

October 8, 2014

A MEETING OF THE PLANNING BOARD of the Town of Ossining was held in the John Paul Rodrigues Ossining Operations Center, 101 Route 9A, Ossining, New York, on the 8th day of October 2014. There were present the following members of the Planning Board:

George Weeks, Chairman  
David Krieger  
Gareth Hougham

Absent: Gregory McWilliams, Vice Chair  
Dennis Kirby

Also Present: Wayne Spector, Town Attorney  
David Stolman AICP, PP, Frederick P. Clark Associates, Inc.  
Daniel Ciarcia, PE, Consulting Town Engineer  
Sandy Anelli, Secretary

#### **Tinman Management, Inc., 37A Old Albany Post Rd., Request for Extension of Resolution of Approval**

Mr. Weeks reviewed with the Board, a letter received from Mr. Jim Damm, Tinman Management, dated September 22, 2014. Mr. Damm has requested an extension of three months on the requirement of filing a building permit within the specified time frame of his resolution of approval. The letter also indicates that the reason for this request is Mr. Damm has been experiencing certain delays with financing the project.

Mr. Stolman recommended Mr. Damm file his building permit within the three month extension period. The original requirement, as specified in the resolution of approval, for filing a building permit expired September 18, 2014.

Mr. Krieger made a motion, seconded by Dr. Hougham and unanimously passed to extend the time frame for three months on the condition that Mr. Damm files a building permit within the three month extension period. This extension will expire December 18, 2014.

There were no further questions or comments.

#### **Briar Commons, 558 North State Rd., Site Plan Amendment**

Mr. Zappi accompanied by his son Brandon Zappi and Attorney, Mr. Adam Wekstein were in attendance. Mr. Wekstein presented the plan for conditional use in the GB Zone and subdivision approval. The plan shows twelve lots which accommodates twelve dwelling units. They are applying for elimination of the lot lines on the filed approved plat. A lot line elimination or re-subdivision approval is required. The intent is to create condominiums out of the proposed buildings.

Mr. Stolman noted new elevation plans have been submitted. He asked Mr. Zappi to go over the changes to these plans. Mr. Zappi explained that the new elevation plans show some architectural changes, a trellis over the garages, a dormer type window at the top, additional siding and treatment to the foundations. Mr. Zappi said he would like to clarify to the audience; this is an approved subdivision, he has paid the recreation fees, there is a filed map and their bonds are in place. There are no changes to the original site plan. Mr. Zappi said the changes on the elevation plans are architectural features only. This will look nicer and breakup the units a little. As far as the site plan approval is concerned, it is all the same. They are looking to change it from fee simple to condominium.

In response to Mr. Stolman, Mr. Zappi said the exposed foundations will be simulated stone (the same stone that was approved for the face of the storm water vault). Also, the siding will be carried down to meet this stone.

Dr. Hougham expressed concerns regarding a couple of issues as outlined in his memo dated October 7, 2014 as follows:

October 8, 2014

*Regarding Zappi's request that he be allowed to switch the development to condominium from townhouse, it seems to me that this short changes the Town of Ossining. Among other things, it might end up yielding less tax input to the Town of Ossining. It also lowers the cashe' of the development – condos being of lower prestige than townhouses.*

*Considering that the Town went out of its way to rezone a residential area (the back half of the 558 property if I understand correctly) to make this development possible, and that it was done so with the **explicit agreement** (see attached PB minute excerpt) **that no change to the plan could be made without invalidating the rezoning**, I wonder if this request shouldn't be denied.*

*I know that the change in plan does not involve any physical change to the site plan, but it does involve a change to many other considerations that the zoning board likely factored in at the time. Notably, the effect on the neighborhood's property values. Having one's house next door to a townhouse is much better than having it next to a condominium. Also notably to the tax base. This change is being sought to allow Mr. Zappi to advertise the units with a lower property tax, making them more desirable to purchase. This seems to benefit him alone, not the taxpayers and not the neighbors.*

*Not to mention that Zappi has demonstrated bad faith in his execution of this plan; leading to stop work orders and more. I am of the view that Zappi should be required to go before the Zoning board again to seek approval for this new plan. The rezoning he got originally seems to be invalidated by this requested change.*

*Just a consideration.*

*Best Regards,  
Gareth*

Mr. Spector noted that there are allowances under the approval by the Town Board. Mr. Stolman noted that a couple of years earlier possibly 2011, the property was expressly rezoned by the Town Board to allow a residential development under the GB Zone. It was not the Zoning Board.

Mr. Wekstein added that there was a declaration specifically for this property saying what residential uses were permitted on the site. Mr. Spector added that when this re-zoning did occur, it was intended to accommodate this particular project. In response to Dr. Hougham, Mr. Spector clarified the public hearing procedures that took place under the re-zone through the Town Board.

Dr. Hougham also wanted to note, on behalf of one of the neighbors, the catch basin seems to be flooding on their property. Mr. Caircia clarified that the catch basin isn't quite connected yet. It is not a complete system yet. However, this is only a temporary construction issue and will be addressed as soon as possible.

In response to the condominium question, Mr. Wekstein indicated that the law in New York is 100% clear that zoning regulates only the use of property and not the form of ownership. In fact, in those cases when communities have tried to legislate, in one case to require a condominium ownership, in another case require different permits for condominium ownership then they would of regular multi-family and this is the court of appeals, the courts have repeatedly said the form of ownership cannot be regulated by zoning. The fact that someone my perceive the cashe' to be different of condominium verses a fee simple zero lot line set of homes, is something that, this Board, the Town Board, the Zoning Board can factor into its calculation from zoning perspective. I am happy to provide the Board with the cases on that.

This meeting was not a public hearing however, following statements were made by attendees:

Mr. Albrecht, 552 North State Road: It seems everything has been promised, hasn't made it onto the plans. People are parking on their property on Gordon Avenue walking through their yard. Trees were taken down, no fence has been installed, and Mr. & Mrs. Trainham now own a frog farm. If changes are going to be made I think everyone has to be consulted and redo the plans as promised four years ago and please put it in writing.

Mrs. Wendy Masserman: I represent a group called the Concerned Citizens of Ossining. I spoke to Fernando Gonzalez at the Assessor's Office. You are correct; there is a big difference in taxes when you move from condominiums to fee simple. A 40% to 60% difference in taxes. That mean condominiums are looked at as commercial and looked at for their rental ability. Even though they're owned that's how they are assessed. This seems to be a mistake. Proposing twelve units, let's say five of these units are rented out to a young family with two children per unit, ten children. We are currently at the cost of \$20,000 to \$24,000 a year per child in the Ossining Schools. If they don't pay the taxes that we are paying as residents and fee simple people, which are not in the Town that I know of because fee simple owners are viewed as the same as all single family residents.

October 8, 2014

So what's going to happen is they're going to get a reduction and we're going to carry the burden. The biggest thing I have to say here is I believe and I may be wrong, if you move to this condo it becomes more marketable. You can now say "Oh, your taxes are lower". That's not the concern of the Board or the people of the Town of Ossining. We are concerned about our continual taxes going up. We are being re-assessed now. I own a business and I pay very steep taxes. I am very opposed to anybody coming onto North State Road and being given any kind of tax advantage over me, my home, and all these people who live right behind there. It's wrong and disadvantageous to the Town! Thank you.

Ms. Sandra Dellano: I am Sandra Dellano; I live on North State Road. Help me understand why now you are switching from original townhouses to condominiums? After all that has been going on within the last few weeks.

Mr. Wekstein: It is within the applicant's rights to do so. Just like anyone else who is in this district could do it.

Ms. Dellano: So it is at his discretion whether it's Townhouse or Condo's. No matter what the impact is.

Mr. Wekstein: Yes, that is correct. It is that way here in Ossining where multi-family is permitted and it is that way in every other community in Westchester and in New York State. It is the applicant's choice. The landowner's choice what the form of ownership is of the homes.

Ms. Dellano: I have serious doubts about this rationale. All that has been going on in the last four years and all the fights we've had with this Town.

Mr. Zappi: I resent that remark. I am here to make a living. I run a business just like she does. I have to tell you something, all these high taxes here and in New York; this is going to drive me out. I feel bad for you guys just like anybody else. It's a horrible thing and I don't know if it is ever going to get better.

Mr. Weeks: This is not really the venue for this.

Mrs. Masserman: My understanding is that this is a change and he has to get permission from the Board form this. This is not just "I want to do it so you're going to give me permission" correct? You are going hear our concerns about the taxes and all of these things. This is not a give-in. I don't want to walk in here thinking that this is a slam dunk. I have had that feeling before. I just want to be clear that this has to go before the Board for review and discussed and you're going to hear what everybody has to say and a decision will be made. It's not the law that he has to have this change. The law doesn't say you must give him this change, correct?

Mr. Spector: The law does not allow the Board to abuse its discretion either way. Whether in granting or denying. The Board has the ability to say "yes" or "no" but it must do so based on a reasonable basis and an acceptable legal basis for doing this not because it likes or doesn't like something and not necessarily what the public wants or doesn't want, which is unfortunate, but because the State and the Town is the one who creates the regulations which the Board has to fulfill. It must do so in such a way that it does not abuse its discretion.

Mrs. Masserman: So in make your decisions, your decisions are always based on the best interest of the Town of Ossining. So you're looking out for our Town, correct?

Mr. Spector: As defined in the laws that are adopted. They can't just make discretionary decisions on their own on what's in the best interest of the Town. There is a code of regulations which govern how site plans, subdivisions, are and aren't approved. They have act within framework of the law.

Mrs. Masserman: Excuse me, the subdivision is approved.

Mr. Stolman: To boil it down. I think what you're asking is whether the Planning Board can use the difference in revenue that the Town would see fee simple townhouse verses condominium. Whether the planning board can use that as a criteria to deny the approvals.

Mrs. Masserman: Yes, thousands and thousands and thousands of dollars in taxes, can you use that as a criteria? Is it illegal for you to do that?

Mr. Spector: First of all, this Board has never considered potential taxable status of a property as the basis for approving or not approving a particular application. If a non-profit comes before this Board for an application, this Board does not have the discretion to deny it based on the fact that it is a non-profit. I want to make a comment because I've been involved in something that I think is important to know this as well. It's the concept of the condominiums and how they're taxed. It is not necessarily related to this project but it is good to know. I don't think anybody here has attended the recent Town Hall that the Town has had because this subject of taxing condominiums on the issue of what's called Homestead. It's a very hot topic right know for the simple

October 8, 2014

reason, in doing a revaluation, it opens up the possibility to change the taxable status of the part of the Town from the advantageous situation that it would have as a condo now and change it to basically the same system of taxation based on value as a single-family home. I can tell you I have listened in several meetings to hundred of condo owners who have argued very vehemently and coherently as to why they believe its proper tax condos in that fashion. If this property is not condo it is still going to be HOA.

Mrs. Masserman: This is an approved plan for townhouses, they are asking for condo now. This is what is approved and we are saying leave it don't give them a tax advantage.

Mr. Spector: Does anybody in this room have a reason why that you would object to the conversion from a HOA to a condo other than the taxable status?

Ms. Masserman: Not for me, they do.....

Mr. Trainham: The variance that was given.

Mr. Spector: That wasn't a variance it was a change of zoning.

Mr. Trainham: Wasn't that given to that site plan or is it cart blanche they just do anything they want?

Mr. Spector: I don't believe at the time.

Mr. Stolman: I don't believe there was discussion about the form of ownership.

Mr. Wekstein: The declaration does not talk about the form of ownership. I looked at it yesterday.

Mr. Stolman: Adam, you were going to provide a memo regarding cases on this subject. If you could do that and include fiscal impact analysis under the SEQR process as part of that. I can explain that more. If you could provide a memo regarding that to Wayne specifically and then Wayne can make a ruling on that.

Mr. Wekstein: I am not sure that a fiscal analysis is relevant to what you're talking about but I will definitely give you the other piece. I'll consult with my client and give you what I can.

Mr. Weeks entertained one last question.

In response to Mr. Albrecht, Mr. Stolman clarified that there are no physical differences being proposed. The future residents of the project will not be permitted to construct a walkway to Gordon Avenue from the site. Mr. Spector explained that with condominium ownership the difference is the owners of the units own basically inside the walls and everything on the outside is owned as common elements and it's all controlled and maintained by a condominium association.

Mr. Wekstein asked the Board to schedule a Public Hearing. Mr. Weeks said the plan will require further review by the Town's Planning Consultant and Engineer before scheduling a public hearing. A public hearing was not scheduled.

## **Minutes**

---

Mr. Krieger made a motion, seconded by Dr. Hougham, and unanimously approved to adopt the draft of Planning Board minutes for the meeting held August 13, 2014.

## **Adjournment**

---

There being no further business to come before the Planning Board of the Town of Ossining, Mr. Krieger made a motion, seconded by Dr. Hougham that the meeting be adjourned to November 12, 2014.

Time noted 9:10 p.m.

Respectfully submitted,

*Sandra Anelli*

Sandra Anelli, Secretary

Town of Ossining Planning Board

**APPROVED: December 10, 2014**