

A regular meeting of the Town of LaGrange Planning Board was held at the LaGrange Town Hall, 120 Stringham Road on Tuesday, October 16, 2014. Chairman Stacy Olyha called the meeting to order at 7:00 P.M. Board members Robert Straub, Frank Sforza, Marc Kormorsky, John Gunn, Dennis Rosenfeld and Joe Zeidan were present. Also present was Walter Artus of Stormwater Management Consultants, Greg Bolner of Clark Patterson Lee and Ron Blass of VanDeWater & VanDeWater.

Mr. Rosenfeld made a motion to accept the minutes of September 18, 2014, seconded by Mr. Gunn and the motion carried 6-1. Mr. Straub abstained.

PUBLIC HEARINGS:

DALEY FARM DEVELOPMENT – Proposed subdivision and site plan located between Titusville Road and Colleen Court containing 233.36 acres (Grid No. 6360-08-1270, 099220, 229310); adjournment

Mr. Straub made a motion to adjourn the public hearing to November 20, 2014, seconded by Mr. Rosenfeld and the motion carried unanimously. PUBLIC HEARING ADJOURNED.

LAGRANGE CREAMERY AMENDED SITE PLAN AND SPECIAL USE PERMIT – Proposed amended site plan and Special Use Permit located on Rte. 55 (Grid No. 6450-02-715925)

Mr. Bob & daughter Kathleen Ferris were present. Also present was Shawna from Rohde, Soyka & Andrews. Mr. Ferris showed the board a rendering of the proposed building which would be located between Ferris Real Estate and Kelly's Steak House. He said it will look like a barn that will match the Real Estate office. He referred to the area that would have the new parking and existing parking. He said the lighter green area he showed would be where they were taking down some trees to make it in to a grassy lawn area or for expanding parking if they need it or for parties. He said the heavy green area around the perimeter they were planning on leaving wooded. Ms. Ferris said his daughter will make the ice cream. Ms. Ferris said they are pairing up with Hudson Valley Fresh and promoting local dairies in Dutchess County.

Ms. Olyha declared the public hearing open and asked if there was anyone who wished to speak.

Mr. Mark Tornitore spoke. He said he likes what Bob is doing and his only issue is he expects there will be a lot of Arlington Students visiting the store. He said his concern is the students will use it as a short cut to the High School. He requested a fence on his side so he doesn't have to be concerned with vandalism, liability and trespassing. He said he is the only residential property on that strip. He said he doesn't want problems with kids trespassing and coming through his property. Mr. Gunn asked Mr. Tornitore where he preferred the fence to be and Mr. Tornitore said between the Ferris property

and his, in the green area. He said he didn't care how fancy a fence it was. Mr. Rosenfeld asked if he had trouble with students trespassing now and Mr. Tornitore said no and added they have no destination now. He said he fully supports Mr. Ferris' business.

Ms. Margaret Mulligan of 36 Renault Lane and her sister Therese Marie Mulligan of 1191 Rte. 55 were present. She said she agreed with Mr. Tornitore and had no issues with the new construction and wished Mr. Ferris much luck. She said however her issues are water. She said when they start to clear out this property she is going to be affected by it. She said every construction project the high school has done has encroached onto their property. She handed the board some of her comments. She said her family has owned this property since the 60's. She also mentioned the new road construction. She said when things get cleared out the water ends up in her basement. She said the fire department has been there and it's a serious problem. She said she is concerned with proper irrigation and flow of water. She said when they put the restaurant in that was the beginning of their water problem and it's been downhill since. Ms. Mulligan said she has never had a problem with the High School kids, but she is concerned. She showed the board where she lived and said she was also concerned with her privacy. Ms. Therese Mulligan complained she just found out about this the day before the meeting and added Mr. Ferris wanted permission to go on to her driveway to cut down trees. Ms. Margaret Mulligan added this is not what my sister expected.

Mr. Straub made a motion to close the public hearing, seconded by Mr. Rosenfeld and the motion carried unanimously. PUBLIC HEARING CLOSED.

Ms. Olyha asked Mr. Ferris if he received the CPL, CAC and OPRHP letters and Mr. Ferris said he saw them. Ms. Olyha asked Mr. Ferris about tree cutting and clearing that was mentioned in the previous month's minutes and Mr. Ferris said they haven't done anything since they cleared out the underbrush which they were doing the test holes for the septic system.

LANDS OF ARCOS SUBDIVISION – Proposed site plan located on Rte. 82 containing 2.01 acres (Grid No. 6561-04-828127)

Mr. Bill Povall of Povall Engineering appeared before the board. He this is a 2 acre parcel on the south side of Rte. 82 just to the west or south of Cross Road, and across the street is a retail plaza and the Lutheran Church is to the east. He said it lies within the Hamlet zone and they are before the board with this site plan proposing 2 apartment buildings, each will have 5 units, four 2-bedroom units and one 1-bedroom unit for a total of 10 units between the 2 buildings. He said they are proposing an entrance in the center which would split and give access immediately in front of each of the 2 buildings with a landscaped court yard in the center. He said they have located the parking away from Rte. 82 behind the buildings. He said they are proposing extensive landscaping, a buffer between the buildings in the front entranceway and rte. 82 and the buildings will be served by an individual well and septic system.

Ms. Olyha opened the public hearing and asked if anyone had a comment. There was no response. Mr. Rosenfeld made a motion to close the public hearing, seconded by Mr. Brenner and the motion carried unanimously. PUBLIC HEARING CLOSED.

Ms. Olyha said we also had comments from County Planning and CPL and the CAC.

YOUNG SPECIAL USE PERMIT – Proposed Special Use Permit located on Lyceum Road containing 0.89 (Grid No. 6559-03-422346)

Ms. Paula Young and Mr. James Chakavelli appeared before the board. He said they purchased the home at 7 Lyceum and it had an accessory apartment which was pre-existing to their purchase and it belonged to the father and then the mother-in-law of the prior owner and they were told that in order to purchase the house they had to come here and they have subsequently purchased the house.

Ms. Olyha opened the public hearing and asked if there was any comment. There was no response. Mr. Rosenfeld made a motion to close the public hearing, seconded by Mr. Zeidan and the motion carried unanimously. PUBLIC HEARING CLOSED.

Ms. Olyha asked for a picture and Mr. Gunn said this is just maintaining a special use permit for the accessory apartment and Ms. Olyha asked so it was already there? And Ms. Young said yes. The Planning Board had no further comment.

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

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

Ms. Olyha said Powerplant Motor Sports requested to be removed and asked the board if it should be discussed. Mr. Blass said 2 things came in since last month's meeting. First was an affidavit submitted by Mr. Vitaj who was asked by the board to get in touch with the manufacturer of the dynamometer and give the board information as to whether it was possible to exhaust vehicles being diagnosed by that machine or not. He has provided an affidavit that says based on his conversation with the representative of the manufacturer of the specific machine, the manufacturer doesn't want to get involved in a matter that is pending before the Planning Board and a matter that deals with whether one can or cannot adequately and safely exhaust vehicles hooked up to this machine. He said he is basically saying it is unfeasible and impossible for him to comply with the board's request. Ms. Olyha said when she read it, she said he asked them a different question, he did not ask him that question, he asked will it affect the performance of the car and that's what they would not answer but they did say they sold different apparatus he could use to vent the car. Mr. Blass read a portion "spoke to Ed Morgante, Dept. Head Manager of Mustang Dynamometer and asked him to provide a letter stating how to exhaust cars so as to not affect the test results and was advised that he would not for

liability reasons provide any such letter and stated that he was concerned that he would be subjecting his company to a liability in a dispute with this board or with a customer and that it could be used against his company in some way. He was apologetic and stated that his company does sell exhausting systems but again he would not verify anything as to the impact on the cars tested or the results". Mr. Blass said he read that incorrectly that they didn't sell the apparatus but they do sell them. Mr. Blass said for him to say that they do sell exhausting apparatus makes less sense for him. Ms. Olyha said basically he is saying that he is not going to tell you it's not going to affect the performance whatsoever. They are not going to give you that kind of a statement but they do state they sell them.

Mr. Blass said his best reading between the lines here is that Mr. Vitaj, who is not exactly objective in this matter got on the phone with this individual, probably shared his perceived plight, made it sound as if there was some sort of great controversy between this board and him, if not others, and the result was the manager begged off getting involved with Mr. Vitaj in this particular context. Mr. Blass said Mr. Vitaj would have a motive for that outcome to exist as well. Mr. Blass said he didn't think we were going to get anywhere if we rely on the applicant on this issue. He said maybe we could identify and have the board solicit the services of an independent mechanic or somebody in the business who is familiar with this sort of equipment and these sorts of processes who would be willing to devote services in aid to the board who then could contact, objectively and independently, without a lot of colored background, this manufacturer and inquire as to whether they have equipment and processes that allow the exhausting of this machine or not without adversely affecting the results. He said if they make exhausting apparatus one would think they wouldn't make it if the outcome was to ruin the results of the test. He said he can't think of any other way to approach it.

Ms. Olyha said her only other option would be to after looking back through the pile since last October, in October he asked us if we could look at alternatives from what was asked of him by the court which was the sound barrier in front of bay #1 and we gave him that chance to give us options other than the sound barrier and compare them to how much attenuation the sound barrier has and so far we've gotten a dance, no information and said we gave him a July, August, September 4th and October deadlines. She said it appears he is not even looking at the alternative and so instead of dancing further she suggested going back to the court order and tell him we want the sound barrier. Mr. Straub said at the last meeting he did talk to the applicant and informed him of what he had to do and he agreed the applicant is dancing and it is not our job as a board to re-engineer or give options to him to solve the problem, it's up to him and added he is willing to go along with Ms. Olyha's suggestion but not beyond that. Mr. Gunn said he read something today that said he had a letter out to Chazen to have a sound an acoustical engineer to come out and added he still thinks it's the dancing thing.

Mr. Blass said the board asked him to get a licensed professional to take measurements under 2 scenarios – one that the garage door 1 was closed while machine running and take an acoustical reading at the property line and two – what

would the acoustical readings be if the garage was open and an acoustical barrier was put in place. He brought in details as to the type of acoustical he was looking at and brought in a non-licensed professional work product that he handed to the board on the evening of the meeting in September giving an opinion that the sound impact would be less with the door open and this moveable acoustical barrier put in place. He said that was almost anecdotal in its nature, it wasn't done by a licensed professional and the board had him write a letter indicating the board wanted that work product by a licensed professional.

Ms. Olyha said so at the last meeting he said that the barrier has the best sound attenuation so now we are back to what the original court order said which was what he did not want because the barrier cost him over \$3,000 and he didn't want to pay that. Mr. Blass said he is now proposing, without the scientific degree of evidence the board asked for, he is proposing to the board that he be allowed to use this acoustical barrier and saying I didn't put it up earlier in spite of the court order because it wasn't practicable for me to do that because I didn't know if it would be acceptable to the board or not and didn't want to spend the money. Mr. Blass said that was Mr. Vitaj's explanation for not abiding with the court order. The Court Order said the case would be dismissed on the condition he kept the door closed until there was an acoustical barrier and should be installed as soon as practicable and that the matter should go to the Planning Board for Special Permit review. Of course the barrier did not go up and his interpretation of the court order is that it's not practicable to put it up because he doesn't know if this board would abide using this sort of sound mitigation or not, and he might be wasting his money. Mr. Blass said he didn't think that is what the court order means but this is basically what his conduct has been. He said he thought under these circumstances he wants the board to approve the special permit with the condition that he be allowed to use this acoustical barrier and thus raise the door during operation. Ms. Olyha said in the June minutes he states that he does not want to spend the money for the barrier and he was wondering if there was a cheaper option. Ms. Olyha said in May Mr. Vitaj said he didn't want to put it up because he didn't know if he was going to get the permit and then in June he had a whole other story, he didn't want to spend the money, he was looking for alternatives.

Mr. Blass said his best recollection in read is that he has come to the ultimate conclusion that he has to spend the money and that he will and he would live with the condition that the attenuation barrier will be used. He said that is the nature of the work product that he handed out at the last board meeting. He was assessing the sound mitigation qualities of using that method. Ms. Olyha asked Mr. Blass if he thought the board should wait until Chazen comes in with a report or should we go with the original sound barrier. Mr. Blass said it probably wouldn't hurt to get a licensed professional putting his stamp on the line so to speak with respect to the actual measured sound attenuation that will result from using this portable acoustical barrier. He said it may be better just to keep the door closed and not have the barrier. Mr. Straub said if that fails, what is our next move to protect the neighbors in that neighborhood. Ms. Olyha asked what deadline? Do we give him one more deadline and then go back to our original plan? Mr. Gunn asked what drop deadline do we need. Ms. Olyha said the Chazen

Group will be doing a sound test the week of October 27th. Mr. Blass said the board should know the day and time to give the board an opportunity to attend. Ms. Olyha said so we will have to send a letter requesting a specific date and time so the board members have the option of attending. The Board gave a deadline of November 14th for Mr. Vitaj to submit whatever information came back from the test that was conducted by Chazen.

RE-APPROVAL DISCUSSIONS –

LAKE RIDGE SUBDIVISION – Eileen Mang, Planning Board Secretary stated that Mr. Bettina called the office earlier and said he would not be present at the meeting. Ms. Mang said she reminded Mr. Bettina that his presence at the meeting was one of the conditions of the re-approval resolution. Mr. Bettina stated that they were gathering the information that was being requested and that some of the requirements were stupid. She also stated that Mr. Bettina said Mr. Paggi would be sending her a letter requesting they be removed from the agenda and as of close of business that day, no letter had been received.

The Board discussed the status of the re-approval. Mr. Gunn asked if we don't re-approve this, what happens. Mr. Blass said the written resolution provided for a conditional 6-month re-approval conditioned on 1. Within 90 days from the last meeting and roughly 60 days from now, the applicant would submit 6 categories of further information and detail to the Planning Board which the Public Works Administrator found to be overdue. Mr. Blass said so there has not been a breach of that condition yet. The 2nd condition was that the applicant appear before the Planning Board at the meeting held on October 16th for discussion of project status. He said that is a condition that is about to fail, from what he heard. He said one might say if the condition fails, so does the re-approval resolution. Mr. Blass said so this may just evaporate on its own. Mr. Straub said that was the concern of the board at the last meeting, that we are approving something that we don't have any updated data relative to make a decision on and therefore our approval ruling becomes inadequate. Ms. Olyha asked what was the date of the original conditional final approval which it was determined it was 7 years ago. Mr. Blass said the board has 2 options – it just excuses the failure of this condition or it doesn't excuse the failure of the condition, the affect of which the re-approval resolution evaporates and they will have to come in and start all over again.

Ms. Olyha said unfortunately as the parent of 3 children who are all grown at this time, she found out as a parent that you have to stand by your threats during discipline time and a threat would be the same as a condition in our case and she feels if that was a part of the condition and it was not met, we have no option but to start from scratch. Mr. Blass said the only other option is to back and modify retro-actively your resolution to remove the condition. Ms. Olyha said she was not at that meeting, and added the board members talked about this and had their discussion and she thought the board should honor the decision that was made at the last meeting. Mr. Gunn said at this point we've done this again and again. Ms. Olyha said this was originally asked for at

the August meeting to come in to the September meeting and one of the applicant's asked if it could be put off until the October meeting which is now. Mr. Gunn said at some point we have to stop re-approving things where the applicant is no longer a part of the process and no longer participating. Mr. Gunn said we have become a rubber stamp and added he realized the economy took a down turn but that's one thing, but then show up and tell us what you want to do. Ms. Olyha said according to our records the re-approval fees have not been paid either.

Ms. Olyha asked where do we move from here. Mr. Blass said you have 2 choices. Go back and remove that condition and excuse it and the re-approval would stand and if you don't do anything then the condition of appearing this evening is going to fail and the re-approval is going to fail and they will have to do it again, start over. Ms. Olyha polled the Board.

John Gunn	Do nothing and let it end on its own
Bob Straub	Do nothing and let it end on its own
Dennis Rosenfeld	Do nothing and let it end on its own
Tony Brenner	Do nothing and let it end on its own
Frank Sforza	Do nothing and let it end on its own
Joe Zeidan	Do nothing and let it end on its own
Stacy Olyha	Do nothing and let it end on its own

Marc Komorsky was not able to vote but expressed his opinion that he would agree with the Board. Ms. Olyha stated the Board will take no action.

ROLLING MEADOWS SUBDIVISION –

Mr. Dan Gueron and Mr. Rich Olson appeared before the board.

Ms. Olyha asked the status of the project and what was going on with the sewer district. Mr. Olson said they have met with Mr. Blass and Ms Livigni and they have no problem with the issue of the formation of the district. Mr. Blass would be discussing it with the engineer to determine whether it's through Titusville or the formation of another district and whichever way it goes they will be cooperating. All of the conditions on the original resolution are still valid. He said the capacity that was originally purchased for \$1.5 million dollars has been paid for in full and we are already in to the Manchester Water District so it's just the sewer district issue at this point. He said Mr. Gueron has given his assurance that he is going to cooperate with the town in whatever way they decide to move this forward. Ms. Olyha reminded the board of the project's location – off of Rte. 55 on Mandalay Drive. The Pegasus Horse Farm. Mr. Gueron said the Health Department just re-approved them for another 5 years. And the DEC just re-signed the map and Mr. Gueron said he paid the fee. Mr. Blass said there may be further applications for re-approval; he said we are dealing with market conditions here.

Ms. Olyha mentioned phases and asked Mr. Gueron asked if that was the same. Mr. Blass said there was the beginning of an effort to amend the approval to allow it to be

developed in phases. Ms. Olyha said she thought we went through the approval for phases. Ms. Blass said he wasn't here for that and Ms. Olyha said Rebecca Valk was present for that.

Mr. Gunn asked how many approvals the board has had for this. Ms. Olyha said seven. Mr. Straub asked if they saw any start date in the future. Mr. Gueron handed out copies of a report done by Houlihan & Lawrence and it is public information. He said he copied some pages that are relevant to this. He went through the information with the Planning Board. He said their target market is \$400-500 thousand selling. He said the report covers the towns listed. He said a total of 12 homes sold in this price range in this whole area of Southwest Dutchess in the last quarter. He said the ratio is a disaster and shows very very low demand. He referred to the average price per square foot; it has gone down from 180 to 130. He said they are getting close to talking about construction costs, let alone interest, land, improvements, etc. Historically new construction was a 170-175. This study indicates that everything that is being sold in the Town of LaGrange is re-selling old homes. He said you can't make new construction and not lose your shirt. He referred to another page that showed the year-to-date in the whole LaGrange area where 90 homes sold in all price ranges. Very few homes sold in our price range. Basically the average price is \$275. Mr. Gueron said there is no market for his product. He said he can come here in 6 months or a year and give the board a song and dance routine, but banks look at these numbers and the market study and it is saying there is zero demand for \$400-\$500 new construction in this area of Dutchess County. Mr. Gueron said will it come back? He said yes, it always does but we have to be patient.

Mr. Gueron said in order for them to get the project going historically we need 20-25 homes sold a year and there's a total of 12 homes sold in that bracket in the whole Dutchess County area, even if we are the best builders in the world they are not going to sell more than 4 or 5 homes a year so this is financial suicide. Mr. Gueron said we keep the approvals legal and we do all the re-approvals with the Health Department and when the market comes back we will see the numbers and the banks will come back and we can get going but at this point Dutchess County is still 25% below where it was in 2007. It's just not good out there.

Mr. Gueron said these are the numbers and Mr. Straub said that's what we asked for and Mr. Gunn said you make the case. Ms. Olyha asked if you look below the first chart - \$400-\$499 and look at the next row \$500-\$599 there's less homes available out on the market but there are 22 sales pending, the question being is with the \$400-500 range, how much of that has what you have, the sewer and the water, that's what people want today is sewer and water. Ms. Olyha said so that kind of ascues the data. Mr. Gueron said but that's in Fishkill and East Fishkill, that's Toll Brothers and they can move inventory at a higher price because they are the southern part. Ms. Olyha said and closer to the Taconic. Mr. Gueron said our location is great, we are not going to apologize and they have spend many many years and we are not going to be a Fishkill project of Toll Brothers, we will be a great product, be very high end for this location and our target has always been between \$400-\$500. In order to cross the \$500 you have to

be further south, it's easier to get that pricing. He said Westchester is doing very well. Mr. Gueron said he would love to sell at \$550 but at this point it is not realistic. He said even in the Hills of LaGrange they are struggling in the low \$350-370's. He said he hopes the market comes back soon. He said he is not indicating that this might be the last re-approval, we may be back here.

Mr. Olson asked if he understood correctly that the re-approval was granted at the last meeting? Ms. Olyha said yes, conditioned on the applicant being present. He asked for a copy. Ms. Olyha said this is approved for 6 months and will expire on March 21, 2015.

Mr. Gunn made a motion to adjourn the meeting at 8:05 PM, seconded by Mr. Straub and the motion carried unanimously. MEETING ADJOURNED

Respectfully submitted

Eileen Mang
Planning Board Secretary

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