

A regular meeting of the Town of LaGrange Planning Board was held at the LaGrange Town Hall, 120 Stringham Road on Thursday, February 19, 2015. Vice Chairman Robert Straub called the meeting to order at 7:00 PM. Board members John Gunn, Dennis Rosenfeld, Frank Sforza, Joe Zeidan, Marc Komorsky were present. Stacy Olyha and Tony Brenner were absent. Also present was Wanda Livigni, Administrator of Planning & Public Works, Walter Artus of Stormwater Management Consultants and Greg Bolner of Clark Patterson Lee.

Mr. Straub announced that Mr. Komorsky would be a voting member in the absence of Tony Brenner.

Mr. Rosenfeld made a motion to accept the minutes of January 15, 2015, seconded by Mr. Gunn and the motion carried. Mr. Komorsky said he would abstain since he was not present at the January meeting. MINUTES ACCEPTED.

PUBLIC HEARINGS:

DALEY FARM DEVELOPMENT – Proposed subdivision and site plan located between Titusville Road and Colleen Court containing 233.36 acres (Grid No. 6560-03-081270, 099220, 229310) Planning Board to consider allowing applicant to re-advertise to continue public hearing.

Ms. Livigni said she has been in discussions with the representatives of the developer. They still need to resolve their issues with the Town Board prior to coming to the Planning Board. She said they are aware of the fact they need to re-advertise whenever they are ready to re-appear and they do need to notify the adjoining property owners. She said if you close the public hearing that starts the clock on SEQR and thus far the Planning Board has decided to not take that course so that is why we keep adjourning it. Mr. Straub said so it's going to continue to be adjourned and Ms. Livigni said correct. Mr. Gunn asked about time. Ms. Livigni said they are always hopeful but she didn't have a date and added she was hopeful it would be in the next 3 months. Mr. Gunn made a motion to adjourn the public hearing to March 19, 2015 seconded by Mr. Rosenfeld and the motion carried unanimously.

LANE WETLANDS PERMIT – Proposed wetlands permit located on Wildrose Lane containing 2.107 acres (Grid No. 6561-02-609515); circulation for Lead Agency.

Mr. Brian Lane appeared before the board. Ms. Livigni said the ZBA was snowed out on the Monday of the month so Mr. Lane was not able to appear before them yet because he needs a variance. Mr. Straub asked for comments from the Board and Mr. Rosenfeld said he thought the Board could proceed. Mr. Rosenfeld made a motion to circulate for Lead Agency, seconded by Mr. Gunn and the motion carried unanimously. CIRCULATE FOR LEAD AGENCY.

Mr. Straub opened the public hearing. Mr. Lane said he was before the board last month. He said he is before the Board for a wetlands permit. He said his property is approx 2 acres with 1 ½ acres being wetlands with wetland buffer area. He said the ½ acre was used to construct his house with the proper setbacks. He said he asked for a wetland permit to go into the buffer area, he said the garage would be sitting in the buffer area by 26 feet. He said he showed the board pictures last month and showed the Board a certified plan he marked up. He showed the board where the garage would go and the flagged wetlands. He said he was able to find them at the time 5 years ago when he built the house. He referred to an area that was 113 feet to the flag and another one that was 74 feet from another flag. He said they weren't exact but pretty close. Mr. Livigni asked Mr. Lane what was the reason for the location of the garage. He replied

from the road to the back of his house is 100 feet and that is where the wetland buffer is, at the back of his house. He said to the right hand side is the septic and with the proper spacing from the septic to the house and the septic to the sideline and to the left hand side it's 40 feet from the house to the sideline so the house was exactly made to fit the space they had that was usable at the time. Mr. Straub said so you are actually looking for variance for the 6-foot lot line and Mr. Lane said he is also going to be looking for a variance from the sideline. Mr. Lane said this is a detached garage but the classification of it makes it where I need a sideline setback variance. He said 25 feet is what he actually needs and is looking for a 19 foot variance from the ZBA as well. Mr. Lane said the neighboring property has 15 acres and a lot of it is wet and fills in behind his property and there are 6 good acres over there and the house would be way off and Mr. Lane said he spoke to the owner and he has no problem with this nor does any of the other neighbors. Mr. Gunn said it's the obvious place to put the garage. Mr. Lane agreed. Mr. Straub said he didn't disagree, if they allow the variance that's not our job to do. Mr. Lane asked if the Planning Board had to give permission to go forward. Ms. Livigni said the public hearing was opened and there was no comment. Mr. Straub asked if there was anyone in the audience who wished to comment. There was no response. Mr. Rosenfeld made a motion to close the public hearing, seconded by Mr. Gunn and the motion carried. PUBLIC HEARING CLOSED. Ms. Livigni said at this time there is no other action other than circulating for Lead Agency. Mr. Rosenfeld said the applicant has to go to the ZBA for the variance. The Planning Board set an escrow for \$200.

RED OAK HOLDING SITE PLAN & SPECIAL USE PERMIT – (COMMUNITY GLASS)

Proposed site plan and Special Use Permit located on New Hackensack Road containing 0.73 acres (declare Lead Agency) (Bolner)

Mr. Gunn made a motion to declare the Planning Board Lead Agency, seconded by Mr. Sforza and the motion carried unanimously. DECLARE LEAD AGENCY.

REQUEST FOR RE-APPROVAL

HARVEST RIDGE SUBDIVISION – Harvest Ridge Subdivision is seeking a fifth re-approval of final subdivision approval previously granted on April 20, 2010. Planning Board is requesting the Town Board's recommendation.

Mr. Ernie Martin representing Harvest Ridge Subdivision was present. He said this was granted final back in April, 2010. He said they have requested numerous re-approvals and they have been granted previously. He said he believed there was a report in the file and he believed the bond has been put in place and based on a previous agreement with the Town, he said he thought they are now prepared to file that map. Assuming we get the approval tonight, we would then ask that the Chairman be empowered to sign the plat. He said he believed the agreement that was reached between the Town and the applicant/owner is that it be filed by March 1st.

Ms. Livigni spoke. She handed out a 2-sided piece of paper with 2 separate correspondences and respectfully requested the Board take a moment and read them. Ms. Livigni said Mr. Chairman, I believe Mr. Zeidan has to recuse himself and Mr. Zeidan said I do? Ms. Livigni said it's Harvest Ridge. Mr. Zeidan said "I recuse myself."

Ms. Livigni said she has been receiving complaints starting in November regarding improper fill going in on this site. She said as you can see by her e-mail she reached out to Christian who works for Ernie on December 29th about clarification about what the fill was and you see Mr.

Martin's response on January 5th. She said the complaint continued and the weather did not make it easy to go out there and look but she went out there yesterday and then handed out a series of pictures of what was found on site. Mr. Straub said he sees lots of concrete and rebar. Ms. Livigni said that large rock is on the stock pile that is right near the other side of the fence by the road that is sitting on top of one of the piles. Fortunately or unfortunately the weather had been warm enough to melt it on top of the concrete and there were some rocks. She said as you can see from one of the pictures there's even an area, which is the area Mr. Martin referred to as being from the Town of Poughkeepsie and being clean fill. Ms. Livigni said maybe it changed since Mr. Martin was out there but there is construction debris obviously throughout the site. She said this is just representative of what's out there. There is a lot along the property before the barns, close to where that whole Dutchess Farms neighborhood abuts this. This is what she said she could see. She said she didn't know what was under the snow. Mr. Gunn said this looks like a broken up building. Ms. Livigni said these are in 3 different locations throughout the site and some of it looks older than other areas, she didn't have a date to put on it. Mr. Sforza asked Ms. Livigni if she said these pictures were taken yesterday and Ms. Livigni replied yes, by her. She said this is just representative. There's a tremendous amount of cubic yards of this kind of fill and once the snow melts we will see what else is in there. This is what could be seen. Ms. Sforza asked Ms. Livigni after she took these pictures did you contact the owner of the property. Ms. Livigni said no she did not because this was up for discussion tonight. Mr. Straub asked Ms. Livigni if she was told this was clean fill. Ms. Livigni said yes. She said she was told that by Mr. Martin. Ms. Livigni said what we have here is a violation of Chapter 103, the Dumping Chapter of the code specifically 103-4 and 103-7 in which it states in 103-4 "Dumping.....The use of private or public lands within the Town of LaGrange as a sanitary landfill site sanitary or industrial waste disposal area, dump, dumping grounds, storage or disposable facility for refuse or garbage is hereby prohibited." 103-7 – "Dumping of materials from outside town" and Ms. Livigni said if you notice Mr. Martin's letter, it said it came from the Town of Poughkeepsie....."the use of any land within the Town of LaGrange as a dump, dumping ground, storage or disposal facility for any refuse, garbage, sanitary or industrial waste, waste papers, rags, straps or any other kind of description or any discarded material commonly termed junk or trash where such items originated from outside the Town of LaGrange is hereby prohibited." Ms. Livigni said that violation will be posted on that site. There will be a stop work issued by the Building Inspector tomorrow. In addition to that this site also has SPDES coverage for storm water. Mr. Martin has been the representative on site and they are required to do monthly inspections. She said she had a failure with her computer this fall and winter in which she said she lost some e-mails on her outlook account, there is an outside source that can be looked at so she figured that they had just been lost from September on because the last one she received was mid September of last year. She said she checked with Walter because he was copied on all the reports as well and he had not received one since then either.

Ms. Livigni said she asked Mr. Moore who works for Ernie to provide those monthly reports that may have been lost to her today and instead she got a letter today and it mentions construction debris on site. Ms. Livigni said so they are in violation of their SPDES permit coverage so the form in which the inspection is done isn't in the proper form it should be with sketches and details on outfalls and things of that nature. She said they can address that privately if the actual inspections had been done. Ms. Livigni said so the site will also be posted by her as the Stormwater Management Officer with an Order To Remedy due to the violation of the SPDES Permit coverage. Ms. Livigni said the long standing policy of the town whether it be the Planning Board, the Town Board or any of the departments downstairs in Building, Zoning, Planning & Public Works is that if you have a violation on your property, no action is taken. It just stands at a standstill until the violations are lifted off the property. The Town Board does

have a supplemental agreement with this applicant that required a filing by March 1st. She said the Supervisor is aware of the situation out there and he is aware that will probably not come into play. She said she didn't see that hauling all of that material out of there by then. She said at this point she would represent that the Town feels this is more important to consider the impact to the people in Dutchess Farms who are living with this in their backyards and in addition, they are on tonight for a re-approval. She quoted Chapter 203-11 – re-approval of final subdivision plat. She said Mr. Martin submitted an Engineer's report, as required for consideration so the Planning Board knows where they are in regards to all permits what the status is. Ms. Livigni said at this time based on the conditions out there under procedure A 2C there is this language "Whether there have been any intervening relevant and material changes in circumstances including but not limited to the physical and environmental setting of the land devoted to the subdivision project adjoining or nearby lands, it or relevant, highway networks, wetlands and water bodies, floodplains, slopes and storm water courses and concentrations. Below that is D – a description of any intervening subdivision improvement work performed on the subject lands or in proximity for the purpose of developing the project" She said that wasn't reported on any engineers reports so therefore that was not complete as well. She said she respectfully request the Planning Board consider these facts, understand there will be violations, s Stop Work Order for the 2 dumping violations and an Order to Remedy for the SPDES violation on this site and would strongly recommend that this Board takes absolutely no action on this application as it stands today.

Mr. Sforza said to Ms. Livigni – they are in violation, now they are required to remove all of this debris. Until it is completed and it is lifted and until you approve it that it is satisfied that it has been cleaned up properly. Ms. Livigni said between Ken McLaughlin and herself, we have 2 different issues. Mr. Sforza said the town has to be satisfied that it's been removed.

Mr. Martin spoke. He said Wanda made mention of a report or letter by us back at the end of December/beginning of January where material was being brought in from the Town of Poughkeepsie and that in fact was true. The construction debris that was brought in most recently was not part of that. He said he is not trying to represent that fill that came in December/January was this fill from Poughkeepsie. He said he wasn't sure where it was from, but it is construction debris. He said one of 2 things has to happen, it either has to be removed or maybe we can work something without, something with the town where we have a staging area where we protect it all. What they would like to do and they've done this before is when they have construction debris like this, they stockpile it and at some point they crush it up and mix it with other soils and use it for backfill. He said obviously it was not done properly, the town wasn't put on notice that it was brought in so obviously it has to be remedied and said he could certainly understand the town's position on that. He said he is not going to argue and say it's not there or was there, but sometimes even these things are even hard for us to monitor or control as consultants. Mr. Martin said we've done it in the past and we will continue to work with the town to get the applicant/owner back on track and where it should be.

Mr. Gunn said so to your statement, it's a past precedent in the Town of LaGrange to chop up this stuff and distribute it around the property. Mr. Martin said the applicant is not looking to bury it on the property. He said what they have done in the past is, there was a period of time where there was a lot of rock that came from that site as well as other sites that he owns, were stockpiled. He brought in a crusher, we crushed it and then it was used for various applications. Mr. Gunn asked so it went off site? Mr. Martin said most of it went on site. Mr. Martin said he didn't really know where it all went but most of it went on site. Mr. Gunn said it's not going away which is what his point is. Mr. Martin said in this case obviously concrete type products, that same thing can be done and obviously if it has rebar in it, he highly doubts they would run that

through a crusher so that would have to be separated and ultimately disposed of properly wherever that might be. He said the intent is not to lose it or hide it on the site. He said it is stock piled there. Mr. Gunn asked so if the intent is not to lose it or hide it on site or buried on site, the intent is then to remove it from the site right? Mr. Martin replied yes, if it's concrete products with rebar but if it's plain concrete, at some point yes, we would crush that along with rock and soil and everything else and try and use it for material on site. Mr. Gunn said that's 2 answers. It's not leaving, some of its staying, some of its leaving and Mr. Martin said that is correct. Mr. Gunn said he was just trying to clarify it. Ms. Livigni reminded the board of the picture that has rebar sticking out and this is what is visible. She said she doesn't know what is under the snow. She said her gut feeling is this is construction debris that's been dumped and there is a tremendous amount of fill out there that's been dumped. Mr. Martin asked are you talking soil fill and Ms. Livigni said she couldn't see through the snow but what she does see sticking out is improper and indicates to her that it's not proper fill and didn't see how it is going to be usable on site. Mr. Gunn asked what was Gran Meadows Subdivision, what was their extent before it ended up here. Mr. Martin said that's a site in the Town of Poughkeepsie. Mr. Gunn asked what was there. Mr. Martin said it was a raw piece of land that was developed into a housing development and there was a lot of rock and soil that was removed from that site. Mr. Straub said he saw frames. Mr. Sforza said obviously this didn't come from that site. Mr. Martin said no, he was not representing that it did. Ms. Livigni said we have no idea where it came from. Mr. Rosenfeld asked Wanda if he heard her correctly that within the Town Code that it is not acceptable in this town to have fill brought in from another town. Ms. Livigni replied correct. Mr. Martin said from another location. Ms. Livigni said from another location outside of the Town of LaGrange. Mr. Gunn said unless you can prove this came from the Town of LaGrange, the assumption would be it came from outside the Town of LaGrange. Mr. Komorsky said which also means that it all has to leave. Mr. Straub asked Mr. Martin if he was in a position to defend this tonight. Mr. Martin said he is not trying to defend it. Mr. Martin said he realizes that, he is not trying to defend it or anything else. All he is saying is it was brought in and staged there with the idea of doing something with it. Ultimately it was going to be carted away or processed, the point being that is not what we consider acceptable fill to be used anywhere. Ms. Livigni said in Mr. Martin's defense, he did not know this was coming up tonight. She said as Mr. Sforza mentioned I did not bring this up to the applicant so in their defense they had no ability to come in here prepared to defend it. She said in her opinion she didn't bring it up because she didn't think there was a need to defend it, it's obvious from what is sticking out of the ground that it's all over in the back by the barn and throughout the site. She said these people who live at Dutchess Farms who have put up with this subdivision for at least 10 years that fill has been going in there, and now they are looking at this in their back yard. Mr. Gunn said there was fill 8 or 9 years ago that was also of a questionable nature, so it's not like the first time this has been dumped in.

Ms. Livigni said what concerns her is their site inspections stopped for a period of time. There is no engineer, there is no professional who can certify where this came from, if they didn't bring Mr. Martin in so she said she has to assume the worst of this site. Mr. Straub said what you are saying Wanda, is we have a serious violation relative to the Town Code. Ms. Livigni replied yes sir.

Mr. Straub said we cannot take any action tonight Mr. Martin. He said he apologized in a sense but it is your applicant with the violations. Mr. Martin said realistically even to be able to do anything the frost would have to go out of the ground so we are looking at a good 6 weeks out. Mr. Straub said at least. Ms. Livigni said without a doubt. Mr. Gunn said you are at a full stop at this point. Ms. Livigni said and the violation is also putting the Town Board agreement in violation, whatever course that takes, but like she said she stated to the Board, the Supervisor

was aware of it and he felt that this was more important to address than to just get this filed and not get this addressed. It's a double edge sword here because the Town Board did want this map filed but for now we have no other recourse due to the severity of the violation. Mr. Rosenfeld asked if this 5th re-approval time clock runs out, because obviously this is not going to be fixed by March 1st, what does that do with the entire application? Does it start from the beginning again? Ms. Livigni said you may remember the term Nunc Pro Tunc. It appears from Eileen's research that it did have a lapse in re-approval already so to her it depends on how quickly they take action. She said the site will be shut down and she knows Mr. Nesheiwat is building a house there so she didn't think this would be too great for him in continuing with what he wants to do there but the site and his parcel is part of this subdivision and it will be shut down. Mr. Straub asked does Mr. Nesheiwat have any awareness of this at all right now. Ms. Livigni said I don't know how he could miss it because he had to drive by that piece of concrete to get out of his house. Mr. Straub said unless he is naive and Ms. Livigni said it could be he thought it was a rock and maybe it was covered with snow the last time he saw it, I don't know what his vacation plans are or what he does for business but regardless of the applicant's knowledge of what's there he should be upset then that somebody is dumping on his property.

Mr. Sforza said he wanted to clarify something. That whole project is considered one project regardless of what they are doing so that means every bit of work stops when the town issues the order tomorrow, is that correct? No matter what they are doing, he said he wanted to make sure that was on record and fully aware of it. Ms. Livigni replied correct. Mr. Gunn said so he can't work on the house on the hill or work on anything. Ms. Livigni said it is a lot in a subdivision and the subdivision is shut down.

Mr. Martin said as most of you probably know we have had violations out there before and the applicant has remedied those violations. Would the Board consider, and I've heard what you have said but I am going to ask anyway, moving forward on this action tonight and he would give his word as his representative and someone you have known for a long time that when that time of year comes to do the work that the work would be done post haste. Mr. Rosenfeld said in his opinion it's town law and we as a Planning Board cannot change town law. Mr. Straub said he agreed. Mr. Gunn said we don't have a leeway. Mr. Martin said I hear you but I had to ask the question. Mr. Straub said as a person I may want to bend but by law I can't. Mr. Straub asked the board for further comment. Mr. Sforza said this is the only way hold we have on the landowner to get this cleaned up and like it was said, you are talking a tremendous amount money to remove this and that's not our fault, we did not dump it there but this is the only thing we have to get the applicant to clean this up. Mr. Straub said our job is to execute law and the rules and these are violations as we can see. Wanda has done a fine job. Mr. Martin said he didn't think it was an issue of a lot of money to do it, he's going to have to do it and he will do it. Mr. Martin said he can't do it tomorrow. If this was April 15th it would probably be done within a week or less but he added he didn't see anything happening there for at least 4-6 weeks.

Mr. Gunn asked what was he thinking. He said in that neighborhood, all their patio doors look out onto that pile, did you think they would miss it.

Mr. Martin said it's a violation and it's got to be taken care of and he said he will carry the message. Mr. Straub said we are not going to take any action tonight. Mr. Martin thanked the Board.

REQUEST FOR 90-DAY EXTENSION:

LAKE RIDGE SUBDIVISION – Lake Ridge Subdivision was granted a 6-month re-approval on September 18, 2014 which is due to expire on March 18, 2015. Applicant is requesting a 90-day extension effective March 18, 2015, due to expire on June 18, 2015 (1st one)

Mr. Rosenfeld said in this economy it is obvious that a lot of these developments are asking for extensions because it just doesn't make economical sense to develop. The market is not there. Mr. Gunn said this is Vinny Bettina's project right? Mr. Straub said yes. Mr. Gunn said they showed up at the meeting and spoke to the Board.

Mr. Gunn made a motion to grant a 90-day extension, seconded by Mr. Rosenfeld and the motion carried unanimously. This extension will take effect on March 18, 2015, and will expire on June 18, 2015. 90-DAY EXTENSION GRANTED.

ROLLING MEADOWS SUBDIVISION – Rolling Meadows Subdivision was granted a 6-month re-approval on September 18, 2014 which is due to expire on March 18, 2015. Applicant is requesting a 90-day extension effective March 18, 2015, due to expire on June 18, 2015. (1st one)

Mr. Rosenfeld made a motion to grant a 90-day extension, seconded by Mr. Gunn and the motion carried unanimously. This extension will take effect on March 18, 2015 and will expire on June 18, 2015. 90-DAY EXTENSION GRANTED.

Mr. Komorsky asked Wanda a question concerning Harvest Ridge, was there a time frame or limitation on the SPDES permit to be remedied. Ms. Livigni said that will be addressed when she issues the Order to Remedy because they will contact her. She said she e-mailed Christian today and asked for all the missing ones today and instead she said she got a letter. Mr. Artus said specifically with that they are supposed to submit monthly inspection reports. Mr. Komorsky said that's why he was asking the question because apparently it wasn't done ever and Mr. Artus said it was done up until September, then it stopped. Ms. Livigni said she didn't know how that correlated to the fill coming in and added that is just supposition on her end. She said it's not a fact, she doesn't know. Mr. Artus said they did do a report today but it's not in accordance with the permit requirements that's required to be in an inspection report.

Mr. Artus said he wanted to add something else to Harvest Ridge. They would also be in violation of Section 240-45 C which is land alterations – bringing in 100 cubic yards of fill or more not associated with an approved project and this is not an approved project at this stage. Ms. Livigni said we will issue that violation as well.

Mr. Straub talked about a project located up on Rte. 82 and 55.

Mr. Komorsky said he didn't see how inspections could be done until April until the ice melts. Ms. Livigni said she doesn't know how much fill came in from out of town, we have no record of it and Ernie can't certify it because he just attested her that he had no idea it was there. We know some of it came from out of town so the assumption has to be that it all did. Ms. Livigni said so it all just needs to be removed, there's no reason for inspections. Mr. Gunn said that was his point of asking the question, if you can't prove it came from LaGrange you have to assume it came from out of town. Mr. Komorsky said part of the issue is when they said they will crush it and use it and now you are using part of it. Mr. Gunn said first he said it was going to be remedied and removed, the 2nd thing he said no maybe we will crush some of it up and use it on site and move the rest of it, that was 3 different answers to one question.

Mr. Straub made a motion to adjourn the meeting at 7:50 PM, seconded by Mr. Gunn and the motion carried. MEETING ADJOURNED.

Respectfully submitted,

Eileen Mang
Planning Board Secretary