

**TOWN OF SOUTHEAST
PLANNING BOARD MINUTES
May 9, 2016**

Present: Chairman Tom LaPerch; Vice Chairman David Rush; Boardmembers Paul Jonke, Phil Wissel and Dan Armstrong; Town Planner Ashley Ley; Secretary Victoria Desidero. Absent & Excused: Boardmembers Michael Hecht and Eric Cyprus; Town Attorney Willis Stephens

PUBLIC HEARINGS:

REGULAR SESSION:

Chairman LaPerch thanked Vice Chairman Rush for handling the last meeting in his absence.

- 1. FARM TO MARKET ROAD SUBDIVISION, Farm to Market Road** – This was a review of an Application for Final Approval of a Subdivision. Engineer Peder Scott of PW Scott Engineering and Architecture and Applicant Alfred Mattikow appeared before the Board. Mr. Scott said we are here for our final Plat approval and we want to come back in two weeks because we have questions on the bond. Boardmember Rush said there was a request for a lot line adjustment, has that been handled? Mr. Scott said no, we are not pursuing that at this time. The motion to Grant Final Approval of the Subdivision was introduced by Chairman LaPerch, seconded by Boardmember Armstrong and passed by a roll call vote of 5 to 0 with 3 absent. Secretary Desidero said the applicant said they want to come back for the bond and she just wondered if they saw the Town Engineer's revised estimates that they requested and were e-mailed that afternoon? Mr. Scott said our problem is with the E&S (Erosion and Sediment) portion is that it's all inclusive and we are selling lots and, once sold, we lose the right to monitor and ensure compliance with the plans yet the bond will still be in place against someone else's actions. He said we're trying to work out something with Mr. Levine (Building Inspector) where they can file the bond and then when the individual homeowner takes over, each person has to have their own bond in place because we've sold our rights away. Mr. Mattikow said there is an agreed upon maintenance obligation that has been filed and they have a lot owner maintenance agreement, which says that every lot owner assumes the obligation to maintain the stormwater facilities and all related items. Town Planner Ashley Ley said the NOI (Notice of Intent) was going to be covering the entire subdivision and that's the way it needed to be on there. Ms. Desidero said but it's not the Building Inspector, it's the Town Engineer you need to speak to about this. Mr. Mattikow said I know that but the issue is we would be sitting on a bond which we could not get released because we didn't finish the entire project and the bond would be in place to ensure the individual lot owners complied with the plan so what happens is if a new lot owner doesn't comply with the erosion control situation or requirements the Town can say we're going to pull the bond which is our money and use it to pay someone else's money whom we have no control over. Ms. Ley said you're not going to be building out the property? Mr. Mattikow said no we're selling lots. Boardmember Armstrong asked if the bonds were for construction and maintenance. Mr. Mattikow said there are two definitions: maintenance will taken care of all these agreements that were given to the Town Attorney and I assume they are okay because the DEP (Department of Environmental Protection) has passed on them as well. He said the erosion control, when a house is built, is customarily the problem of the homebuilder who is building the lot and when we sell the lot to an individual in the eye as a contractor, it's up

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to him to maintain... Ms. Ley said they need to talk to the Town Attorney and Town Engineer about those matters but there are provisions for reducing the bond over time so as things are built out, you could come in for bond reductions. She said in order to file the Plat, the bond needs to be filed but where a conversation needs to be had is how that bond is reduced and transferred to the homeowner. Boardmember Armstrong said they are not breaking new ground here and why not just follow whatever has been done before. Ms. Desidero said the difference is that they're not planning on doing the building on the lot and they don't want to take responsibility for someone else going in and doing the erosion and sediment control measures. Boardmember Rush said I understand but I can't imagine that there hasn't been another situation like this where the individual owner was responsible for whatever went on. Chairman LaPerch told the applicant to contact Ms. Ley to work out the details.

Boardmember Wissel said since he has recused himself from the Santucci Review and the Meeting Minutes for the meeting he attended cannot be voted upon tonight, he is leaving the meeting at this time.

2. **SANTUCCI RESIDENCE, 5 Shady Lane** – This was a review of an Application for Special Permit for Grading and Excavation. Attorney Michael Liguori of Hogan & Rossi and Owner Dennis Santucci appeared before the Board. Chairman LaPerch asked Ms. Ley to give the Board an overview of this application. Ms. Ley said where we left off was that it seemed the best course of action for resolving the issue from both the applicant's side and the Town's side is to pursue a Special Permit to do some new filling and grading on the property to finish the direction that they had started so this would be new fill that would be brought in up to the top of the existing retaining wall. That is something that requires a Special Permit from this Board, she said, and there are also some other areas of fill and grading that they would like to pursue throughout the property and this would make any existing concerns between the Town and the applicant no longer applicable because this permit would cover anything that had happened in the past. Chairman LaPerch asked if Boardmember Armstrong had a question and he said yes. He said in Mr. Gainer's (the applicant's engineer) letter, does the last paragraph create a problem for the Town? Ms. Desidero found the memo and read the last paragraph: *"It is understood that, should the Planning Board act favorably on the application, that all prior disputes regarding filling and grading shall be resolved and the Stop Work Order shall be lifted. However, the submittal herein is not intended to waive any right to claim that the prior work was lawfully performed."* Boardmember Rush said it's that sentence. Does that create any problem? Chairman LaPerch said I'm not an attorney. I can't answer that, he said, but I'm assuming by getting a Special Permit... Ms. Ley said that is their position and by pursuing a Special Permit any previous issues will no longer be of concern. Mr. Liguori said we wanted to not waive the right to say what was already done was lawful. The motion to Classify this a Type II Action under SEQRA was introduced by Chairman LaPerch, seconded by Boardmember Armstrong and passed by a roll call vote of 4 to 0 with 3 absent. Mr. Liguori said I just wanted to raise a point. He said I was out at the site with Dennis (Santucci) today and Dennis had pointed out to me that behind the septic system, we're going to have some area where the machine is going to trap and we don't want to have an issue with the Board as to whether that would be covered. Tomorrow with the actual

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application form, he said, I'm just going to mark this up a little bit further. It's this area back here, he said, and I'll show it on the as-built. Chairman LaPerch said to Mr. Liguori: highlight it please. Ms. Ley said that they're just going to show where they're going to be moving the fill back and forth. Mr. Liguori asked did you guys walk where the stonewall goes down to the stream? Chairman LaPerch said no. Ms. Ley said I looked over there. Mr. Liguori said okay, Dennis had shown me there was a little bit of washout. Chairman LaPerch said I think it would be smart to put everything on there and get everything approved at once. The motion to set a Public Hearing for June 6, 2016 was introduced by Chairman LaPerch, seconded by Boardmember Jonke and passed all in favor.

The Board discussed which Meeting Minutes could be approved and it was determined that neither the Meeting Minutes of April 11 or April 25, 2016 could be approved because there was not a quorum of members who attended those meetings present.

Chairman LaPerch said he would like to state publically that Boardmember Armstrong showed him why a berm would have made a lot of sense at the Brewster Honda site. Boardmember Armstrong said had they put material on the pavement to put around the edge and it was about a 5 ft. berm and, with that there, the people in their backyards and porches and decks and first floor windows would not have been able to see the parked cars. Chairman LaPerch said he's right: shame on us.

Chairman LaPerch asked Ms. Desidero what the next meeting looked like. Ms. Desidero said there could be a Continued Public Hearing for Glickenhau Private Academy if they get their traffic study. Ms. Ley said they did: they sent it at like 5:00 today. Ms. Desidero said the people who had asked to be postponed for the Conditional Use Permit is Power of Movement. We have a request from Verizon, she said, for an exemption for something they're doing at 45 Independent Way. Ms. Desidero said Farm to Market may come back for their bond. The Board discussed the issue that Farm to Market is raising about their bonds.

The motion to close the meeting was introduced by Chairman LaPerch, seconded by Boardmember Rush and passed all in favor.

May 20, 2016/VAD/CC