

Gardiner Town Planning Board

Meeting Minutes

January 15, 2019

Present:

Chairman- Paul Colucci, Marc Moran, Joe Hayes, Vice-Chairman-Keith Libolt, Clerk- Mariela Roman
John Friedle, Ray Sokolov, Secretary- Carol Richman, Josh Verleun

Others Present:

- James Freiband - Principal Planner
- Marc Millspaugh- Sterling Environmental
- David Brennan- Attorney to the Planning Board

Meeting Called to Order: Start time- 7:08 p.m.

Roll Call Taken

PUBLIC HEARING:

None

OLD BUSINESS:

1. Golden Dome Realty, LLC – SBL #94.003-4-34

Minor Special Permit application for a commercial kitchen and retail outlet. Rte 208 (Cathgro Building) SBL # 94.003-4-34

Mr. Colucci: there is not anything for the board to discuss other than to be informed that the Ulster County Planning Board referral has been received- with comment 'no impact'

All members acknowledged receipt of a copy.

Mr. Colucci: asked for board comments for the UCPB reply of "no impact". None were given.

Mr. Colucci: According to the resolution passed back in December authorizes us to sign [plans].

Read Mr. Freiband's December 12 memo item of "recommendation".

Mr. Colucci: How many maps do we need?

Mr. Freiband: Four. One to Building Inspector, one to Town Clerk, one for the Planning Board files, and one for the Assessor.

2. John Calderone- SBL# 92.004-2-14.120

Minor Two Lot Flag Subdivision- South Mountain Rd at Calderone

Mr. Colucci: acknowledged receipt of updated map and memo from zoning enforcement officer, confirming that items on site plan of neighbor's B&B was in conformance.

Mr. Libolt: read the correspondence from the Building Inspector (on file) date Jan. 9 , 2019.

Mr. Freiband: read his memo (on file) dated Jan 9, 2019.

Mr. Colucci: noted the "up to 6-foot-high stockade fence" and asked if the stockade fence could be defined more accurately by the applicant.

Applicant: agreed to change the verbiage to cross out "up to".

Mr. Colucci: asked the board for comments.

Mr. Freiband: suggested this point to jump into SEQR.

- Joe Hayes motions to complete the Short Environmental Assessment Form Negative Dec for environmental significance.
- Ray Sokolov seconds.
- Motion carries unanimously.

Mr. Colucci: informed the applicant of a driveway maintenance agreement, a revision to verbiage, map in final form, and all Planning Board fees paid up to date.

- John Friedle motions to approve the subdivision of lands of John Calderone and waive a final public hearing.
- Josh Verleun seconds.
- Motion carries unanimously.

3. Heartwood- SBL # 93.4-1-42.100 & 93.4-1-41.120

Special Permit & Site Plan Review: Lot Line Revision -Rte. 44/55 and Tuthilltown Rd.

Mr. Colucci: the planning board has had ample opportunity to review minor changes that were discussed in depth at the workshop meeting 1/9/19. Allyson, attorney to the board was instructed to make those changes. We have received comments for Marc Moran and Carol Richman.

Mr. Brennan: distributed copies of his final resolution (on file). Document kept in red-line format. Most changes are towards the end of the document. Suggested to look at each marked spot. Mr. Brennan began review of document by item.

Page 8-

Strike out of "There are no existing farm operations in close proximity to the site."

Page 9-

Acres corrected to "21"

Page 11/12-

Noise comment strike out "cut power to the sound system if the established decibel limits are exceeded."

Page 27-

regarding impervious surface, additional information was provided by Mr. Medenbach's office to conclude that it will be below the 10% coverage. Language tweaked to make that clarification.

Ms. Richman: Does this include impervious?

Mr. Brennan: Yes.

Page 33-

Discussion on tree clearing. In this finding it noted that no clear cutting is allowed and there is condition that circles back to that

Page 35-

Previous mistake where "conservation easement" was added to all three parcels, rather than carving them all out. Same change made to reflect "21" acre portion.

The wording of "revoke". Language included to name both Site Plan and Special Use Permit.

Mr. Colucci: asked for clarification.

Mr. Hayes: inquired about limitation on the noise "not centered at the event barn?" For example, a guy with a guitar at a wedding, or music at the pool, or other scenarios.

Mr. Brennan: agreed to change the language that defines sounds other than amplified music.

Mr. Moran: This section is discussing the noise limiter, relating back to acoustics study.

Mr. Friedle: Asked if this was in relation to an event.

Mr. Moran: No- Subject to decibels. whether it is an event, if it would be subject to the noise limiters.

Mr. Brennan: suggested "low level background music at the pool"

Ms. Richman: requested low levels to be defined

Mr. Freiband: Doesn't matter where on the site the music is being played. The amplification control is inherently equipped indicate and to shut down any amplified music.

Mr. Moran: pointed out that the acoustics study calculated from the property line to the event barn

Mr. Brennan: suggested to ask the applicant for specific

Mr. Rapaport: Suggested "the location of the amplified music in conjunction with events is limited to the site." The intention is if there were an event with amplified music, with the potential to disturb, it can be contained to the area by the event barn.

Mr. Colucci: Reference to the good document from Sterling Environmental that can be read into the record, as well as the resolution. Suggested to continue with the resolution and then jump into the conditions, which will indicate how we are going to approach the noise issue.

Ms. Richman: stated concern with the conditions in this paragraph. Unsure what which is referring the 3dbm impact will be.

Mr. Hayes: Proposed "The location of the amplified music is limited to the *center* of the site at the event barn" to add flexibility and still use noise limiting factors.

Mr. Brennan: Suggested to broaden the sentence to "at the event barn or at the center portion of the facility"

Ms. Rapaport: agreed with similar verbiage

Discussion about car sound systems.

Mr. Hayes: I agree with the language that adds a little more flexibility

Mr. Moran: The noise study, in its conclusions set certain limits. Both "within the outdoor out door event area" to comply with the DEC guidance and town codes.

Mr. Freiband: Clarified that at the point where the noise is produced and measured at the property lines, this is set to that limit that are specified.

Discussion had about permit renewal and revocation.

Mr. Moran: Referenced section 7 there is a discussion about annual permits, renewal requirements- Raised concerns here. Main question is what authority does the board have to issue a permit?

Discussion had as to who could make a complaint and who would it be directed to. Discussion mentioning the possible authority of the zoning officer, or the "good grace of the operator".

Mr. Moriello: what if it read " a future planning board may consider"

Mr. Moran: language does need to change because it is currently unclear and currently suggests an authority we don't have.

Mr. Freiband: There is a provision in the performance standards in the code that allows the building inspector to cite someone for creating a nuisance is up to the inspector to make that determination.

Mr. Moran: The building inspector would not issue a violation when the applicant is compliant. 0

Discussion had about making changes.

Mr. Brennan: Pointed out that there are two discussions going on. 1-The annual permit renewal is not allowed under our code, the town board has established that we do not have that authority. 2-The second item is what to do about the noise. The decibels and hours are already in the town code.

Mr. Libolt: Inquired for the need of this information.

Mr. Brennan: This is to clearly address one of “The Heartwood 7” items.

Mr. Moran: Questioned whether the board has the authority.

Mr. Brennan: Mr. Brennan referenced six lines down that address the issue of revocation.

Ms. Richman: Suggested a more strict compliance

Discussion had to strike out the conditions.

Mr. Moran: Suggested: “While such a system may work for certain land uses, the Planning Board believes an annual permit renewal for this use is unworkable” be struck out and replaced with “We acknowledge the concern; however, an annual renewal is not provided under the zoning law.”

Mr. Brennan: in agreement

Continuing to page 41. #2, under Conditions of Approval-

Discussion had to agree upon subsequent changes needing to be noted and dated.

Minor changes will be in the conditions in a bubbled or wavy lines format.

Page 41. Number 3: Renumbered as #4

Page 41. Number 6: Renumbered to #5

Page 41. Number 7: addition of “of the Site Plan documents referred to in Paragraph 2 above”.

Page 41. Number 8: addition of “is required”

Page 42. Number 10: addition of “including, but not limited to, NYSDEC and NYSDOT.”

Page 42. Number 14 : Discussion had about pest control provision. Addition of “pesticides, herbicides, rodenticides, and insecticides will not be used” and “by a licensed professional applicator in strict adherence to all applicable regulations and standards.”

Ms. Richman: Stated concerns for second-generation rodenticide.

Mr. Libolt: are you suggesting we strike out rodenticide?

Ms. Richman: No. I would prefer they not be allowed. I had proposed language that requires the applicant to provide a rodent mitigation plan, and also to prohibit the use of a second generation rodenticide.

Mr. Brennan: I tried to synthesize some of the language to the concerns, using all the comments provided by the board. The concern encompasses the entire town we should not single out this applicant.

Mr. Moriello: Stated concern to specify which conservation easement because in the agricultural easement you’re going to be using these things.

Mr. Brennan: It says the forested area of the site. That is not within the conservation easement.

Mr. Moriello: Made comparison of the language created to that of a previous, similar project (Kiviat).

Ms. Richman: that shouldn’t be there in the conservation easement at all.

Mr. Moriello: We had a lengthy discussion about that.

Mr. Colucci: Opened the discussion for each member of the board to give their opinion. The language will be changed if there are more than three members that want to make a significant change.

Mr. Verleun: Agree with Carol’s concerns of the potentially secondary impacts of the rodenticides but also that we don’t want to single out the applicant.

Mr. Sokolov: no comment

Mr. Friedle: no comment

Mr. Libolt: no comment

Mr. Hayes: no comment

Mr. Moran: no comment

Ms. Richman: This is a reverse of an Open Space plan. Open Space plan is to figure out what

area is environmentally sensitive and not build there. Here, you are taking what you know is the environmentally safe area and exposing it ... and that makes the difference. You so are allowing rodenticides of any sort in an environmentally sensitive area...

Mr. Colucci: confirmed with Mr. Brennan his familiarity with the Kiviat language?

Mr. Brennan: I think the language in this document is stronger

Mr. Colucci: The board is in agreement and can use the current language.

Number 15

Mr. Brennan: Read updated and revised item 15 regarding tree removal.

Mr. Moran: inquired of what controls there are for the removal of trees above 6 inches.

Mr. Brennan: 2 things: tree removal necessary for construction, nothing above 6 inches would be removed ...if there is a tree in the site where a building is going it will need to be cut down if necessary for the construction.

Mr. Brennan clarified newer text to "Except for outside the area of the site that is forested" Discussion had about terminology "landscape professional".

Mr. Rapoport: suggestion made; the trees that pose a safety hazard, those trees we will have to remove immediately, we would bring in an outside professional. Discussion with overall agreement.

Mr. Colucci asked for further comment. No comments.

Number 16

Mr. Brennan: read item 16 as amended

Mr. Colucci referenced an email received on this day from the Open Space chairperson. She was inquiring about the conservation easement. Requested clarification that the referenced is the forested area along the river bank.

Mr. Brennan: The area outside the conservation easement, but yes, along the riverbank.

Mr. Colucci: referenced a question that was asked "How will the applicant set a baseline for the conservation easement?"

Mr. Moriello: Mr. Boyle's office would use an aerial photo to establish a baseline.

Discussion had to agree that the referenced baseline was from the Town Board.

Mr. Colucci asked Mr. Moriello to ensure the language is included in the updated document-establishing a baseline.

Mr. Moriello: referred to the Ulster County Planning Department

Mr. Colucci stated his concern for the up-to-date accuracy of the material.

Discussion had to confirm UCPB has current maps.

Mr. Brennan: Asked if the concern is the limits of the land?

Mr. Colucci: One of the issues is the sensitivity of the area. The highly erodible land. Public concern has been trees being cleared. An established baseline will ensure those trees would not be removed. It is a reasonable request the Open Space Commission requested to insert this language.

Mr. Moran inquired if there would be markers on the ground to show where the easement lines are- for the public, such as workers to not cut trees.

Discussion had to about the markers that were indeed used on said project.

Mr. Colucci asked the board to make comments or further concerns.

Mr. Verleun: no comment

Mr. Sokolov: no comment

Mr. Friedle: no comment

Mr. Libolt: no comment

Mr. Hayes: no comment

Ms. Richman: Re-introduced the rodenticide concern. Kiviat' easement prohibited rodenticides that were not "organic"

Mr. Rapoport: referenced "disturbance of the ground" to be broadened to suggested "approved improvements, which includes walkways, landscape, stormwater rain gardens..." Discussion to establish new language to be added.

Ms. Richman reintroduced the specifics of the plants.

Mr. Brennan confirmed new language agreed upon.

Number 17

Mr. Brennan read item 17.

Mr. Rapoport: requested some additional language to clarify "guest, excluding staff" as to avoid ambiguity.

Mr. Brennan confirmed the change.

Number 18

Mr. Brennan read item 18.

Mr. Moran stated that quiet hours has no definition.

Discussion had to establish that the site plan does include a definition of 10 p.m.

Number 19

Mr. Millspaugh reviewed the noise studies.

He contacted our town's noise consultant Brian Shug of Catskills Consultants, whose email made five main points:

1-The stated goal of not increasing sound by more than 3decibels over the ambient condition at property line.

2-The use of noise limiters on amplifiers is effective in preventing the source noise from exceeding the specified maximum -whatever it is set at.

3- A band with a sound system consisting of multiple speakers can be evaluated as a single noise source. One observation was that when events occur, the public expects noise and notices it more. Mr. Shug did not think this would affect item 1.

4-The use of on-site noise monitoring instruments is a good way to confirm that the source noise stays within specified limits. Most monitors are capable of storing data which will provide Heartwood and the town with actual data in the event there are any complaints. This is probably to everyone's advantage, especially if there are multiple complaints.

5-The condition of approval could include that within the first year of operations Heartwood repeat the actual test during an actual event and obtain noise measurements before, during and after the event. Relating that to the existing study would allow adjustments as may be appropriate.

He also suggested the town establish an escrow account to retain a noise consultant to confirm field measurements. His suggested a\$2500 escrow account for the first.

Mr. Sokolov inquired about the number of people who may find noise disturbing, and about the feasibility and accuracy of a monitoring system.

Mr. Brennan identified research comparing 125 decibels to be a rock band, and 110 decibels representative of a wedding band playing and still being able to carry on a conversation.

Mr. Rapoport noted that the decibel scale is not linear: 125 to 110 is an order of magnitude reduction in volume. Also, 125 decibels at the sound source was projected to result in about 65 at the property line - which is characterized as the volume of a conversation. If you start with 110 at the source, the resulted calculation in property line is about 50 which is the

volume of a floor fan. No potential for a nuisance level. This would not be a 0-3 increase. This would be a significant decrease relative to the existing ambient sound levels.

Mr. Moran: referenced two sound studies, dated February and April. Both studies established ambient measurements along the highway, and Tuthilltown Rd., and along the creek, but the second study measured higher ambient levels at the creek. The ambient measurements are used to calculate the appropriate "source" sound level. The first study recommended maximum source levels of 100dBa during the day and 90 in the evening. The later study proposed 125 and 110.

Mr. Hayes: 125db is very loud. 110 decibels is a threshold for hearing damage. For 8 hours at a construction site requires providing ear protection at 110 decibels. Proposes to lower the levels to 100 in the day and 90 at night and ask for a test to demonstrate that these levels are acceptable.

Mr. Colucci asked the board for their comments: general agreement with Mr. Hayes' proposal, with the additional restriction that noise levels at the property line not exceed 0-3 dBa.

Mr. Moran: Acknowledges he cannot vote in this matter but reiterated his discomfort on relying solely on a very limited noise study; *a different and more conservative approach would be to start with no amplified music outside and make adjustments as needed.*

Mr. Millspaugh: The applicant's noise studies are first order evaluations; no consideration of possible noise buffering due to vegetation, leaves, trees, or buildings, which could be significant. .

Discussion followed regarding noise limiters and how they work.

Mr. Colucci: asks Mr. Hayes to provide the language he proposes to Mr. Brennan and then we can take a straw vote.

Mr. Hayes: no. 19. delete amplified music restricted to indoors. Outside amplified music should ... noise limiters to the sound system which will prevent the sound level at the source from exceeding 100 decibels from 7 am to 8 pm and 90 from 8 pm to 10 pm. No amplified music shall be allowed outside those hours. Then I'm ok with the rest of this. But they don't get to turn it up to 125 ... this is the limit.

Mr. Rapoport: did we test for a 0-3 increase?

Mr. Hayes: less than 3 decibels increase at the property line

Mr. Rapoport: would the board be ok with "prior to any events being held" instead of "prior to C of O?"

Mr. Rapoport: could we include some language that if there is an increase, and does not meet the test, that we would recalibrate the levels lower so it does meet the test.

Various: yes

Mr. Brennan: included language "should the test exceed 3 db..."

Mr. Hayes: inquired about a complaint line

Discussion had to remove a noise complaint line. Building inspector will continue to address

Mr. Hayes: going back to field test issue. The location about where the amplified sounds is and the direction should influence where the ambient noise is. Seems the outside events will be on the western side of the building structure.. so if it's going in that direction, the sound is going to bypass the ambient measure

Mr. Colucci: We can will leave it to the applicant with the town consultant with a member of the planning board to determine where and what extent we will make the test.

Mr. Colucci: confirmed with Mr. Brennan of the language to be added.

Mr. Brennan: adding “ if the field testing indicates that there is an increase in the observed sound level greater than 3 dBA at the property line, then the noise limiters will be adjusted to the sound level to achieve compliance”

Mr. Colucci: asks the board for comments

Mr. Brennan: inquired about escrow details

Mr. Colucci: the escrow is definitely something that needs to be established.

Mr. Brennan : adding “ escrow of 2500 for town’s noise consultant for field testing”.

Mr. Brennan: addressed the issue of an outdoor intercom. The town code has a chapter 119 code and this prevents from fireworks happening every weekend. Inquired of the applicant’s intentions with fireworks.

Mr. Rapoport: none of those operations are our intentions.

Mr. Brennan: Inquired about an issue of UCPB referral. Mr. Freiband pointed out the response of “recommendations” and also “required”-generally inconsistent. Mr. Brennan is waiting on a clarification response from UCPB. It will be a further resolve in the resolution.

Mr. Moran: I propose one additional condition; that the cabins be fabricated off-site and installed.

Mr. Rapoport: Our plan is to construct the panels off site but that language is very restrictive. We are not going to stick build the cabins.

Mr. Colucci: panelized construction is what you propose

Ms. Rapoport: yes. Construction will happen outside

Mr. Colucci: asked for comments

Mr. Sokolov: inquired of why the request from Mr.Moran

Mr. Moran: This is just reflecting the applicant’s proposal. The material they presented said the cabins would be constructed on site.

Mr. Colucci: the clarification is they are doing the paneling outside, they are not modular. It’s a minor impact. It would be more harmful if there was a crane installed in a riparian area we are trying to protect.

Mr. Moran; Asking for purpose of clarity. But in a broad concept, the difference is stick building on site versus another method.

Mr. Friedle: Stick building would be a lot louder. Panelized homes and its quicker and quieter.

Ms. Richman: Is the pre-fab on the site plan? Because if it’s not on the site plan it has to be in the permit.

Mr. Friedle: This is a non-issue

Mr. Libolt: no comment

Mr. Hayes: no comment

Mr. Colucci: inquired from Mr. Brennan for proceeding.

Mr. Brennan: This document has hand written changes that the board has recommended those changes will be vetted by someone for accuracy. Suggested a for a member to move an adoption, second and do a roll call vote. Marc is excluded from voting because the board has a full complement tonight. That is subject to the board’s prerogative. Inquired of Mr. Freiband and Mr. Millspaugh if they have any other comments.

Mr. Colucci: confirmed with Mr. Brennan -The resolution we are voting on tonight, is that the only thing we would have to do as far as adopting a resolution.

Mr. Colucci asked for further comments;
Mr. Millspaugh: No comment.
Mr. Freiband: No comment.
Mr. Verleun: No comment.
Mr. Sokolov: No comment.
Mr. Friedle: No comment.
Mr. Libolt: No comment.
Mr. Hayes: No comment.
Ms. Richman: No comment.

Mr. Colucci asked for a motion to resolve in the application of Heartwood for special permit and site plans dated November 28, 2018 as set forth in the resolution dated 1/15/2019.

- Mr. Friedle motioned to accept the resolution discussed tonight with the provisions we amended as set forth in the resolution date 1/15/2019.
- Mr. Hayes seconded.

Josh Verleun: aye
Ray Sokolov: aye
John Friedle: aye
Keith Libolt: aye
Joe Hayes: aye
Paul Colucci: aye
Carol Richman: nay

- Motion Carries. 6 aye. 1 Nay.

Mr. Colucci inquired of the legal counsels for procedure for easements.
Mr. Brennan; to finalize and authorize and get referred to town board for final authorization.
Mr. Moriello: with all the changes...in the easement for agriculture... we would go to town board after the red lines are removed, as adopted tonight. They presumably may add somethings to them.
Mr. Colucci: Inquired about the timeline
Mr. Moriello: We have a month or two
Mr. Colucci: requested a memo to have in our file for the procedure going forward here. An outline of procedures we can forward to the board and to the applicant's attorney.
Mr. Colucci: addressed applicant to keep close upcoming communication to keep bills paid up to date.

NEW BUSINESS:

None

INFORMATIONAL:

None Present

PRIVILEGE OF THE FLOOR:

Hillary Adler: Inquired of Mr. Brennan about the timing of the final approval for filing article 78.
Mr. Brennan referred Ms. Adler to her attorney.

Ms. Richman: Resigns as secretary.

Mr. Friedle: *I put my hat in the ring.*

Mr. Colucci: Informs to sign established documents prior to resignation.

Resignation is effective at the end of the meeting.

Discussion had about privilege of the floor. Planning Board law requires privilege of the floor.

- Mr. Sokolov nominates Mr. Friedle as Planning Board secretary.
- Ms. Hayes seconded.
- Motion granted.

- Mr. Sokolov motions to close the nomination.
- Ms. Richman seconded.
- Motion granted.

Approval of Minutes

No minutes approved at this meeting. December 18, 2018 meeting minutes and Special Meeting of January 9, 2018 will be reviewed for approval at next regular meeting.

Adjournment

Submitted,



Mariela Roman
Planning Board Clerk

Michelle R. Mosier 3/25/19

Approved: 3/19/2019

Filed: 3/25/2019 - _____