

MINUTES

VILLAGE of CHESTER PLANNING BOARD

SEPTEMBER 22, 2009

PUBLIC HEARING AND REGULAR MEETING

PRESENT: Richard RAMSDELL, Chairman  
Gene WINTERS, Member  
John REILLY, Member  
Anthony LA SPINA, Member  
John ORR, Code Enforcement Officer  
Mark EDSALL, Engineer  
Harold PRESSBERG, Attorney

NOT PRESENT: Robert JANKELUNAS, Member  
Tony FIGUEROA, Alternate

PUBLIC HEARING:

1. DePaulis 94 Amendment of Fill Permit Project #09-05  
Location: Route 94 SBL 116-1-1.2 M1 Zone  
Owner: J. DePaulis of DePaulis Enterprises VI, LLC  
Re: Proposed control fill for future development  
David Zigler of Atzl, Scatassa & Zigler, P.C. representing.  
Joseph DePaulis attending.

Chairman Ramsdell opened the Public Hearing and read the Public Hearing Notice as it appeared in the Times Herald Record on September 14, 2009:

NOTICE IS HEREBY GIVEN that the Planning Board of the Village of Chester, New York will hold a Public Hearing at the Village Hall, 47 Main Street, Chester, New York on Tuesday, the twenty-second day of September 2009 at 7:15 P.M., or as soon thereafter as the matter can be heard, concerning the application of Joseph DePaulis for the project known as DePaulis 94 Amendment of Fill Permit. The applicant is requesting to secure a Permit from the Village of Chester Planning Board pursuant to the Village of Chester Code, Article III, General Regulations, 98-13.1 - Dumping of construction debris and hazardous waste, to allow the applicant to deposit dirt or fill, for future development, on 5 acres of 39.3 acres of private property; such fill to be taken from a local construction site and to consist of soil and rock.

The property is located in the Village of Chester, New York on Route 94 and Nucifora Boulevard and is listed on the Village Tax Map as Section 116, Block 1, Lot 1.2 in a M1 Zone.

All persons interested will be heard by the Village of Chester Planning Board at the aforementioned time and place.

BY: Order of the Village of Chester Planning Board  
BY: Richard Ramsdell, Chairman

Chairman Ramsdell explained the Public Hearing procedure: The applicant is asked to make a presentation about the project; the Planning Board may discuss the project; then the hearing is opened for public comments. Anyone who wishes to speak is asked to identify themselves.

Chairman Ramsdell said that, in addition to what was listed in the Public Notice, the property is in the Overlay District that the Village created.

David Zigler of Atzl, Scatassa & Zigler, P.C. representing. Mr. Zigler said that the applicant is here to amend an approved permit for 5 acres regarding Project #07-07. The applicant has more fill left over, and would like to extend the fill area another 5 acres. At a meeting today, the Village engineer had questions about the site. The applicant is ready to add solutions to Phase 2 so that we can start Phase 2.

Chairman Ramsdell said that this project is also on the Regular Meeting agenda, and we will address these issues later. The locations of Phase 1 and Phase 2 are indicated on the plans, to clarify for the record.

Mr. Zigler said that Phase 2 is the shaded area. It is actually moving back toward the Industrial Park.

Member La Spina asked how much higher the second phase in the back will be.

Mr. Zigler replied that it will be equal to the first phase. There will be a slight taper so that water runs off but no slope to it. There will be a catch pond for runoff at the bottom to catch the water and clean it.

Chairman Ramsdell asked if the runoff will be in the same direction that the runoff has been going so far.

Mr. Zigler replied yes.

Chairman Ramsdell asked Engineer Mark Edsall if he had any comments on the description. Mr. Edsall did not, and Chairman Ramsdell then opened the hearing to the public for comment.

Code Enforcement Officer John Orr said that he had a conversation with a representative from Community Products. The representative asked to look at the plans as he was concerned with creating a high plateau right off of their property. He was concerned with excessive runoff onto their property. He was satisfied with Mr. Orr's explanation.

Chairman Ramsdell asked for any further questions or comments. There were none. Chairman Ramsdell requested a **Motion** to close the Public Hearing. **Motion** was made by Member La Spina, seconded by Member Reilly. All in favor, none opposed. **Motion** carries. The Public Hearing closed at 7:30 P.M.

#### **REGULAR MEETING:**

Chairman Ramsdell opened the Regular Meeting of the Village of Chester Planning Board.

##### 1. **MINUTES**

Chairman Ramsdell asks if the Board members have any questions or comments on the draft of the April 2009 Planning Board Meeting Minutes. There were none. Chairman Ramsdell requests a **Motion** to accept the April 2009 Planning Board Meeting Minutes as drafted. **Motion** is made by Member Reilly, seconded by Member La Spina. Member Winters was not present at the April meeting, and therefore had no comment. All in favor, none opposed. **Motion** carries.

##### 2. **CORRESPONDENCE:**

**Letter from:** Mr. Mike Sandor of MJS Engineering and Land Surveying  
**Dated:** August 13, 2009

**Letter from:** Town of Chester Planning Board  
**Re:** Public Hearing Notice on October 7, 2009  
**Applicant:** Chester Union Free School District  
Subdivision of 3 lots in the Town of Chester

**Pamphlet from:** Orange County Municipal Planning Federation  
**Re:** Land Use and Planning Course on October 2, 2009  
Chairman Ramsdell said that several of our Planning Board members will be attending this course.

##### 3. **C.E.O. REPORT - SEPTEMBER 22, 2009**

The C.E.O. Report was presented by Code Enforcement Officer John Orr.  
Current projects that were inspected during the last month:

Lowe's:

1- Temporary Certificate of Occupancy has been extended.

Nexans:

1- General site work continues.

Zangrillo 4 Nicotra Lane

1- No work has started.

Atkin 4 Howland Ave

1- General site work continues.

Palumbo 2 School Street

1- No work started.

Green Meadows Apartments

- 1- General site work continues.
- 2- 32 have been issued Certificate of Occupancy.
- 3- Project should be complete during the month.

Flynn 8 Kerner Dr

- 1- General site work continues.

DePaulis

- 1- Fill operation just about complete.

Conducted fire and safety inspection at: Amscan 47 Elizabeth DR  
 C&S 1 Elizabeth Dr  
 Christian Salvesen 14 Elizabeth Dr  
 Community Products 24 Elizabeth Dr

Respectively Submitted,

John S. Orr  
 Code Enforcement Officer

Chairman Ramsdell commented regarding Lowe's, stating that there are still lighting and visual problems for the Hom Street neighbors. Some things have been done but the net effect has been pretty minimal. John Orr and I have had 3 or 4 meetings with Lowe's people already. We need to have more regular contact with Lowe's.

Mr. Orr said that he will try to view the lighting tonight.

Chairman Ramsdell said that he had a chance encounter with Mr. and Mrs. Miner (Hom Street residents). This is the time of year when sight problems are the most explicit. They need to get this problem resolved. It's not over.

Mr. Orr said that the Garden Center lights are on past closing. The parking lights are reduced to 30%.

Chairman Ramsdell thanked Mr. Orr for his report.

**4. DePaulis 94 Amendment of Fill Permit                      Project #09-05**  
 Location: Route 94                      SBL 116-1-1.2                      M1 Zone  
 Owner: J. DePaulis of DePaulis Enterprises VI, LLC  
 Re: Proposed control fill for future development  
 David Zigler representing; Joseph DePaulis attending

Mr. Zigler spoke of work session comments from Engineer Mark Edsall which would be addressed before they made modifications to their map. In addition, he explained that John Orr had done a field inspection at the end of last week and his concerns lead to the field meeting today because of additional items that were not on the Engineer's list.

Mr. Zigler said Mr. DePaulis had agreed to hire Robert Torgersen, Landscape Architect, to do soil inspections. Mr. Torgersen went to the site today and issued a report.

Chairman Ramsdell spoke to clarify that the current issues include the Planning Board Engineer's work session and site comments, Mr. Orr's observations and concerns, and Mr. Torgersen's report from today.

Mr. Zigler spoke of the issues from today's meeting. He said that Mr. Torgersen's sheet had issues with design as well as 4 or 5 construction issues to help clean up the site. These are things that were done, but they have to be maintained.

Chairman Ramsdell said that John Orr was very involved in this matter.

Engineer Mark Edsall stated that, for clarification, the initial comments of John Szarowski from our office are on the current active phase, and on the current SWWWP. As part of the current application phase, I told John Szarowski to see how the beginning phase is wrapping up. Some initial problems were identified, which resulted in today's meeting. That's when some problems were identified with the construction activity on what was originally approved. Mr. Szarowski has comments on the construction activity, and also on the current application.

Chairman Ramsdell asked Mr. Edsall to speak to the comments. The permit requires weekly inspections that apparently have not been occurring which constitutes a DEC permit violation. The required Site Log Book has not been

maintained, another violation. The site of the initial approval, approximately 5 acres, has not been stabilized. There was general discussion regarding the requirements and benefits of stabilization. The required sediment basin was not properly constructed. He said that Mr. Szarowski asked that all filling operations be stopped immediately, until these things are straightened out. Mr. Edsall said that the first phase of the project must be stabilized and brought to closure before starting the next phase (Project #09-05). (Mr. Edsall's comments are attached at the end of the Minutes).

John Orr spoke of how his concerns had been heard and will be addressed by the applicant.

Chairman Ramsdell invited Mr. Zigler to comment on the issues. He said that Mr. Torgersen has been hired by Mr. DePaulis. Mr. Torgersen will do the weekly inspections and will fill out the log book for the DEC. We will stabilize the site; seeding will start tomorrow. The site will be mulched; we will create a path in and a path out for trucks, and then everything else has to be seeded. He's made a commitment to do that. The sediment basin will be straightened out so that we will be in compliance. Mr. Torgersen's letter had a few additional issues he wanted done. Mr. Zigler presented the letter and reviewed those issues with the Board. There was extensive general discussion on the matters.

Chairman Ramsdell said that so far, we've discussed work done regarding the approved application, part 1 of the project, and construction issues that have occurred. The purpose of this evening's Public Hearing and the item on the agenda is Part 2 of this fill operation. Chairman Ramsdell asked for Mr. Edsall's comments. Mr. Edsall made a presentation of his comments. (Mr. Edsall's comments are attached at the end of the Minutes).

Mr. Zigler accepted the comments and said they would not be a problem.

Mr. Orr asked for a completion date of the project.

Mr. Zigler and Mr. DePaulis said about 4 weeks, weather permitting.

Chairman Ramsdell asked the applicant what his anticipation for compliance with all the comments on Phase 1 of the project is.

Mr. Zigler replied probably about a week.

Attorney Harold Pressberg asked that there is no more filling going on in the entire site until there is compliance with the permits already issued, is that correct?

Mr. Zigler replied that's correct.

Mr. Orr said that the Board can conditionally approve the project.

Mr. Pressberg said that we don't have Orange County approval yet.

Chairman Ramsdell said that the list of conditions is just now starting to materialize, and SEQRA must be decided.

Mr. Pressberg suggested typing this project as an Unlisted Action under SEQRA, with the same conditions as the first application.

Chairman Ramsdell asked if there are other agencies involved.

Mr. Edsall said that the DEC issues a general permit. This is not an individual permit. The applicant does not have to apply for an individual permit, but must comply with the conditions of a general permit. We already have agencies that have issued permits - Department of Transportation (DOT) and Orange County Department of Planning (OCP). The Department of Environmental Conservation (DEC) has also already issued a permit. I don't see any reason why you couldn't conclude SEQRA. The SWWWP falls under the jurisdiction of DEC.

Chairman Ramsdell asked if, after having discussed SEQRA, Planning Board members are comfortable with discussing conditions. There was general discussion.

Mr. Edsall said that the Planning Board Chairman won't sign the plan for Project #09-05 (Phase 2) until Project #07-07 (Phase 1) is in compliance. One of the conditions should be that there will be no signed plan or permit issued until the initial plan is in compliance.

Mr. Orr stated that meetings have been held including Chairman Ramsdell, the applicant, and himself. Chairman Ramsdell has created an Application for Fill Permit document. One of the requirements for Phase 2 is that the closing conditions of Phase 1 must be met.

Mr. Pressberg said that the problem with the Fill Permit is that it was given without Phase 1 conditions being met.

Member Winters asked if DEC can fine the Planning Board.

Mr. Edsall replied no, but the DEC can fine the applicant. The Village of Chester has no enforcement responsibilities, and no legal jurisdiction. One hundred percent of the responsibility is up to DEC. We are looking at this project for the SEQRA standpoint. We believe that there is no environmental problem.

Mr. Orr said that it is very important to get the stormwater right from the beginning because of proximity to neighbors.

Mr. Edsall suggested increasing the time so that the applicant can be watched a little closer. The SWWWP must be complied with in all respects.

Chairman Ramsdell said that notes need to be shown on the plan. There was general discussion.

Mr. Orr said that the first thing that needs to be done is to have the basin be established. Some fill will need to be brought in to establish the basin. Mr. Orr said that the hours of operation for Phase 2 will be the same as those of Phase 1.

Mr. Zigler stated that the hours of operation will be 6AM - 4PM on weekdays, and 7AM - 5PM on Saturdays only; no Sundays or holidays.

Chairman Ramsdell asked if there is anything else we want memorialized on the plans.

Mr. Orr suggested identifying the person who will manage and inspect the project.

Mr. Edsall said that the key is to link the Site Plan to the SWWWP. If we do that, the applicant will have to comply with both. Other than filing the sediment basin, there should be no other fill until the basin is complete. This mirrors the SWWWP. The DEC and DOT permits shall be obtained and kept active during the course of the project.

Chairman Ramsdell said that all of our comments are not rigidly formed at this point. We will ask for guidance from Mark Edsall and Harold Pressberg.

Chairman Ramsdell requested a **Motion** to type this project as an Unlisted Action under SEQRA and for the Planning Board to do an uncoordinated review. A **Motion** was made by Member Reilly, seconded by Member Winters. All in favor, none opposed. **Motion** carries.

Chairman Ramsdell requested a **Motion** in favor of a Negative Declaration as this Board finds that this project will not result in any potentially significant adverse effects. Chairman Ramsdell noted that SEQRA is already in place for Phase 1. A **Motion** was made by Member Reilly, seconded by Member La Spina. All in favor, none opposed. **Motion** carries.

Chairman Ramsdell asked Mr. Zigler if he wanted Conditional Approval.

Mr. Zigler replied he did. Everything was very well understood tonight. We will straighten things out so that the Board will be happy with the first phase, and then we'll move on.

Chairman Ramsdell said that obviously, the Board is not trying to hinder things. We have an appreciation for the weather conditions and for the quality of the material. We will refer to this phasing business as #07-07 and #09-05.

Mr. Edsall listed the generalities of the Conditions of Approval as follows:

1. DEC and DOT permits must be kept valid.
2. Orange County Department of Planning - Local determination
3. Bonding - Maintained and access route

4. Project #09-05 will not be signed until Project #07-07 is final and accepted.
5. Establish basin
6. Payment of all fees

Chairman Ramsdell stated that the notes on the plan must meet with the satisfaction of the Planning Board Engineer in coordination with the Planning Board Chairman and Attorney.

Chairman Ramsdell requested a **Motion** for Conditional Approval of Project #09-05. A **Motion** was made by Member Reilly, seconded by Member Winters. All in favor, none opposed. **Motion** carries.

Mr. Pressberg asked where the Planning Board alternate was, and if he was notified about the meeting. Secretary Susan Marino replied that he is always notified by email, as are the other Planning Board members. The secretary received a "read receipt," but never received a reply as to whether or not he would be attending the meeting. The secretary was aware that there would be a quorum for the meeting.

Chairman Ramsdell said that this issue should be addressed.

5. Chester Shopping Plaza, LTD Project #08-06  
 Owner: Jacob Deutsch  
 Location: 69 Brookside Avenue, NYS Rt. 17M  
 JL Consulting - Larry Torro representing  
 Re: Proposal to SUBDIVIDE 3.5 +/- acres from previously approved Chester Plaza Hotel pad site. B-2 Zoning

Engineer Larry Torro explained they are here seeking approval of a 2-lot subdivision to create a separate lot for the Hotel. They have attended work sessions, and secured Variances from the ZBA.

Mr. Pressberg said that he was contacted by Attorney Ben Ostrer regarding receiving the form of easement, but he has not received it yet.

Chairman Ramsdell said that this variance was typed as an Unlisted Action. It was approved by the ZBA in April of this year.

Mr. Torro said that there are 2 variances in place for the proposed hotel site.

Chairman Ramsdell asked Mr. Edsall for his comments. Mr. Edsall's comments are attached at the end of the Minutes.

Chairman Ramsdell said that there are variances in place for the narrow side yard. There are 2 variances - 1 for each lot.

Chairman Ramsdell requested a **Motion** to hold a Public Hearing for this project at the next Planning Board meeting on October 27, 2009.

A **Motion** was made by Member Reilly; seconded by Member La Spina. All in favor, none opposed. **Motion** carries. The Public Hearing will be held on October 27, 2009 at 7:15 P.M.

Chairman Ramsdell asked if there are any Site Plan amendments.

Mr. Torro replied no, other than easements.

Mr. Orr pointed out that an Approval Box is needed on the plan.

Mr. Torro said that he will obtain the mailing list from Secretary Susan Marino.

6. 5 Brookside Avenue LLC Project #09-06  
 Re: Rezoning from M2 to B2 Zone  
 Recommendation from Planning Board to Village Board

Chairman Ramsdell said that there has been a zone change request received by the Village Board regarding 5 Brookside Avenue. The Village Board has the authorization to do this. That procedure requires a report from the Planning Board. The clock starts now, and we will get a jump start on this matter for the next Planning Board meeting. The Village Board, prior to holding a Public Hearing, needs to have the Planning Board report in hand. The Planning Board has 60 days from September 22, 2009 to approve a final draft.

Code Enforcement Officer John Orr distributed zoning maps to show the location of the 5 Brookside Avenue property and surrounding area. Mr. Orr then presented and explained the zoning map to the Planning Board members. The 5 Brookside Avenue property is currently in the M2 zone. Mr. Orr said that there is very little manufacturing going on in this zone. It is becoming very difficult for property owners or potential property owners to develop their properties under an M2 standard. The owner of the 5 Brookside Avenue property is requesting that the property be rezoned from M2 to a B2 zone.

Attorney Harold Pressberg asked if B2 zoning is the proper use for the property as opposed to B1 zoning.

Chairman Ramsdell said that one of the more significant issues to be looked at is site access. The issues in the Zoning Law that the Planning Board specifically needs to cover are in Section B of 98-40. We will not be spending any time on some of these issues, such as B-2 and B-5. Issues B-1, B-3, and B-4 need to be addressed. We will present our view to the Village Board. The Village Board is the approving agency. We need to look at the District Regulations in the types of uses regarding Zone B1 versus B2.

Mr. Pressberg said that the Planning Board members first need to answer the questions. Site access is a Planning Board matter. In order to make a proper recommendation, we need to look at the entire area, not just one property. We have to answer 3 of 5 questions.

Mr. Pressberg said that what we're talking about is change of use in the M2 zone region wide as opposed to a specific area. We don't want to do spot zoning.

Mr. Orr said that, in his opinion, the Village would be better served having the area as a B2 zone - it's the entrance to the Village - instead of an M2 zone. If the area is zoned as B1, then only B1 uses would apply. If the area is zoned as B2, then B1 and B2 uses would apply.

Mr. Pressberg said that the Planning Board needs to look at the broader issue in context of the comprehensive plan. We don't want to make a decision on this parcel without looking at the whole package.

Chairman Ramsdell asked if the Board members are clear on what's happening with this matter. All members confirmed that they understand the situation.

## **7. General Discussion**

Chairman Ramsdell said that there are a few other things, mostly administrative, to be discussed on the record. The application made by Wearhouse Outlet for the social club is in arrears with regard to Escrow. There have been letters sent to the applicant. We have asked our Attorney to send a letter as well.

Mr. Pressberg said that he needs to hear from the Village Board Attorney regarding this matter.

Mr. Orr summarized a letter that he sent to James Dillin regarding the Perriello property. There was general discussion regarding parking, prior uses of the building, new uses, and required inspections. Chairman Ramsdell summarized the Site Plan process parking calculation and subsequent approved shortage and how conditions with tenant changes have resulted in the shortage being increased.

Member Gene Winters said that he attended a Pattern for Progress meeting on September 17, 2009. He said that the meeting addressed SEQRA and amendments, and that it was outstanding. He thanked the Village Board for allowing him to attend. Member Winters wanted to go on record to thank Planning Board Secretary Susan Marino for coordinating and making arrangements for the meeting.

Mr. Orr advised the Planning Board members that if they want to go to a class, make sure to let Susan Marino know. Susan will be the central point and will coordinate the effort for members to attend classes. She will turn in one voucher for all members who wish to attend a specific class.

Chairman Ramsdell asked if there were any other matters to be discussed. There were none. He requested a **Motion** to adjourn the meeting. A **Motion** was made by Member Winters; seconded by Member Reilly. All in favor, none opposed. **Motion** carries. Meeting was adjourned at 9:55 P.M.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Susan Marino".

Susan Marino  
Planning Board Secretary