

Planning Board Meeting  
January 29, 2020

Chairman Chris Maron called the meeting to order at 8:03 p.m. with the following members present: Mr. Dwight Anson, Ms. Cynthia Fairbanks, Ms. Mary Lou Fitzgerald, Ms. Robin Severance, and Mr. Ken White. Also in attendance was Mr. George Hainer, Building Codes/Zoning Officer. Guests in attendance: Peter Gibbs, Kevin Hall, Anthony Fainberg, Diane August, James Starbuck, Wendy Meguid, Michael Fergot, Richard Fritz, and Heidi Sweet.

Chairman Maron: The first order of business is to appoint a chair, vice chair, and secretary for 2020. I had a conversation with Robin and she is happy to be the chairperson for 2020 and I'm certainly okay with that. If anybody wants to make a motion-

Mr. White: So moved.

Ms. Fairbanks: I'll second that.

Mr. Maron: Ken moves that Robin is the Chair. Cynthia seconds. All in favor?

All: Aye.

- **Resolution 2020-1 Appointment of Chair**

Resolved: To appoint Robin Severance as Chair for 2020.

Moved by: Mr. White

Seconded by: Ms. Fairbanks

In Favor: Mr. Anson, Ms. Fairbanks, Ms. Fitzgerald, Mr. Maron, Ms. Severance, and Mr. White

Opposed: None

Mr. White: Thank you for your leadership over the past years.

Mr. Maron: Thank you. We'll move on to the Vice Chair. I'd assume that Alan would probably continue.

Mr. White: I'll nominate Alan Hipps.

Ms. Fairbanks: Has he indicated he's still interested?

Ms. Fitzgerald: I think he's interested. I'll second it for Alan Hipps.

Mr. Maron: All in favor of Alan Hipps as Vice Chair?

All: Aye.

- **Resolution 2020-2 Appointment of Vice Chair**

Resolved: To appoint Alan Hipps as Vice Chair for 2020.

Moved by: Mr. White

Seconded by: Ms. Fitzgerald

In Favor: Mr. Anson, Ms. Fairbanks, Ms. Fitzgerald, Mr. Maron, Ms. Severance, and Mr. White

Opposed: None

Mr. Maron: For the secretary. All in favor of Julie as our secretary?

All: Aye.

- **Resolution 2020-3 Appointment of Secretary**

Resolved: To appoint Julie Schreiber as Secretary for 2020.

In Favor: Mr. Anson, Ms. Fairbanks, Ms. Fitzgerald, Mr. Maron, Ms. Severance, and Mr. White

Opposed: None

Mr. Maron: I'll continue chairing this meeting and Robin will take over as subsequent meetings.

Ms. Severance: Fair enough.

Mr. Maron: Now we approve our 2020 meeting schedule, which we don't have in front of us. We've met at ever third Thursday –

Mr. Hainer: The fourth Wednesday.

Mr. Maron: The meeting schedule will be the fourth Wednesday of each month, except for November and December when it will be the third Wednesday. All in favor of that schedule?

All: Aye.

Mr. Maron: Now we move on to the proposal **from Todd August, Tax Map No. 76.2-1-24.100**, a Class B subdivision. In the law, the Type II SEQR list for Class B projects says that actions subject to the class A or class B regional project jurisdiction of the Adirondack Park Agency or local government pursuant to section 807, 808, and 809 of the Executive Law, except class B regional projects subject to review by local government pursuant to section 807 of the Executive Law located within the Lake George Park as defined by subdivision one of section 43-0103 of the Environmental Conservation Law. With undecided sections of New York State Executive Law, the Adirondack Park Agency Act established SEQR like review, record, and decision standards for the Adirondack Park Agency and for local governments with APA approved local land use programs. All decisions made under that authority are exempt from SEQR. For Class B projects we use a checklist to evaluate its impact.

Mr. Maron: I'm not sure if we need to go through the proposal again, but it's a proposed subdivision of this property into two lots. There is a building on both lots, however there is disagreement over whether one is defined as a single family dwelling or a guest cottage. I think we should have a proposal to accept or deny the project before beginning discussion.

Mr. White: I would move that we accept the proposal.

Ms. Fitzgerald: I second.

Mr. Maron: Does the project need to be explained again for the Board?

Ms. Fitzgerald: It was explained at our meeting in December; it's in the minutes. We had the site visit, the explanation of the project, and discussion of it.

Ms. Severance: Do you have a house designed already?

Ms. Diane August: No, not yet.

Ms. Severance: Is that something you'd bring back to us?

Ms. August: Definitely. We're going to abide by any construction requirements.

Ms. Fitzgerald: This is strictly the subdivision – nothing else.

Mr. Maron: We'll go through the Class B findings checklist so see what the impact might be. The principal natural resource and public resource aspects of the proposed subdivision site are considered in connection with Class B review. We determine if it will have a Small to Moderate Impact, Potential Large Impact, and Can Impact Be Mitigated By Project Change.

- Soils, General – Small to Moderate Impact
- Agricultural Soils – N/A
- Topography – Small to Moderate Impact
- Water Quality and Eutrophication – Small to Moderate Impact
- Surface Waters – Small to Moderate Impact
- Floodplains – N/A
- Groundwater – Small to Moderate Impact
- Shorelines – Small to Moderate Impact
- Mineral Resources – N/A
- Air Quality – Small to Moderate Impact
- Noise Levels – Small to Moderate Impact
- Wetlands – Small to Moderate Impact
- Aquatic Communities – Small to Moderate Impact
- Vegetation, General – Small to Moderate Impact
- Rare and Endangered Terrestrial Wildlife – Small to Moderate Impact
- Fragile Ecosystems at Higher Elevations – N/A
- Aesthetics, General – Small to Moderate Impact

- Scenic Vistas – N/A
- Travel Corridors – Small to Moderate Impact
- Open Space, General – Small to Moderate Impact
- Outdoor Recreation – Small to Moderate Impact
- Surrounding Land Uses, General – Small to Moderate Impact
- Adjacent State Land – N/A
- Wild, Scenic, and Recreational Rivers – N/A
- Historic Sites – Small to Moderate Impact
- Special Interest Areas – Small to Moderate Impact
- Government Consideration, Service and Finance – Small to Moderate Impact
- Government Consideration, Regulation – Small to Moderate Impact
- Public Utilities and Community Resources – Small to Moderate Impact
- Streets and Roads – Small to Moderate Impact
- Siting and Construction of Buildings – Small to Moderate
- Sewage Disposal – Small to Moderate Impact
- Storm Drainage – Small to Moderate Impact
- Water Supply – Small to Moderate Impact
- Solid Waste Disposal – Small to Moderate
- Pesticides and Herbicides – Small to Moderate
- Shoreline Development – Small to Moderate
- Noise – Small to Moderate Impact
- Signs – Small to Moderate Impact
- Utilities – Small to Moderate

Mr. Hainer: Will the utilities be buried?

Mr. Kevin Hall: I would assume they'd be buried from the pole on Lot 1 to Lot 2 to minimize the visual impact.

Mr. Maron: There's a motion that read, "Resolved, that the Town of Westport Planning Board determines that the proposed Class B project will not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational, or open space resources of the town or the Adirondack Park nor upon the ability of the public to provide supporting facilities and services made necessary by the project taking into account the commercial, industrial, residential, recreational, or other benefits that might be derived from the project." Do I have a motion to accept that?

Mr. White: So moved.

Ms. Severance: I'll second it.

Mr. Maron: Any discussion? All in favor? Okay, five ayes and one recusal.

- **Resolution 2020-4 August Class B Determination**  
Resolved, that the Town of Westport Planning Board determines that the proposed Class B project will not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational, or open space resources of the

town or the Adirondack Park nor upon the ability of the public to provide supporting facilities and services made necessary by the project taking into account the commercial, industrial, residential, recreational, or other benefits that might be derived from the project.

Moved by: Mr. White

Seconded by: Ms. Severance

In Favor: Mr. Anson, Ms. Fairbanks, Ms. Fitzgerald, Ms. Severance, and Mr. White

Recused: Mr. Maron

Opposed: None

Mr. Maron: We have a subdivision approval form resolution, which I'll read out loud.

Mr. Hainer: In the permit you'd put the historic district requirements, SHPO, and looking at the house design.

Mr. Hall: When we get to the right point in the meeting I'd like to go over the steps that Diane is going to need to do to get a building permit. If possible, I'd like that explained so we're on the same page.

Mr. Hainer: You're going to have to approve any conditions that are going to be in the Class B permit. It will be filed with the APA and at the county.

Mr. Fritz: Should we not prevail this evening, do we have the right to seek an injunction to prevent the institution of the subdivision and to seek some kind of court action to oppose the decision?

Mr. Hainer: You can file an Article 78 Proceeding. It's a legal document contesting a board decision. It would go to court. In this case – because of the Class B status – our representative would be the Adirondack Park Agency and the Attorney General of New York State. If we didn't have jurisdiction, the APA would be issuing the permit and the process would be different.

Mr. Maron: Do we consider the conditions as part of the resolution?

Mr. Peter Gibbs: Does the project come in for site plan review?

Mr. Hainer: It'll come in for site plan review. The prints will be sent to SHPO for review and then we'll do a review of the project.

Mr. Gibbs: You'd look at the site plan and whether to bury the power. The condition would be that.

Mr. Hainer: Right. That's generally written in the Class B permit. It gets sent to the APA and recorded in the APA book at the county.

Mr. Gibbs: Is there a draft permit?

Mr. Hall: There'll be a draft permit that we'll look at and make sure we understand.

Mr. Hainer: You could draft the permit, review it, and then approve it.

Mr. Maron: Before or after this is approved?

Mr. Hainer: You approve the subdivision and then the Class B project. A lot of the permit would be based on the checklist.

Mr. Maron: I'll read the resolution. Is there a resolution to approve this project, to conditionally approve it, or to approve it with conditions? There are going to be conditions; what might those be?

Ms. Fitzgerald: The lighting.

Mr. Maron: The lighting shall be downcast and not illuminate other properties.

Ms. Fitzgerald: Screening from the lakeside.

Ms. Fairbanks: Burying the utilities.

Mr. Hall: There are trees there. I would propose that the condition be to maintain some of the vegetation between the house site and the lake.

Ms. Fitzgerald: We don't want any more screening than we have to have.

Mr. Maron: Is there a motion to accept the subdivision with those conditions?

Mr. Anson: So moved.

Mr. White: Second.

Mr. Maron: Is there discussion? All in favor? Okay, with one recusal, this has been approved.

- **Resolution 2020-5 August Subdivision Approval**

- **Whereas**, application number 6 of 2019 has been submitted for approval of a 2 lot Minor Subdivision, Tax Map No. 76.2-1-24.100; and

- **Whereas**, said application is a Class B Regional Subdivision; and

- **Whereas**, in respect to the State Environmental Quality Review Act, the proposed project is a Type II Action for which no further action is required; and

- **Whereas**, a public hearing was held on 12/18/2019 and 01/29/2020; and

- **Whereas**, a site visit was made on 11/20/2019; and

- **Whereas**, the following findings were made as a result of:

- Technical review by the Code Enforcement Officer: Complies with Westport Subdivision regulations and Westport Land Use Law Section 2.063(a) 1973

pre-existing principal buildings and minimum lot size. Meets all dimensional requirements and will upgrade onsite sewage system. (See Class B permit)

- Planning Board: Review of application, plans, and other information: Followed procedures in Westport Subdivision regulations for minor and Class B Regional Subdivisions and Westport Land Use Law. Class B permit to be filed with the Essex County Clerk
- SEQR: Type II Action per 617.5(C)(45)
- Class B Checklist: Small to moderate impacts for items 1a, 2, 3a, 3b, 4, 7, 8, 9, 10, 11, 14, 15, 18, 19, 20, 21, and 22. (See Class B permit)
- Site Visit: Site is over 500 feet of lakefront. Upper, non-lakefront portion is flat with existing screening at south end of property. Property has an existing smaller house on it and the site has a developed site plan with a driveway, electric, town water, and onsite septic system. Created lots meet all dimensional requirements of Westport Land Use Law section 31.045 RR8.5 Lakeshore Residential.
- Public Hearing: Comments from neighbors and non-neighbors basically against creation of the subdivision and disputing principal building designation of the smaller house.
- Other information: No variances required or 239 referral.

**Now Therefore Be It Resolved**, that the Town of Westport Planning Board determines that the proposed Class B subdivision will not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the Town or the Adirondack Park nor upon the ability of the public to provide supporting facilities and services made necessary by the project taking into account the commercial, industrial, residential, recreational, or other benefits that might be derived from the subdivision and that;

**The subdivision is approved subject to the conditions outlined in the Class B permit**, which shall be noted on the plat and in the deed, and the Planning Board Chair is hereby authorized to sign the plat map; and

**Be It Further Resolved**, that anything showing the signed plat map is hereby approved irrespective of use of conditional words such as, but not limited to “proposed.”

Moved by: Mr. Anson

Seconded by: Mr. White

In Favor: Mr. Anson, Ms. Fairbanks, Ms. Fitzgerald, Ms. Severance, and Mr. White

Recused: Mr. Maron

Opposed: None

Mr. Maron: The next matter before us is **Guy George Lever, Tax Map No. 66.2-2-22.130**. We received a letter on January 15<sup>th</sup> in response to our letter regarding the archaeological site. There was an archaeological study done there which designated a sensitive area. The report said the information was not forwarded to the state because there were going to be deed restrictions, which would make it a moot point. Mr. Lever showed a letter saying that the state did not designate that as an archaeological sensitive area because they didn't know about it. We sent a letter asking for guidance. The APA contacted OPRHP and received a no impact determination. OPRHP wrote that further

investigation is unnecessary and that the proposed structures will have no adverse impact on archaeological or historical resources. Now that we have this correspondence, we can consider what we want to do with the proposal to adjust the building envelope.

Mr. White: I disagree that it would have no impact. I want to stick with what we offered him for the building envelope.

Mr. James Starbuck: We, the abutters, would agree with Ken. I think I heard previously that the town can decide that something is historically significant and not be beholden to what the state says. George, is that true?

Mr. Hainer: I believe so.

Mr. Starbuck: The stipulation that I was given that was a condition for granting that subdivision required me to present a deed that included that language. The deed reads, "An archaeological investigation of this parcel has resulted in the identification of an archaeologically sensitive area as shown on Essex County plat map. This archaeologically sensitive area contains a stone retaining wall, the subsurface ruins of two charcoal kilns and is inferred that there may contain additional charcoal kilns. No ground disturbance activities are to be conducted within the archaeologically sensitive area, including grading or excavation below a depth of one foot below the existing natural grade without an appropriate mitigation plan. This mitigation plan must be developed with the aid of a qualified archaeologist, meeting requirement as detailed in the Department of Interior National Park Services Regulations, and approved by the Town of Westport Planning Board." I think it's historical, but I'm not sure how significant it is.

Ms. Severance: The Planning Board wanted this in the deed, but they didn't have a plan as to how a prospective buyer would work around it. Why has this taken so long?

Mr. Starbuck: At any point he could have built a nice home on the building envelope that exists.

Mr. Maron: What we want to decide is our process going forward. Mr. Lever has made an informal proposal asking if we would consider changing the building envelope to accommodate his needs. If he has a formal proposal, we can evaluate it and take all the information into account.

Mr. White: We offered him the building envelope. If he wants to change that he needs to come to us with a proposal.

Ms. Fitzgerald: I think it would be important to let him know there's some disagreement. I'd like to see him be able to build something there.

Ms. Severance: He bought that property with the deed; he knew what he was getting in to. I'd like to see him do something, but he's going to have to be mindful of these restrictions.

Ms. Fairbanks: I don't think you need to say that. Just ask him to submit a detailed proposal.

Mr. Starbuck: How would a deed get changed? Is there a process?

Mr. Maron: We would have to figure that out. I'll put together a letter to get out to everybody.

We have a person who applied to be an alternate on the board. How do we want to proceed with that? I'd be happy to invite her to come in and talk with us.

Ms. Fairbanks: I think that'd be a good idea.

Mr. Maron: We'll invite her.

Mr. White: I don't think we approved the minutes. I move we accept the minutes as presented.

Ms. Severance: I second it.

Mr. Maron: All in favor? Approved.

- **Resolution 2020-6 Approval of Minutes**

Resolved: To approve the minutes of December 18, 2019.

Moved by: Mr. White

Seconded by: Ms. Severance

In Favor: Mr. Anson, Ms. Fairbanks, Ms. Fitzgerald, Mr. Maron, Ms. Severance, and Mr. White

Opposed: None

Mr. White: I move we adjourn.

Ms. Fitzgerald: I second.

Mr. Maron: All in favor? Adjourned at 9:08 p.m.

Respectfully submitted,

Julie Schreiber, Secretary