

**PLANNING BOARD MEETING  
JULY 8, 2015**

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

**EXCUSED:**           Darin Dekoskie  
                  Dan Michaud  
                  Myles Putman, Consultant

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.

**MARK MADE A MOTION TO APPROVE THE JUNE 10, 2015 MINUTES AS AMMENDED SECONDED BY MARGARET. ALL MEMBERS WERE IN FAVOR. MINUTES PASSED WITH A VOTE OF 5-0.**

**VOUCHERS:**

M.L. Putman Consulting (June, 2015).....	\$2,300.00
Clough Harbour (Church Communities).....	\$ 275.00
April Oneto (secretarial services).....	40 hours

**MICHAEL MADE A MOTION TO APPROVE THE VOUCHERS AS READ, SECONDED BY MARK. ALL MEMBERS WERE IN FAVOR. MOTION PASSED WITH A VOTE OF 5-0.**

**PUBLIC HEARING**

**FRED MADE A MOTION TO OPEN THE PUBLIC HEARING FOR CAFALDO, MINOR RE-SUBDIVISION, CASE #2015-04 SECONDED BY MARGARET. ALL MEMBERS WERE IN FAVOR. MOTION PASSED WITH A VOTE OF 5-0.**

Chairperson Pecora read the Public Hearing Notice placed in the Daily Freeman. Copy placed in file.

Chairperson Pecora asked if there was anyone present who wished to speak

regarding this application. No one wished to speak.

**FRED MADE A MOTION TO CLOSE THE PUBLIC HEARING FOR CAFALDO, MINOR RE-SUBDIVISION, CASE #2015-04 SECONDED BY MARGARET. ALL MEMBERS WERE IN FAVOR. MOTION PASSED WITH A VOTE OF 5-0.**

**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.

**MICHAEL MADE A MOTION TO MAKE A DETERMINATION OF NON-SIGNIFICANCE (NEGATIVE DECLARATION) PURSUANT TO SEQR FOR CAFALDO, CASE #2015-04, SECONDED BY FRED. ALL MEMBERS WERE IN FAVOR. MOTION PASSED WITH A VOTE OF 5-0. VOTE WAS AS FOLLOWS:**

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

**MARGARET MADE A MOTION TO ACCEPT THE SHORT EAF, PARTS 2 & 3 FOR CAFALDO, CASE #2015-04 SECONDED BY MARK. ALL MEMBERS WERE IN FAVOR. MOTION PASSED WITH A VOTE OF 5-0. VOTE WAS AS FOLLOWS:**

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

**MICHAEL MADE A MOTION TO GRANT CONDITIONAL FINAL APPROVAL FOR CAFALDO, MINOR RE-SUBDIVISION, CASE #2015-04 CONDITIONED UPON RECEIPT OF \$2,000 RECREATION FEE, COUNTY HEALTH DEPARTMENT APPROVAL AND 6 PAPER COPIES AND 1 MYLAR SIGNED BY APPLICANTS, SECONDED BY MARK. ALL MEMBERS WERE IN FAVOR. MOTION PASSED WITH A VOTE OF 5-0. VOTE WAS AS FOLLOWS:**

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

**NEW BUSINESS:**

**SCENIC HUDSON LAND TRUST, INC.: Case #2015-05 – Special Use Permit/  
Site Plan – 132 River Rd., Ulster  
Park; SBL: 64.001-2-8.1**

Heather Blaikie and Audrey Friedrichsen, Esq. present to represent this application.

Heather stated that Scenic Hudson is the largest organization in the Hudson Valley that protects land for preservation of environmental habitats and an environmental advocate. They create quality of life by offering opportunities for recreation and education about those significant ecological, historical and cultural treasures along the Hudson. To date they have protected 31,000 acres within the Hudson Valley.

They are here because they submitted an application for their property located in the R40 Zone. This property was purchased with the intent of serving as a day use trail head and access point for future preserved lands of the Esopus Lakes property and to provide a universally accessible experience that is necessary and complimentary to the larger recreational intent. The proposed long range plan was included in the application and they would request that the Planning Board provide comments on that as well. Scenic Hudson intends to submit a petition to the Town Board to request rezoning of the PUD in order to obtain a Special Use Permit for those properties. Their intention today is to receive permission to begin construction late summer/early fall to complete before winter. They agree with Myles conclusions and recommendations in his report dated 7/2/15. Copy of report placed in file and copy given to applicant. Their final request is that the Planning Board might consider extending the Special Use Permit for those additional parcels contingent upon successful rezoning at which time they can submit an amended application.

Michael is concerned about the turning radius for the northbound vehicles. Heather stated that they looked at it. The turning radius is a small radius. The curb cut is extensive (120 ft.) so someone could make a wide turn. Margaret asked about buses. Heather stated that you would need a larger turning radius and it would be difficult for buses. They are not expecting a large bus attendance and frequency and those who would be using a bus would have to get a group permit from Scenic Hudson. It would be really difficult on the inside to amend the turning radius because of the topography and the slope. Discussion took place

regarding the land across the street and that property has a spit on the other side. Michael asked if it would be possible for a wide spot in the road so that the buses could swing to the right before coming back to the left. Heather stated that the slope is severe and pedestrian safety would be a concern. This is adjacent to Esopus Lakes. Michael asked what the rationale was for not doing this all together. The other property is in the PUD. They need to go before the Town Board to dissolve the PUD. He is concerned that this is like a segmentation issue in that they are building a parking lot for something they hope to have changed. He is concerned that if this did not work then there would be a parking lot in the middle of nowhere. Fred stated that he does not see where having a parking lot in this location hurts anything. Michael stated that it pre-assumes that the rezoning will take place. Fred stated that the rezoning is a separate issue.

Audrey Friedrichsen stated that as an environmental agency they are very sensitive to SEQR. She stated in terms of segmentation under SEQR they are already moving forward by requesting a meeting with the Town Board to start a rezoning process. Under SEQR you can do separate environmental studies. This is really being driven by construction time and hoping to get the work done before winter. She stated that there is a provision in the code that provides expiration of the PUD if you do not obtain a building permit within five years. She thinks there is some question about this coming into the law at a later time.

Michael understands the issue but he is concerned that they might create a walking traffic issue on River Road. It was suggested that they speak to the Ulster County Department of Public Works since River Road is owned by the County. Fred asked how they propose to keep people from going up the hill. Heather stated that they are proposing to have gates put up.. Fred is also concerned about how they would get somebody out if there was an accident. He suggested that they contact TEVAS and the Port Ewen Fire Department and speak with them. Fred stated that there is a sheer failure in that road and the County is aware of it. The whole road is shifting to the river.

**MICHAEL MADE A MOTION TO DECLARE SCENIC HUDSON, CASE #2015-05, SPECIAL USE PERMIT/SITE PLAN, AS AN UNLISTED ACTION (NEGATIVE DECLARATION) PURSUANT TO SEQR AND MOVE TO APPROVE SKETCH PLAN, SECONDED BY MARGARET. ALL MEMBERS WERE IN FAVOR. MOTION PASSED WITH A VOTE OF 5-0. VOTE WAS AS FOLLOWS:**

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

**MICHAEL MADE A MOTION TO REFER SCENIC HUDSON, CASE #2015-05,**

**SPECIAL USE PERMIT/SITE PLAN TO WATERFRONT ADVISORY BOARD AND ULSTER COUNTY PLANNING BOARD, SECONDED BY MARK. ALL MEMBERS WERE IN FAVOR. MOTION PASSED WITH A VOTE OF 5-0. VOTE WAS AS FOLLOWS:**

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

**MICHAEL MADE A MOTION TO SCHEDULE A PUBLIC HEARING FOR SCENIC HUDSON, CASE #2015-05 SPECIAL USE PERMIT/SITE PLAN, ON 8/12/15 AT 7:40 PM, SECONDED BY ROXANNE. ALL MEMBERS WERE IN FAVOR. MOTION PASSED WITH A VOTE OF 5-0. VOTE WAS AS FOLLOWS:**

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

Applicant was informed that there is a \$200.00 Public Hearing fee.

**ZBA REFERRALS:**

None

**BUILDING DEPARTMENT UPDATE:** Fred Zimmer

Nothing to report

**LEGAL:** Peter C. Graham, Esq.

**Melamud:**

Roxanne stated that at the last Planning Board Meeting we referred the Zoning Board of Appeals Decision regarding Eli Melamud, Rifton Terrace, to the Planning Board Attorney for his opinion.

Peter stated that the ZBA in exercising their jurisdiction over a determination made the Building Inspector reverse many of the decisions made by the Building Inspector but they passed the ball to the Planning Board to take up the cause as to whether or not the Special Use Permit that was issued for the 12 room rooming house many, many years ago is operating legally.

Considering the transfer of the jurisdiction back to the Planning Board again it is incumbent upon the Planning Board to give notice and an opportunity to be heard to the current owners concerning their ability to renew and continue the permit. At the very least a letter should be sent from the Planning Board, giving notice to the current owners and requesting that they come to the Planning Board to discuss this issue at which time they will be given an opportunity to be heard. This is not an enforcement proceeding because the unusual circumstance is that from the time that this termination was issued to the present time the property has changed hands. We want to give them, in all fairness, notice that there is an issue here and they will have to address it. We are not turning this into a legal and an adversarial proceeding at this point. We are not going to get into an adversarial position since it looks like the new owners do not even know about this.

**FRED MADE A MOTION TO HAVE PETER C. GRAHAM, ESQ. WRITE A LETTER ON BEHALF OF THE PLANNING BOARD TO THE OWNERS OF RECORD FOR RIFTON TERRACE ROOMING HOUSE, SECONDED BY MARGARET. ALL MEMBERS WERE IN FAVOR. MOTION WAS PASSED WITH A VOTE OF 5-0. VOTE WAS AS FOLLOWS:**

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

Discussion took place regarding the history of this property. Peter stated that what has done can always be undone. Peter stated that because a public official does something wrong during their tenure that is not binding on the municipality forever.

Roxanne questioned that if they come for a Special Use Permit can we put conditions on it at this point. Peter stated that we can.

Discussion took place regarding who is responsible to send a notice such as this one. Peter stated that the Building Inspector sends the notice. He does not agree with the ZBA decision in this case.

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### **Tucker Pond**

Peter stated that the Planning Board has exclusive jurisdiction over a Site Plan. They grant a Site Plan and many times they grant conditions to the Site Plan. You become aware that one of the conditions is not being met. This happens all of the time. Building Inspectors operate on what is called a "Punch List". The

Building Inspector has discretion.

Michael questioned if this was a full CO or a temporary CO. Peter stated that the law is the same. He stated that the Enforcement Officer authorized by the Town Board makes the decision. This is the law. Even though you may disagree the Building Inspector has the right to say that the building is close enough.

Peter read two sections of the law.

Special Use Permit – 274 B-4 – Conditions attached to the issuance of Special Use Permit - The authorized Board shall have the authority to impose such reasonable conditions as are directly related to Special Use Permits. Upon the granting of said permit any such conditions must be met in connection with the issuance of the permit by applicable enforcement agents or officers of the Town. Peter stated that this means that whatever the Town Building Inspector would do or other Enforcement Agency this is the end. The Planning Board does not have any power to enforce those conditions.

Peter stated that the same wording is for the Site Plan. Again the law says (274 A) that any such conditions must be met but it continues on stating that with the issuance of the permits by the Enforcement Agent or other officers of the Town.

He referred to his opinion on Tucker Pond. He has been the attorney for this Town since 1990 since the beginning of Tucker Pond. He stated that it is not for the Planning Board to determine things have not been completed. The Building Inspector who says it is close enough for him. The “punch list” is close enough. He stated that it is normal for the Building Inspector to not insist that they put the last cover on the light switch and hold them up from occupancy. Peter stated that he has never seen in his 41 years of experience where the Planning Board has the authority to revoke a Site Plan or a Special Use Permit. The Planning Board’s responsibility is to give broad guidelines for the Site Plan and reasonable conditions but not unlimited.

Michael gave a history of what he feels as the issues with the Tucker Pond project. Michael stated that his concern has always been that these are not reasonable. Peter stated that he has spoken to Tim and they pretty much know their jurisdiction and the fact of the matter is that he has not granted a Certificate of Occupancy for the other eight units in the second building. Peter said this is a chain of command issue and it is his call. You may disagree with it on a personal basis but you do not have the right to tell him what to do. Michael stated that this is not his intent. He stated that the Planning Board as he understands it is an independent board which makes decisions which are not subject to review by the Town Board but the enforcement is subject to review by the Town Board and not by the Planning Board. The question is what is reasonable. He feels that Tim and the Town Board honestly believe that Tim is not suppose to enforce the decisions of the Planning Board. Peter said that he does not get that feeling in

speaking with Tim about this case and other cases and certainly after speaking with the late John Coutant. Peter said that John believed that Tim is not only the Building Inspector but he is the Zoning Enforcement Officer and John and the Town Board insisted that the chain of command be followed.

Michael stated that in another instance the Planning Board approved a project and required a bond be issued to guarantee the completion of the road so that it could be turned over to the Town. The Town Board decided not to take the bond. The Town has yet to take over the road which has affected other members of the Town. He feels that this is a similar case that the Planning Board decided as is it's responsibility which can not be second guessed by the Town Board or the Enforcement Officer and yet the road has not been taken over. He feels that the perception is that the Town Board and the Building Inspector feels that our work is advisory or suggested. Fred stated that in this particular instance the applicant did do the work that is shown on the plans but it is at the Town's discretion as to whether they want to accept the road. The Board was informed that the problem in this case is that the applicant does not own the land that the road is on so therefore it can not be turned over to the Town. Roxanne also said there are liens on the road as well.

Peter clarified that we are talking about that there is a chain of command and the final call about compliance with Site Plan or Special Use Permit is the Building Inspector or the Zoning Enforcement Officer designated by the Town. Peter stated that the Building Inspector or Zoning Enforcement Officer is given discretion.

Peter went back to the basic issue. What is the limits on his discretion? Does he have to exercise his discretion as I think or what you think? No as what a reasonable man would think, with him being a municipal officer, being given the benefit of the doubt in exercising his discretion. Under the law you would have to show that he acted arbitrarily and capriciously and exercised misconduct and abused his discretion. This is almost impossible.

Michael discussed what other people's opinions are concerning some of these issues. Peter stated that the neighbors do not have veto power over other people's property. We live in a representative government. If our representatives in the exercise of their lawful duties, exercise their discretion in a certain way and we are not happy with them then we vote them out of office. Michael thinks it would be a benefit to the Town, the Building Inspector and the Planning Board to understand where that line is for reasonable from the Attorney General's Office.

Peter said that we are not going to get that. He said if you have a problem then you go to the Building Inspector and discuss it with him. Margaret said that at this point they are only occupying one building and the second building is not finished. The Building Inspector can say that the lights have to be taken care of and the pond needs to be taken care of before issuing Certificate of Occupancy

for this building. Roxanne stated that Tim said that he has to work within the timeframes for a CO legally and if all of the conditions of the CO are met he has to issue the CO. Peter stated that this is a contract. Michael stated that our issues have to be in that contract. Margaret and Peter stated that he is working on it. Margaret asked Fred to speak with the Building Inspector about her concerns for the covering of the lights and the stormwater pond. Margaret asked him to check on this and get back to this Board.

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### **Letters of Credit**

Fred questioned Peter about Letter of Credit. Fred looked into these and basically the only thing that it says is that they will loan money to the applicant. Peter stated that a letter of credit is something that you have to accept as a road improvement bond it involves somebody that either has the cash or they so satisfy the bank that the bank upon presentation of the letter of credit will pay the money. Peter stated that a Letter of Credit is a bank guarantee and the law specifically says that it has to be approved by an attorney. The Letter of Credit or such other financing is in this Town Code and every other Town Code in New York State stating that it is not up to the Board or the Highway Superintendent or the Town Board to approve the Letter of Credit. It is up to the Town attorney or the attorney designated by the Town to approve it.

Roxanne stated that when this Board does a motion to establish a Letter of Credit then it is out of the Planning Board hands and they have to show the attorney and the attorney has to approve it. Fred used the example that even if we get a bank guarantee and the individual goes bankrupt or his circumstances change we may not have enough money to fix the road. Peter stated that is why they insist upon a Security Bond, Improvement Bond or a Letter of Credit that has to be approved by an attorney designated by the Board. Peter stated that the Highway Superintendent in this case should be the one to set the price for completion of the road up to highway specifications. Fred asked if we could get a Materials and Performance Bond. Peter stated that this is almost impossible to get. Peter said that if the bond does not cover the costs at the time then you add it to the taxes.

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### **Possible Rehab Center**

Peter said that he wrote the letter to the Town Board saying that there was nothing that the attorney said in his letter that justified his conclusion that this 16 unit facility for recovering alcoholics was equal to a one family dwelling. This attorney wrote a letter and thought this could be used as an application. An application has to be on prescribed forms. Fees have to be set and when he files the application we will set an escrow. This attorney was informed by Peter last week by telephone call that he has nothing filed. There is no application. In his

letter he can call it anything he would like, but a letter is not an application. He wanted the Building Inspector to issue Building Permits when he did not file any building plans. There is nothing in front of the Town at this point.

Fred stated that this is basically a working class neighborhood and he has some serious concerns about the health and welfare of the residents in that neighborhood. Peter stated that this is all premature so let's not even discuss it until we get an application. Roxanne stated that the plan is for Peter to be present at all of these meetings. All board members present this evening were in agreement.

**MARGARET MADE A MOTION TO ADJOURN SECONDED BY MARK.  
MEETING ADJOURNED AT 9:40 PM. ALL MEMBERS WERE IN FAVOR.**

**NEXT MONTHLY MEETING:                      AUGUST 12, 2015**

**DEADLINE DATE:                                      JULY 29, 2015**

**NEXT PRE-SUBMISSION:                      JULY 22, 2015**

Respectfully submitted,

April Oneto,  
Planning Board Secretary