

Greenport Planning Board
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Chairman Edward Stiffler

Planning Board meeting of December 22, 2015 was opened at 7:30 by Chairman Stiffler with the Pledge of Allegiance. There were 8 people in attendance. Present:

<input checked="" type="checkbox"/> Edward Stiffler – Chairman	<input checked="" type="checkbox"/> Paul D’Onofrio
<input checked="" type="checkbox"/> Robert MacGiffert	<input checked="" type="checkbox"/> Sandy Kipp
<input checked="" type="checkbox"/> Michael Bucholsky	<input checked="" type="checkbox"/> John Florio
<input checked="" type="checkbox"/> Genevieve Trigg, Esq.	<input checked="" type="checkbox"/> Ray Jurkowski, Engineer

Robert MacGiffert motioned to approve minutes of the November 24, 2015 meeting. Seconded by Paul D’Onofrio. All in favor.

Old Business:

1. **Columbia Land Conservancy** – (7:30-7:34) Peter Paden began with a description of the sub-division that the Land Conservancy has applied for, with the purpose of selling the residence at the end of Daisy Hill Road.

7:35 p.m. Commencement of the Public Hearing for the Columbia Land Conservancy with reading the notice that was placed in the Register-Star. Chairman Stiffler then asked if anyone would like an opportunity to speak. Attorney Lance Miner, Esq. spoke on behalf of Mr. Kobilca. Mr. Miner, Esq. provided a copy to each board member of the map (originally done by Anton Koren) illustrating the 19 acres of property owned by Mr. Kobilca. He stated that the two property owners have 15 feet of property that splits down the middle of Daisy Hill Road, allowing the opposite 15 feet of use as a right of way for each owner. Mr. Miner, Esq. noted that he understood the law of the right of way running with the land, however that is not what the case is here as the 15 foot right of way is being given to the new owner and being kept for use by the seller. That allows for three owners being given use of the land. Mr. Miner, Esq. stated that he provided a letter to the town Attorney, Genevieve Trigg, Esq. and Chairman Stiffler recapping this position. The concern is that if the Columbia Land Conservancy continues to sub-divide their property in the future there will be more individuals being given rights to the right of way portion of the property, as well as the Land Conservancy themselves. Therefore, they do not have the right to give others permission to use the right of way and continue to keep use for themselves. Mr. Miner, Esq. questioned why the Land Conservancy couldn’t provide an alternative road for the new potential property owner. Chairman Stiffler asked Mr. Miner, Esq. if CLC gave the right of way solely to the new home owner, would that in effect, prevent CLC from using Daisy Hill Road from bringing in their equipment for maintenance of the property. Mr. Miner, Esq. responded yes but they could create an alternative access road. Chairman Stiffler

then asked Mr. Paden if that was feasible. Mr. Paden said that to do so would cost somewhere within a six figure number and it would ruin the current entrance that they already spent a large sum to create. The new entrance is a gravel, wheel chair accessible path. To turn that into a paved road would ruin what they've already done. Attorney Genevieve Trigg, Esq. asked for clarification on where the entrance is to the trails, if Daisy Hill Road was used. Mr. Paden explained that entrance is only for the maintenance equipment and the public uses a separate entrance. Attorney Genevieve Trigg, Esq. recapped that the only use for the road then by CLC is for the maintenance of the property. Mr. Paden stated that there may be an occasional use for a school bus to bring children in, but that would be very rare. CLC created the new entrance at the urging of Mr. Kobilca and Daisy Hill is now essentially a private road that the Land Conservancy pays to maintain.

Attorney Genevieve Trigg, Esq. then weighed in with her legal opinion, stating that there is court of appeals cases, the highest court of the state, detailing that a planning board does not have the authority to enforce the terms of a private deed restriction and the issuance of a permit or approval for a use allowed by a zoning ordinance, or in this case a sub-division ordinance may not be denied because the proposed use is in violation of a restriction. Therefore, it is not within the planning board's authority or jurisdiction to be reviewing this issue, it's a private land owners' dispute. If you look at the language of the deeds, the Land Conservancy's deed to this private owner, provides for the 30 feet width for all legal purposes including ingress and egress, and Mr. Kobilca's deed, as cited in Mr. Miner's letter provides for a 30 feet width, 15 feet from each side of the property for the common use of both parties.

Mr. Miner, Esq. argued that the right of way was specifically written with this language so that only the successors to the property have use of the right of way. It was asked of Mr. Miner, Esq. if it was his position then that Mr. Kobilca could not in the future, sub-divide his property and sell two houses there. Mr. Kobilca replied that if he did, he would make sure to have the funds to give them their own right of way and not give them permission to use someone else's right of way. Mr. Paden stated as a point of information, this entire property is under conservation easement with the Open Space Institute and there will be no further sub-division, so there is no prospect of putting six more houses (for instance) in there, it's not going to happen. CLC had specifically reserved the right to sell this house knowing it was something they may have wanted to do. Mr. Miner, Esq. reaffirmed that this is not the same as running with the land. They are giving away a right to the land and keeping the right for themselves at the same time.

Christopher Newmann, the neighbor of Mr. Kobilca then asked to speak. He stated that while he does enjoy having Mr. Kobilca as his neighbor, it is he and the Land Conservancy that take care of the road and if you look at the 15 feet on Mr. Kobilca's side of the road, it is not being maintained at all.

Mr. Miner, Esq. then questioned the hundreds of thousands of dollars that Mr. Paden stated it would require to create a new road. Mr. Paden said that first, they are not giving something away, they are sharing it and secondly, he would like a copy of the letter that Mr. Miner, Esq. had sent the board. Continuing that nothing will change with the approval of the sub-division.

Everything will continue exactly as it has been and again, the road is only being shared. Mr. Kobilca said that is the point, you can't. Mr. Miner, Esq. asked Mr. Kobilca to discuss the road that he was talking about as an alternative road. Mr. Kobilca stated that they have other right of ways from Joslen Blvd. back to that property. When John Malasky bought that property he couldn't develop it because of the partnership road that exists today, he couldn't give another piece of property off that road. He bought the Black's property, maintained a right of way from Joslen Blvd. back to this property then he sold the remaining part of Julia Black's to a party but maintained the right of way from Joslen Blvd to that property for a road. As far as Daisy Hill Road goes, that 15 feet has to go with the house in order to get in there. Mr. Kobilca stated he has no objection to CLC using the road for their equipment. His issue is with turning this road into a three party road, which will cost him money. Mr. Kobilca then stated that there is another road that they bring their trucks down to unload their mowers and tractors. Mr. Bucholsky asked if there is a question on this road that may require legal action, where is the planning board on doing a sub-division that may end up being a landlocked piece of property. Chairman Stiffler deferred to the council for legal opinion. Attorney Genevieve Trigg, Esq. stated that there is a lot of privately owned issues and disputes that could arise with this but there is no regard over the planning board's jurisdiction. There is clearly a right of way provided for, the important deed here is the Land Conservancy as they are the applicant, who has shown that that is part of their deed and that right of way will be transferred over to the new owner. The planning board is only required to review the deed, which was done and that is the extent of their authority.

Chairman Stiffler asked if anyone else would like to speak for or against this sub-division. There was no one. Chairman Stiffler said if there is no one else then he would request a motion to close the Public Hearing. Mr. Bucholsky motioned to close the Public Hearing. Mr. D'Onofrio seconded. All in Favor. Chairman Stiffler asked the board for their input. Mr. Bucholsky stated that on the advice of counsel, he doesn't see how they can hold the project up any further. Chairman Stiffler requested from Attorney Genevieve Trigg, Esq. for clarity, is she satisfied there is legal access to this one acre parcel to be sub-divided. Attorney Genevieve Trigg, Esq. replied yes. Mr. MacGiffert motioned to accept and approve the sub-division. Sandy Kipp seconded the motion. All in favor. Chairman Stiffler requested seven additional maps for stamping. Mr. Paden stated they would be brought in next Monday, at which time he could take his copies as well.

2. Mental Health Association of Columbia – Greene Counties – (8:05-8:28) Chairman Stiffler asked if anyone would like to speak for or against this project. There was no one. Mr. MacGiffert motioned to close the Public Hearing. Mr. Bucholsky seconded the motion. All in favor.

Mr. Freeman was made aware that the Planning Board needed escrow money. It was noted that the bill was paid for the two special meetings but the escrow would need another \$5,000 or \$6,000 to proceed. Chairman Stiffler stated that they received new plans and copies were provided to the members.

Chairman Stiffler pointed out to Mr. Freeman that there was supposed to be a holding tank shown on the new maps and there is not. Mr. Freeman stated that was because it has not been determined exactly how many gallons the tank will be and they didn't want to add it to the map

and then have it be inaccurate. Ray Jurkowski stated for clarification according to DEC guidelines they provide for a given flow amount and that's a set standard that they have within their documentation and an engineer is to utilize that information short of any additional information regarding actual flows. If they provide actual flow data on a similar project, they can consider it and approve it based on that flow. So Mr. Jurkowski concurred with Mr. Freeman as this is new information provided by Mr. Hershberg after the original long form. Chairman Stiffler asked Mr. Freeman if they would be receiving a revised Site Plan showing the size of the tank, its location and any equipment necessary for it. Mr. Freeman agreed.

Mr. Bucholsky asked how long the vetting will go on before DEC gets back to them. Mr. Freeman referred to Mr. Jurkowski, who stated that the town should be receiving something from Jamie Malcolm just after the beginning of the year at which point the town will need to respond. At that time, the town will need to get together with the applicant's engineer.

Ray Jurkowski noted that he had updated the Neg Dec and would read the altered narrative on page 7 regarding the impact of water. The board would now be considering adopting an amended Negative Declaration for this project. Mr. Bucholsky motioned the board accept the modified Negative Declaration with the addition of the modifications as read by the engineer. Sandy Kipp seconded the motion. All in favor. Chairman Stiffler stated that SEQR is now completed on this project.

Attorney Genevieve Trigg, Esq. pointed out that following the requirements that this Neg Dec will need to be filed within five days. Chairman Stiffler stated now that the SEQR has been closed, the board now has 62 days to render a final decision on this project unless the applicant agrees to an extension beyond that based on circumstances that arise between now and then. Chairman Stiffler recommended to the board that prior to the next meeting on January 26, 2016, if there are any conditions they would like to see met they should get them submitted 12 days prior to the meeting. Chairman Stiffler requested from Mr. Freeman a plan on how the transportation system would work, outlining the hours of operation, the types of vehicles to be used, who will be eligible to ride them, etc.

Attorney Genevieve Trigg, Esq. spoke of the mitigation fee. In accordance with the local law the fees will be held in a separate bank account. Is there any other reason it needs to be distinguished when that money will be released. Local law is silent on that issue, so when will it be payable to the town. Mr. Freeman replied that his client wants to ensure that the town would only use that money if the project goes forward, so as a condition, not until a building permit is issued. Mr. Jurkowski stated the only outstanding issue on his part to be resolved is the waste water. Chairman Stiffler asked Attorney Genevieve Trigg, Esq. to do a draft resolution to include all the items that have been discussed with the understanding that there is no promise of approval, this is just another tool to look at.

3. **Dziubelski Apt** – (8:28 pm) No Show for the Second time.

Other Business:

1. **Election of Officers** – (8:29-8:30) Election of Officers for 2016. Mr. MacGiffert nominated Ed Stiffler to stay on as Chairman. Sandy Kipp seconded the motion. All in favor.

Sandy Kipp nominated Mr. MacGiffert to stay on as Vice-Chairman. Chairman Stiffler seconded the motion. All in favor.

2. **Public Comment** – (8:30-8:32) Jerry Grossman had a question about the flow of waste water for the Mental Health Association. He asked what happened after a holding period and the plant was back up and running. Wouldn't the released amount plus the regular amount of waste water exceed the amount for the permit? Chairman Stiffler clarified that it wouldn't be a deluge when it came time to release it, it would be a trickle effect.

Mr. Bucholsky motioned to adjourn. It was seconded by Sandy Kipp. All in favor. 8:32 p.m. Meeting adjourned with wishes of a happy holiday season.

The next regular Planning Board meeting will be held on Tuesday, January 26, 2016, at 7:30 pm.

Respectfully submitted,

Jennifer Pinkowski

Planning Board Secretary

cc: Edward Stiffler, Chairman
Sandra Kipp
Robert MacGiffert
Paul D'Onofrio
Michael Bulcholsky
Ray Jurkowski

Attorney Jason Shaw
Town Clerk Sharon Zempko
Building Inspector's Office
Fire Chief Gary Mazzacano
NYS DOT
Columbia County Planning Department
(Via website)