

**PLANNING BOARD MEETING  
JUNE 10 2015**

**PRESENT:**           Roxanne Pecora, Chairperson  
                  Michael Minor  
                  Fred Zimmer  
                  Dan Michaud  
                  Margaret Yost  
                  Mark Anderson

**EXCUSED:**           Darin Dekoskie

**ALSO PRESENT:**   Myles Putman, M.L. Putman Consulting

Chairperson Pecora called the meeting of the Town of Esopus Planning Board to order at 7:30 P.M. beginning with the Pledge of Allegiance to the Flag. Roxanne advised the public of the building's fire exits and roll call was taken.

**MINUTES:** Chairperson Pecora asked if the Board read the minutes from the May 11, 2015 meeting and if there were any changes or corrections.

**MICHAEL MADE A MOTION TO APPROVE THE MAY 11, 2015 MINUTES SECONDED BY MARGARET. ALL MEMBERS WERE IN FAVOR. MINUTES PASSED WITH A VOTE OF 6-0.**

**VOUCHERS:**

Clough Harbour (Church Communities).....	\$1,195.00
M.L. Putman Consulting (May, 2015).....	\$2,300.00
Peter C. Graham, Esq. (ZBA Referral Decision Opinion).....	\$ 175.00
April Oneto (secretarial services).....	44 ½ hours

**MICHAEL MADE A MOTION TO APPROVE THE VOUCHERS AS READ, SECONDED BY DAN. ALL MEMBERS WERE IN FAVOR. MOTION PASSED WITH A VOTE OF 6-0.**

Chairperson Pecora stated that the agenda has been revised to include issues that were previously on the agenda.

**OLD BUSINESS:**

**CAFALDO: Case #2015-04 – Minor re-subdivision – 311 River Road (Co. Rd. 81) ,Ulster Park; SBL: 64.003-3-3**

Bryan and Andrew Cafaldo were present for this application.

Waterfront Advisory Board response letter dated 6/4/15 which states that they have some questions regarding measures taken on the steep slope area during construction. Copy of letter placed in the file.

Myles Putman has completed Part II of the EAF and is in the process of completing Part III.

**FRED MADE A MOTION TO SCHEDULE CAFALDO, CASE #2015-04, MINOR RE-SUBDIVISION FOR A PUBLIC HEARING ON JULY 8, 2015 AT 7:40 PM SECONDED BY MARK. ALL MEMBERS WERE IN FAVOR. MOTION PASSED WITH A VOTE OF 6-0. VOTE WAS AS FOLLOWS:**

Mark.....yes  
Fred.....yes  
Margaret.....yes  
Dan.....yes  
Michael.....yes  
Roxanne.....yes

Applicants were informed that there is a \$200.00 Public Hearing fee.

Chairperson Pecora asked if any of the Board members had any concerns regarding the Waterfront Advisory Board comments. No Board members have any concerns.

Michael stated that the maps submitted with the two driveways shown meet this Board's concern regarding the shared driveway.

**CHURCH COMMUNITIES FOUNDATION “The Mount Community Expansion: Special Use Permit/Site Plan Review – 825-1001 Broadway (US Rt. 9W), Ulster Park; SBL: 72.001-2-13.1**

Chairperson Pecora stated that since the Board's last meeting we received a letter from Brinnier and Larios regarding the SWPPP. After speaking with the Planning Board Engineer the following day she discovered that they had not received the updated SWPPP. This was communicated to Hans Boller, Church Communities, and this information was given to the applicant's attorney and the information was forwarded to the Planning Board Engineer. Pete Lilholt, Planning Board Engineer, responded with a letter dated June 1, 2015 and he is okay with everything. The only thing he noted was that results of the Infiltration Test be certified by the design engineer and submitted to the Town Stormwater Officer prior to the issuance of a Certificate of Occupancy.

**MELAMUD: Case #2014-14 – Special Use Permit/Site Plan – 15-17 Rifton Terrace, Rifton; SBL: 71.030-2-25.2**

Chairperson Pecora informed the Board that this property has been sold. She spoke with Michael Moriello today to find out if the Planning Board Attorney, Joseph Eriole, ever followed up with him. He stated that they met each other on the street in uptown Kingston and had a casual conversation. Roxanne stated that Fred and she have had a number of discussions regarding Joseph Eriole's service to this Planning Board and in terms of this case we would like to send him a letter informing him that his services are no longer required for the Melamud application as his follow-up and communication have been non-existent. As such, we do not expect any new bills regarding this matter and in fact are requesting a refund of the \$1,330.00 previously paid to him for this matter.

Michael questioned if we have not already paid a bill to him for this application. Roxanne stated that we have but he could still send us more bills. The Board members discussed this situation at length. Michael feels that we should ask for a refund of the amount already paid. It was agreed that a letter should be sent to Joseph Eriole, Esq. and request a refund of the \$1,330.00 that has already been paid to him. A copy of this letter will be forwarded to the Bookkeeper for her information.

Roxanne stated that Joseph Eriole, Esq. expressed his issue to the Town Supervisor that he does not get enough business from this Planning Board. However, the Board agrees that this is not ethical conduct to not follow through on the Board's concerns and to have to continue to contact him for follow-up and response.

Roxanne stated that the property has been sold and the Abstract that was completed by the Building Inspector states that there were no open issues with the Town which is not true.

Discussion took place regarding the direction if any that this Board should take. Fred stated that this is more than enforcement. This is regarding the ZBA decision. Fred stated that Michael Moriello, Esq. went to ZBA on Melamud's behalf to overrule Timothy Keefe, Town Building Inspector, notice stating that it was not sufficient to trigger a renewal of the Special Use Permit. ZBA ruling got mixed into this regarding whether it was a valid Special Use Permit or not. When it came back as Tim's notice was a valid notice but they convoluted it to the effect that it had to be the Planning Board that went and told Melamud that he had to come back. Where this came from we do not know.

Michael said that we are not responsible for the Zoning Board's decision. The ZBA felt that they were supporting Tim stating that there is no Special Use Permit. If Tim is now saying that there are no limitations, all we are doing is gaining a world of hurt for the Town. The way the law is written is that when we grant a Special Use Permit it is granted. If there are conditions with that Permit, they must be enforced by the Building Inspector as the Enforcement Officer. If we grant a Special Use Permit for the old use we don't have a leg to stand on. This Permit was granted over 40 years ago to the individual

who preceded Melamud and a number of Building Inspectors have validated that initial permit by giving him building permits, etc. Discussion continued about the direction the Board should go. Michael stated that there is an easy way out. Applicant sold it and Tim says the Town has no problem with it we should let it go. Roxanne stated that this is not true. She had a discussion with Peter C. Graham, Esq. Fred stated that he thinks we need to ask Peter C. Graham, Esq. to look at this. Michael stated that the new owners may come in and want to use it differently and will then require a new Special Use Permit. This situation is in limbo right now and Michael feels that we need to leave it until the new owners come and say what they want to do with it. They have to come in for any change. It is a change for what it was originally approved 40 years ago. Roxanne stated that if they continue to use it as it has been used and you look at the ruling of the original Planning Board it had to be renewed annually. Michael stated at that point the Building Inspector can say this was not renewed annually and send it to this Board. Roxanne stated that knowing what he know now the ZBA had no authority to send this back to the Planning Board. Michael feels that in nine cases out of ten they are not going to do what the Special Use Permit was originally granted and Tim will say “no” the Special Use Permit does not allow that and he will send it to this Board.

Fred stated that there is more than one issue involved. It is not only the issue of the Special Use Permit but the position that the ZBA is trying to put the Planning Board in. Roxanne stated that we need to sit down with the ZBA. Roxanne stated that the new person buying the property should at least know that there was a permit that was outstanding. They obviously don't know and we have a Building Inspector that says there are no open issues and there are open issues. Michael feels that we should not step in where we don't have to. Fred and Roxanne stated that they are trying to get the situation straightened out. Michael feels that we continue to make the same mistakes over and over again and wonder why it goes wrong. Fred disagrees with Michael. Michael suggests that Fred reads the law that he gave a copy of to the Planning Board secretary. Michael stated that this is the enabling legislation for Planning Boards. Michael stated that he has never asked for enforcement but he feels that if we don't have enforcement somebody should and somebody is not doing it. Discussion continued regarding this issue.

**FRED MADE A MOTION TO REFER THE MELAMUD ZONING BOARD OF APPEALS DECISION TO PETER C. GRAHAM, ESQ. AND GIVE US SOME DIRECTION, SECONDED BY ROXANNE. MOTION WAS PASSED WITH A VOTE OF 5-1. THE VOTE WAS AS FOLLOWS:**

Mark.....yes  
Fred.....yes  
Margaret.....yes  
Dan.....yes  
Michael.....no  
Roxanne.....yes

Roxanne will contact Peter C. Graham, Esq. and ask him for an estimate as to what this

will cost.

**NEW BUSINESS:**

**CUTHELL: ZBA Referral – 145 River Road, Ulster Park, NY; SBL: 64.1-2-9**

Roxanne stated that she called Peter C. Graham, Esq. and she asked him about the ZBA's ability to refer to this Board. She was told that they have no jurisdiction to refer to any Board. They come to us during their normal process with a referral and we make comments or don't make comments. If they have issues, they should have a dialogue with this Board. They can not make a decision that sends an applicant to the Planning Board. They do not have that authority to send them to any Board as part of a decision. Peter said that we should be sitting down with the ZBA because this is getting out of control.

Peter wrote us a letter so that we can sit down with the ZBA and have a discussion. His letter is dated 6/10/15 and it states that this Board requested his legal opinion about referrals from the ZBA which requests that the Planning Board review the single family house at 145 River Road for septic system, erosion control plan and the entire project. Peter stated that the ZBA has limited jurisdiction as confirmed by State Town Law and the Esopus Code. They only have jurisdiction to hear appeals and variances applications. Although the ZBA was in the midst of a variance application they lack legal authority to refer the matter to the Planning Board. Therefore no action is required by the Planning Board. (Copy of letter placed in file.)

Roxanne stated that it does not belong before this Board because it is a single family residence and the only reason the ZBA sent it here is because of the comments from the Ulster County Planning Board. ZBA has the ability to overrule the Ulster County Planning Board comments with a majority plus one vote.

Michael stated that he believes there were comments from the Waterfront Advisory Board since it was referred to them and they had some concerns. He does think that there might be a concern to the Waterfront Advisory Board but this is not the mechanism that should be used.

Jim Joseph and Megan Conover were present to represent the applicants in this matter.

**DAN MADE A MOTION TO REFER CUTHELL APPLICATION TO THE BUILDING INSPECTOR SECONDED BY MARK. ALL MEMBERS WERE IN FAVOR. MOTION PASSED WITH A VOTE OF 6-0. VOTE WAS AS FOLLOWS:**

- Mark.....yes
- Fred.....yes
- Margaret.....yes
- Dan.....yes
- Michael.....yes

Roxanne.....yes

Applicants were directed to go to the Building Department and obtain their Building Permit.

**ZBA REFERRALS:**

None

**PLANNING BOARD LIAISON TO THE BUILDING DEPARTMENT REPORT:**

**Tucker Pond**

Fred stated that one building is completed and has received its Certificate of Occupancy. The second building has no CO's. Michael stated that they are continuing work. They are getting the second building ready and according to Tim he must grant the CO's when the building is complete. They seem to be putting up new light poles. He does not know if it is cutoff lighting or not and lighting is one of our issues.

Michael stated that there has been some e-mail communication between Planning Board members, Town Board members and Mark Anderson trying to educate us on what the laws might be. Michael stated that we granted a Site Plan approval for that site which indicated that it would be condos. Mark stated that this does not have any effect on the Building Permits which are for multiple residences. Mark stated that when you make an application for a Building Permit you are making an application for a Certificate of Occupancy. When you make an application for a Certificate of Occupancy under the occupancy classification of the Building Permit which is an R2 and the R2 can be an apartment and the apartment can be sold as a condominium. It does not matter. Michael stated that we did request a Condominium Association of which the builders not a part of. Roxanne stated that they are not at that point yet and this is under the New York State Attorney General. Mark stated getting into this in the beginning was not a good idea because this is not within the purvue of the Planning Board.

Michael stated that this project could not have been built if they had not received the Special Use Permit and Site Plan approval granted by the Planning Board. The law says that our requirements must be taken into account when any permits are issued. He feels that this has not happened and we are told that the Building Inspector must grant the permits. Michael is concerned that if the Planning Board has no enforcement power are we being told that any decision that this Board makes can not be enforced? Mark said that if the decision is unenforceable then we can't enforce it. It is like saying that those apartments can only be rented to Native American people. This cannot be enforced.

Roxanne stated that they did go to Peter C. Graham, Esq., Planning Board Attorney, upon the applicants request and they talked only about making a multifamily and they decided against that and that they wanted to keep them as condos and rent them out. There intention has always been to rent out the condos. We have other condos in this Town that

are doing the same thing. Michael feels that this is a different issue because it does not meet the zoning code. Michael questioned why we issue Site Plan Permits and Special Use Permits if we can not enforce them. Mark stated that the Site Plan requirements i.e. the grading, drainage, signs, locations of buildings, lighting, distance from lot line are certainly enforceable. Roxanne stated that the site plan does not have to be completed to give a CO. Discussion continued regarding this issue. Roxanne stated that our Code states and she has reviewed this with Peter C. Graham and it states and recognizes that if they substantially comply, the Building Inspector can issue a Temporary CO. He did not issue temporary COs he issued permanent COs. Following further discussion Roxanne asked if the Board would like to have Peter Graham come to a meeting to discuss these issues.

Fred stated that he thinks some boards are out of the dam at Tucker Pond to get the water out. SPDES Enforcement Officer is the Building Inspector. Roxanne stated that this would come under Stormwater Management and the Building Inspector is the Stormwater Management Officer for this Town. This will be brought to his attention.

Roxanne informed the Board that the Building Inspector is a 20 hour a week job and he has numerous job responsibilities. He is the Building Inspector, Stormwater Management Officer and the Enforcement Officer. She has been told by the Town Supervisor that his major job is Building Inspector. The Town Board is not realizing all of the things that are sitting out there that are not getting done. We are seeing that these jobs can not be done in 20 hours a week. Roxanne said that if the Town Board wants to keep the present Building Inspector part time then they need to hire someone else to do enforcement or stormwater and enforcement.

Roxanne read section from the Zoning Code stating that it shall be the duty of the Zoning Enforcement Officer who shall be appointed by the Town Board to enforce the provisions of this chapter and all rules, conditions and requirements specified pursuant thereto. The Building Inspector shall serve as the Enforcement Officer unless a different person is otherwise designated by the Town Board.

That section authorizes the Town Board to designate another individual to enforce the provisions of the chapter as well as all rules, conditions and requirements adopted or specified by the Planning Board. If the Town were to consider to appoint another individual to enforce violations of Special Use Permits and other Planning Board requirements that person would either have to be appointed as a deputy by the present Building Inspector/Zoning Enforcement Officer with the approval of the Town Board or the Town Board would have to enact a local law authorizing other or additional individuals to issue appearance tickets for the violation of Planning Board requirements.

Roxanne stated that again it is within the purvue of the Town Board to deal with it. Roxanne stated that the Town Board needs to look at Chapter 76 and change it so that the Zoning Board can create Escrow Accounts.



