close the public hearing, seconded by Gunn and the motion carried. PUBLIC HEARING CLOSED.

Mr. Rosenfeld made a motion to grant a Special Use Permit, seconded by Mr. Gunn and the motion carried unanimously. SPECIAL USE PERMIT GRANTED.

SILINSKY SPECIAL USE PERMIT – Proposed Special Use Permit located on Smith Road containing 1.6 acres (Grid No. 6360-01-950448)

Ms. Silinsky said this is for an accessory apartment. She said it is in the basement with outside access and one bedroom.

Mr. Blass reviewed the code regarding the phrase of "family member" for an accessory apartment. Mr. Blass said in the recent zoning amendments adopted by the town last week and probably presently affective, the condition of family use only was eliminated from the accessory apartment section. Mr. Komorsky asked does that change if it listed as a rental. Mr. Blass said a rental apartment as you use that phrase probably encompasses open to the universe at large for potential tenants, so the only limitation on that was family occupancy only and that has evaporated so yes, these could theoretically be rental apartments.

Mr. Straub opened the public hearing and there was no comment. Mr. Rosenfeld made a motion to close the public hearing, seconded by Mr. Gunn and the motion carried unanimously. PUBLIC HEARING CLOSED.

Mr. Rosenfeld made a motion to grant a Special Use Permit, seconded by Mr. Gunn and the motion carried unanimously. SPECIAL USE PERMIT GRANTED.

REQUEST FOR REAPPROVALS

ROLLING MEADOWS SUBDIVISION – REQUEST FOR 7TH REAPPROVAL

LAKE RIDGE SUBDIVISION – REQUEST FOR 7TH REAPPROVAL.

Ms. Livigni reminded the board that their packets contained the Town Board's recommendation for these 2 applications. She said based on discussions that were had last month for these re-approvals, she has requested the applicants come in and will be appearing before the Planning Board in October.

Mr. Blass referred to the resolutions that were given to the Board. He summarized these to include that the Town Board has an advisory function in this matter. He said the resolution concerning Rolling Meadows and referred to the Town Board recommendation letter. He referred to Page 2 of the resolution which included some language incorporating a condition that was recommended by the Town Board with respect to the re-approval; the gist of it being that the re-approval shall be for no more than a period of 6 months from the expiration of the prior approval and that any further re-approval be denied by the Planning Board absent the applicant's full and complete cooperation as required by contract and as determined by the Town Board with any intervening steps taken by the Town Board in the formation in the extension of the Titusville Sewer District or otherwise to create a sewer district or sewer improvement area covering the Rolling Meadows real property. He said the approval shall expire on March 21, 2015 unless otherwise extended as permitted pursuant to section 276 7 (c) of the town law in the event of the applicant's fulfillment of conditions contained in this resolution. He said this resolution will grant the re-approval for 6 months and limit the granting of further re-approvals or extensions until and unless the applicant were to fill the condition regarding sewer district.

Mr. Blass asked Ms. Livigni if we want to take this one tonight or wait for the applicant to appear. Ms. Livigni said it is unfortunate that the actual Planning Board members who had raised the questions about this are not here tonight and asked the Board did they want to make the applicant's appearance in October a condition of this or just hold off and do it next month. Mr. Komorsky said his opinion was to adjourn until October when the applicant comes in. Mr. Gunn said we need to make it a condition that the applicant appear in October. Mr. Blass said the last re-approval expires on September 21 of this year. If you adjourn this to October and you grant it in October, you will have to make it retro-active one month so they will be going out one month with a suspended project. He said the board has the authority to make the October extension effective back to September 21st. Mr. Komorsky asked if there was any liability in the board not approving it tonight. Mr. Blass said no.

He said his preference is not to see an application dangling out there with an expired, suspended approval and Ms. Livigni added we have a precedent set where we go back in time to re-approve it and the actual fee is higher. It was done with Lake Ridge years ago.

Mr. Blass said the town has a fairly liberal section of the local law regarding re-approvals put into effect years ago to make these things easy to obtain, in the absence of a change of

circumstances and the Town Board has weighed in with respect to a comment made by the applicant as to whether sewer was available and the Town Board has said sewer is available and has been and will remain available and they need to cooperate with us in terms of districting to open up the service. He said he didn't see a big deal in the Board granting the re-approval and said he thought it was a bigger deal if the town were not to grant the re-approval. Mr. Straub said he would like to go for the re-approval based on conditions in October that they show up and if they don't then we deny the re-approval. Mr. Blass said he would add a section to the resolution "be it further resolved that this resolution is conditioned upon the appearance of the applicant at the Planning Board's meeting of October 16th for discussion of project status."

Mr. Gunn made a motion to approve the amended resolution as stated and entered into the minutes, seconded by Mr. Komorsky and the motion carried unanimously.

Mr. Blass said Lake Ridge is sort of the same but not identical. He said this resolution on page 2 and read a portion where it said hereby approves the re-approval upon the same conditions detailed in the prior initial resolution of October 16, 2007 with the exception of the additional and overriding conditions included within the following paragraph "this approval shall expire on March 21, 2015 unless extended beyond that as permitted by the town law. Applicant shall be eligible for such further extensions, that is beyond March 15 only in the event and only upon the condition that within 90 days from this date, the applicant fulfills the following conditions A-F, which are the product of a recommendation by the Planning Staff to the Town Board and thus a recommendation by the Town Board back to the Planning Board that all of these items A-F be taken care of within 90 days or there is no opportunity to get any further extension beyond the 6 month extension. Mr. Straub asked Mr. Blass if there was any exposure on any of these items that could push that 90 days beyond, and asked is 90 days reasonable to accomplish these tasks. Mr. Blass said he thought it was very reasonable, he said the first 3 are just copies of things that should already exist that haven't been submitted. He said hopefully they do exist and can be submitted. Mr. Straub said there are other people in the loop and Ms. Livigni said no, these are not new things that they should be acquiring, these are things that had to have been obtained for the Planning Board to give approval. These are just copies of these documents and the issue that concerns her is they have switched engineers and she would not want to see the subdivision be held up between one engineer holding up another engineer's work. Ms. Livigni said the applicant was notified. Mr. Blass asked if they board wanted the same clause added to the applicant coming into the meeting on October 16th and the board agreed.

Mr. Gunn made a motion to approve the amended resolution as stated and entered into the minutes, seconded by Mr. Komorsky and the motion carried unanimously.

POWER PLANT MOTOR SPORTS SPECIAL USE PERMIT – Proposed Special Use permit located on Industry Street containing 2.01 acres (Grid No. 6361-03-162267)

Mr. Gjon Vitaj appeared before the board Ms. Livigni reminded the board of her memo where the Planning Board had given Mr. Vitaj a deadline of September 4th which was not complied with.

Mr. Vitaj handed out documents to the Board and said we can go through this together. Ms. Livigni said reviews are not typically done at Planning Board meetings and said it was up to the Planning Board if they wanted to accept this after the deadline. She also said applications are not reviewed at the meeting. Mr. Komorsky asked about the escrow issue and Ms. Livigni said we did receive escrow. Mr. Straub asked Mr. Vitaj for the delay. Mr. Vitaj said his lawyer was at

the last meeting and he was out of town and he said his lawyer told him this was the next meeting and to make sure he had his sound test, which he said he had done. Mr. Straub said our Engineers have not reviewed this. Mr. Gunn said the Planning Board doesn't usually get the report on the night of the meeting. Mr. Vitaj said his lawyer Mr. Hilpert did not say anything about this. Ms. Livigni said so again your attorney has kept information from you and Mr. Vitaj replied yes. Mr. Vitaj said he had a text from his lawyer saying make sure you bring that town code tonight. Mr. Straub asked the Board what they wished to do. Mr. Rosenfeld said this was submitted late and there are copious pages to go through and take time. Mr. Straub asked for a motion to adjourn this. Ms. Livigni asked the Town Attorney to speak. Mr. Blass said he read Ms. Livigni's memo stating what was required of the applicant before September 4th which was a report from an acoustical engineer providing the decibel readings at the property line perpendicular to the bay where the dynamometer is being used under the 2 conditions of the door being opened and the closed respectively. He said there was also a requirement for a letter from the manufacturer of the equipment addressing whether or not the equipment could be used effectively if exhausted to the outside by some device. He said the first issue that comes up is whether or not we have a report from an acoustical engineer providing decibel readings under the conditions called for. Mr. Vitaj said he did and then handed out some documents to the Board. He said the documents shows the sound deadening material he will be using and it shows the noise reduction _____ of a .75 which is a 76% reduction in noise. Mr. Blass asked if this was from an acoustical engineer and Mr. Vitaj said it was from a sound engineer. Mr. Blass asked if a sound engineer came to the property and Mr. Vitaj said yes. Mr. Blass asked what did he do. Mr. Vitaj said he did a test with the doors open and the doors closed at both houses and the property line. Mr. Blass asked who is the sound engineer? Quiet Star Industries? Mr. Vitaj replied yes. Mr. Blass asked and they are in North Bergen New Jersey? Mr. Vitaj said yes. Mr. Blass asked the results. Mr. Gunn said New York State Code permits up to 65 dba at the property line in a residential community. Currently you are in excess of that whether you run your dynamometer with the garage door closed (73) to 76 dba property line or open 82dba at property line. Mr. Vitaj read an excerpt from the bottom of the document which said a 30 minute dose, which he said his machine was, it's dose, a burst, it's a short energy of sound. He said a 30-min dose of exposure adjusts the allowable exposure upwards of 20 dba. If you were to use this as a guideline for adjusting for your short doses, the adjustment for a short dose of up to 30 minutes per day would be 85dba. Mr. Gunn said statement A contradicts statement B. Mr. Vitaj said New York State allows motorcycles, snow mobiles, recreational vehicles to have 78-88 dba. Mr. Straub said he preferred to not review this right now and said he preferred to adjourn and Mr. Komorsky said there was a motion on the floor. Ms. Livigni said before the board takes a vote, QuietStar Industries is not an engineering firm, with a Google check on the address on the letter head, so this is not from an engineer. She said she also saw no letter from the manufacturer. She said so neither of the terms that the Planning Board set last month, which his attorney kept from him but were in the minutes on the website, were complied with. She said there is nothing to review here, if the board still believes that it's valuable. Mr. Straub thanked Ms. Livigni for her input and added he still wants to adjourn and Ms. Livigni asked for what, to do what. Mr. Straub said for the applicant to come back with some legal documents. Mr. Vitaj said he will have his lawyer call the town tomorrow to straighten this out. He said he wasn't here for the last meeting. Ms. Livigni asked if the board would like to give a deadline for this. She said the applicant's attorney was told at the last meeting in September to submit a letter from the dynamometer manufacturer verifying how to exhaust the car being tested on the dynamometer so as to now affect the results. She said he was also requested to submit a report from an acoustical engineer, that is someone with a license and licensed in New York State, provide the decibel readings at the property line perpendicular to the bay the dynamometer is being used under the 2 conditions of the door being opened and the door being closed. Those were the 2 things that were supposed

to be brought in and that is not what was submitted. Ms. Livigni asked if the Planning Board would like to set a deadline for this. Mr. Straub asked what date would you consider fair and Mr. Vitaj said the next Planning Board meeting. Mr. Gunn said how about a week before the Planning Board meeting. The board set October 9th as the deadline for these documents. Mr. Straub said he wanted closure for this project and asked Mr. Vitaj for his cooperation and Mr. Vitaj said he would cooperate.

Mr. Gunn made a motion to the date of October 9, 2014, seconded by Mr. Rosenfeld and the motion carried unanimously.

The Board continued to discuss Mr. Vitaj's deadlines. Ms. Livigni said we had a public hearing where residents brought up concerns and maybe some people may not legitimize them but this board owes them a decision one way or the other and denial of knowledge is not valid. His attorney stood her last month and said yes, I did share the court order with Mr. Vitaj and she said the Board has an obligation to the people who live next to this to address their concerns, whether valid or invalid, they deserve to be addressed. Mr. Straub agreed. Mr. Blass said the thought might be to have a short communication go to the applicant as to whether or not this comes close or satisfies Wanda's requirements and he said he could send him a short letter. He said he would send it to his attorney too.

BECK/TURREL USE VARIANCE- Referral from the Zoning Board of Appeals as per Town Code Chapter 240-92E (Grid No. 6559-01-465994

Mr. Beck said they were before the board a few years ago for a Dog Kennel application. He said he went to the ZBA last month. He said the application says Use Variance for Industrial, light industry. He said they were open to suggestions from the Planning Board to see if there any thoughts for this piece of property. He said the owner wants to legalize it. He said the last use was an apple packing/storage and she has owned it since 1999 and been using it for warehousing. He said there is a granite company in there, storage of bread, and there were some mechanics in there over the years and are removed. Mr. McLaughlin did a fire inspection years ago and there were some issues. Mr. Beck said there are some apartments there. He said the owner hired him to help her with this. He said it has taken them 4 years to get the fire inspection issues taken care of which are 100% now, as well as some open building permits that are now closed. He said last month they were before the ZBA and they were asked to come to the Planning Board, and added it's required, it's in the code that they come to the Planning Board.

Mr. Blass said there is a provision buried in the ZBA article of the code that says with respect to Use Variances as opposed to Area Variances, the matter is referred to the Planning Board for potential comment back to the ZBA. Mr. Blass said the Planning Board does not have the approval power, it's just a recommendation. Mr. Komorsky asked if there was anything in the code that determined light industry. Mr. Blass said there is a definition. Mr. Straub asked Mr. Beck what he needs. He responded by saying his client needs to make money and they are looking for a use that fits into these buildings. He showed the board a survey and what was left of the apple orchard, the type of buildings, the size the size of them and his client wants to make use of those buildings. Mr. Gunn said this is on the ZBA's docket so they are flipping it to us to see if we have any comment on something they could use. Mr. Beck said current zoning is R-120. He said he hasn't finished his numbers and he said he is working on them for demolition. He was looking into the cost of that so he could come back to the Planning Board for a 3-lot subdivision, there's a little over 12 acres there. Mr. Beck said with the numbers he has now it's not feasible. Mr. Beck said the lots are worth let's say \$75,000-100,000 a piece and he said he

has \$350,000 in demolition with 300 yards of concrete in the middle there where that building burned down in the 1980's. He said the application did say light industry, it refers to uses in the industrial zone and he said they were open to suggestions. He said he was asking for the Planning Board's expertise, as they are required to be here. Mr. Blass looked up the definition of light industry and it read "industrial uses that meet the performance standards, bulk controls and other requirements established in this chapter" Mr. Blass said that doesn't really tell you much. He said the next logical move is to go to the use table to see where light industry is allowable. He said light industry is subject to site plan approval in the industrial zone and it's allowable by special permit in the commercial 1 zoning district. He said the next step is to go the bulk and area table with respect requirements for C-1 or Industrial and then there's also provisions in Chapter 240 zoning Special regulations with respect to the C-1 district that were adopted back in 2005. You would have to refer to that whole bundle of materials. He said you don't see that many of these applications. He said to take the R-120 zoned parcel of approximately 12 acres and in it's broadest sense, make it available to any light industrial use that would be allowed in the industrial zoning district or C-1 zoning district subject to whatever standards apply. Mr. Blass said it's basically taking a property within a R-120 Zone and allowing it to be used for light industrial purposes. Ms. Livigni asked if the application had any suggested uses. Mr. Beck said it wasn't specific. Mr. Blass said if I were to bet where this goes, the most logical expectation would be someone is going to ask the applicant and say what do you want to do. Mr. Beck said eventually he will have an answer but right now he wants to hear everybody out and that's why he came to the Planning Board for opinions. Mr. Beck said he had a feeling the way the ZBA is going and wants to hear the Planning Board's opinion. He said if he has to come back next month and listen to the rest of the members that aren't here tonight he would do that. He said he wasn't looking to close this out anytime soon. He said his client has complied with the request of the department downstairs and said his client wants to continue to move forward in a positive manner. Mr. Straub said he thought the board would be open to a suggestion and/or proposal. He said he liked to see land used and buildings used properly. Mr. Gunn said you need to be more specific and less vague. Mr. Beck said he is also waiting for the County to come back with their request. Mr. Straub said he didn't see a problem as long as it is legal and reasonable. Ms. Livigni said that's the point, currently it is not legal so she thought this board's responsibility is to respond back to the ZBA with what you think is your thoughts on it. Ms. Livigni said Emans Road is a quiet town road surrounded by residential and that is something the Board cares about and rightfully so. She said the Board's responsibility is to respond to the ZBA with things that strike you as worthwhile for them to look at.

Mr. Blass said assuming that the ZBA would grant a Use Variance here, there would seemingly need to be a whole parcel of conditions attached to it or you are just re-zoning the property from residential to Industrial. So there has to be some conditions attached and they would be tied to limitations on the use of the site and improvement of the site and the traffic, storm water, etc. so it's hard for him to envision how one gets to what sort of conditions could be crafted without knowing what the specific proposal is. Maybe the specific proposal is here are the limitations that we will live under. Mr. Beck said he would still have to come back to the Board for whatever use it is, if they were granted a Use Variance. Mr. Blass said if you got a Use Variance which would probably be a conditional Use Variance, you would probably need to fulfill the special standards applicable to site plans and special permits. Ms. Livigni said it's this board's job if there is something such as we just discussed for them to refer it to the ZBA for consideration. Mr. Blass said he thought the Board had 3 options: it can say we love this, we don't like this or we think the ZBA should be concerned with the following issues of A,B,C,MD and then you would be done.

Mr. Straub said he agreed, the ZBA should be concerned with noise, traffic, toxic fumes from building, things of that sort, which are general environmental concerns in terms of peace and tranquility in that neighborhood. Ms. Livigni said she thought the Board was leaning toward option 3 which Ron just explained. The Planning Board offered the following comments, questions and/or concerns:

Range of Uses to be allowed

Whether the current site development will be altered in any way either enlarged or expanded

Environmental impacts associated with the most onerous of the uses falling within the range of uses

Noise

Consistency with the character of the neighborhood

Will the variance run with land or with current owner and terminate with that ownership

Any and all other criteria which the ZBA is compelled to apply in its own right under prevailing law

Any conditions the applicant is willing to self-impose on this activity

LANDS OF ARCOS SITE PLAN – Proposed site plan located on Rte. 82 containing 2.01 acres (Grid No. 6561-04-828127); set public hearing/discuss excess parking

Mr. Bill Nemeth appeared before the board. He said his engineer couldn't be here. He said the extra spaces would be visitor parking. He showed the board a preliminary elevation. Ms. Livigni said this was ready for a public hearing to be set for next month. Mr. Straub asked if the architecture was consistent with Hamlet design. Mr. Bolner said he did not review the architecture yet. Ms. Livigni said they have to revise their last submission based on comments from Greg and Walter.

Mr. Gunn made a motion to set the public hearing for October 16, 2014, seconded by Mr. Komorsky and carried unanimously. PUBLIC HEARING SET.

Ms. Livigni said the only issue in GPL comment letter was it is completely within the Board's domain whether the excessive parking is warranted or not. Mr. Bolner said the way the code reads is you basically cannot have parking in excess of the minimum requirements unless approved by the Board with justification from the applicant. Ms. Livigni asked how many over and Mr. Bolner said 3. Mr. Straub asked how the buildings facing the road. Mr. Nemeth said that was all addressed.

Mr. Gunn made a motion to allow the 3 additional parking spaces, seconded by Mr. Komorsky and the motion carried unanimously.

LAGRANGE CREAMERY AMENDED SITE PLAN – Proposed amended site plan located on Rte. 55 (Grid No. 6450-02-15925)

Mr. Bill Rohde was present Also present was Kathleen and Bob Ferris.

Ms. Livigni said she believed this was ready to set a public hearing. Mr. Rohde said there was a slight change in the layout originally proposed. He said it is to take down the wooded area in the backyard and create a grassed area suitable for picnics. Mr. Ferris said they were mostly Locust Trees. Ms. Livigni said there is a problem with this. She said this has not even started SEQR and they are looking to proceed with disturbing land for a project that is a larger scale.

Ms. Livigni said they are asking to complete work prior to SEQR starting without circulating. She asked Mr. Rohde isn't that what you are looking for? Mr. Rohde said no. Ms. Livigni said we had previous discussions. Mr. Rohde said we don't want to segment. Mr. Straub said no trees and no grading. Mr. Rohde said no, not now. Mr. Artus said there a few things that should be submitted prior to the public hearing. He said it does have to be circulated to County Planning and to NYSDEC and to OPRHP. He said he noticed on the plan set that not all of the adjoining property owners within 150 feet were identified. He said a full EAF needs to be submitted. Part 1

WRIGHT FARM/PITTMAN SPECIAL USE PERMIT LOT 8 – Proposed Special Use Permit located on Noxon Road containing 115.71 acres (Grid No. 6560-04-969085) consideration of granting a Special Use Permit

Mr. Komorsky made a motion to grant the Special Use Permit, seconded by Mr. Gunn and the motion carried unanimously SPECIAL USE PERMIT.

Mr. Gunn made a motion to adjourn the meeting at 8:15, seconded by Mr. Komorsky and the motion carried unanimously. MEETING ADJOURNED

Respectfully submitted

Eileen Mang
Planning Board Secretary

DRAFT