



COPAKE PLANNING BOARD

FEBRUARY 15, 2020

GRJH SPECIAL MEETING MINUTES

DRAFT

Please note that all referenced attachments, comprising 15 pages, are on file with the Copake Town Clerk and in the Planning Board office. An annotated listing of those attachments appears at the end of this document.

A special meeting of the Copake Planning Board was called to order at 10:15 a.m. by Bob Haight, Chair. Also present were Chris Grant, Marcia Becker, Ed Sawchuk, and Jon Urban. Steve Savarese and Julie Cohen were excused. Attorney Ken Dow was also present. Lisa DeConti was present to record the Minutes. The purpose of the meeting was to review the ongoing application of GRJH Inc. for a Convenience Store at the intersection of Route 23 and Craryville Road so as to bring the Board closer to a vote.

PUBLIC HEARING

NONE

SUBDIVISIONS/SITE PLANS

2017-38 SITE PLAN REVIEW – GRJH INC. – State Route 23 [Craryville]

- None

Alicia Metz appeared representing GRJH Inc. Mr. Haight made note of the fact that there are no new submissions and there hasn't been any for the past few months. He acknowledged that today's Board meeting is to make sure the application is complete.

Mr. Haight asked if any of the Board members had any questions or concerns. Mr. Sawchuk had several issues of concern. After consulting with Region 4 of the DEC Mr. Sawchuk questioned why the applicant has not submitted a Work Plan for Spill No. 1906329. He had issue with the fact that after two-and-a-half years there has not been any compliance with the NYS Navigation Law and NYCRR Part 613 (Petroleum Bulk Storage) raising his concerns of potential on-site soil contamination and unknown impact on the downstream ground water.

Ms. Metz explained that Hydrogeologist Jean Patota has submitted the preliminary reports that were requested by the DEC which included expanded details on the original tests that Ms. Patota had taken. Ms. Metz was not advised as to whether the DEC responded to this. Mr. Sawchuk brought up the fact that he spoke to Dan Wehn and Supervisor Andrew Fleck from the Spill unit of Region 4 of the DEC and as of yet there is no Work Plan.

Ms. Metz made note of the fact that the tests that were done took place last fall as part of the construction preparation as is normally done. She explained that it is possible that there is no Work Plan in place and submitted at this point because they are waiting for feedback from the State. Mr. Sawchuk pointed out that when someone buys a site that might have potential contamination they are responsible for whatever might be discovered. Ms. Metz acknowledged that she was aware of this. Mr. Sawchuk had issue with the fact that a sub-surface analysis of the site has not been done until recently.

Ms. Metz made note of the fact that whatever might be on this site has been there for a very long time, possibly forty to fifty years and the site was purchased with the knowledge that it might possibly need to be cleaned up. Mr. Haight also made note of the fact that the Board agreed to turn the responsibility of following up on this to the Building Department.

Mr. Sawchuk had concerns of what is downstream that might have migrated from this site as groundwater flow has been established to be from North to South. Another of Mr. Sawchuk's issues is how the Planning Board would be able to assess what the past or ongoing potential contamination is to the existing wells south of the site. It is Mr. Sawchuk belief that the applicant needs to remediate or excavate the issues on the site prior to any building. Once again Mr. Haight brought up the fact that this is why the Board is having this addressed by the Building Inspector so that any issues can be monitored by him and remediated prior to DEC approval.

Mr. Grant questioned what exactly the Work Plan is that Mr. Sawchuk is referring to. Mr. Sawchuk explained that the Work Plan is required by the Spill Unit of the DEC in compliance with the NYS Navigation Law and 6 NYCRR Part 613 regulations which pertain to Bulk Petroleum Storage and contamination. In response to Mr. Grant's question Ms. Metz explained that as part of their ongoing review the DEC will oversee this and determine the different scope of remediation processes for a site such as extraction, excavation or on-site treatments. Mr. Haight also made note of the fact that an Occupancy Permit would not be given in this case until DEC is satisfied.

Mr. Sawchuk also questioned whether the ZBA would have issued a Special Use Permit if they had known about the contamination on the site. It was Mr. Sawchuk's opinion that there should be more coordination between the ZBA and the Planning Board when both are involved in an application. Mr. Haight advised him that this will need to be addressed with the Town for the future. Mr. Sawchuk suggested having a joint meeting with the ZBA so that they can pinpoint their concerns and the assumptions that they have made.

Mr. Grant asked what was found on the site. Ms. Metz was not sure of the exact type of contamination however she noted that the DEC is aware of this and will consult with them as to what they will need to do to address the remediation.

Attorney Dow addressed Mr. Sawchuk's concerns regarding the ZBA's decision of the Special Use Permit and explained that the ZBA process is a much more conceptual level than the Site Plan process. He explained that the ZBA review is a much more limited review and is more concerned with whether a use is an accepted use within the parameters of the Zoning Code. Attorney Dow noted that these parameters are quite limited in the Code. Mr. Grant believed that Mr. Sawchuk's concern centers on the relevance of the Work Plan and the DEC procedure to Site Plan Review. Ms. Metz acknowledged that whatever method is needed, be it excavation of something else, will dictate the construction line of the project.

Ms. Metz explained that contaminated sites which have not been dealt with are usually referred to as Brown-Fields and these Legacy Spills are not unusual. She continued to explain that the rules are profoundly different now than the rules that were in effect when this site was used in that capacity forty or so years ago. She said that with the equipment that is available today the unlikelihood of something like that happening now is very, very unlikely being all the testing and monitoring that is done.

Mr. Grant questioned whether this is part of the Phase II. Mr. Haight explained that the Phase I was done during the ZBA process and inasmuch as it has since been determined that there was a gas station on the site GRJH agreed to do the testing now so as to identify the issue. Ms. Metz did acknowledge that when the project was first introduced to the Town, Geo-Probe Testing was done. She went on to explain that all a Phase I is, is a search of the records to determine the history of the site. She added that at the time they bought the site they were aware of the hydrologic lifts which they knew at the beginning would be a point of testing and this led to the preliminary testing that was done recently. It was also noted that there are no underground tanks however there was some underground piping that was found. Ms. Metz also noted that NY Leak Detection, who did the recent testing, has been back and will continue to monitor the site during the remediation process.

Mr. Sawchuk asked when it would be right for the Board to make a determination. Mr. Haight made note of the fact that the DEC has been notified of this and the fact, that it will have to be taken care of, and he will make sure that the Building Inspector does not issue an Occupancy Permit until this issue has been remediated to the DEC regulations. Ms. Metz did make note of the fact that this would be required no matter who bought the property whether it is a Burger King, an Electric Shop or a Post Office. Mr. Haight advised the Board that he could see no reason to hold up whatever decision the Board is going to make until the site is completely cleaned up. Mr. Sawchuk questioned whether the Board can request status reports from the DEC and asked if the DEC can order some downstream water testing.

Attorney Dow explained that if an approval is given to an applicant the process doesn't end there as there has to be continued oversight by other entities such as the DOH, DOT, DEC, etc. Mr. Grant did acknowledge that there is a neighboring property that had similar issues and is being actively monitored but it didn't stop the Board from moving forward with Site Plan Review. Mr. Grant could not see a reason why the Board would be required to wait for the DEC determination. He brought up the fact that Attorney Dow pointed out that this is a DEC matter and New York State will require the applicant to remediate however dictated and he does not see it as a factor relating to Site Plan Review. Ms. Metz also noted that the Construction Schedule might be impacted by whatever method the DEC requires for remediation. She acknowledged that whatever is determined by the DEC needs to be addressed.

Mr. Sawchuk sees this as the Board's opportunity to lay out the conditions for this project and he would be a lot more comfortable if the Board could request some monitoring of the wells by the applicant with respect to off-site migration. He also suggested requiring that some water samples be taken. Mr. Haight explained that it is up to the DEC and the DOH to make these requirements. Mr. Grant agreed and believed it would be the DEC's determination. Ms. Becker made note of the fact that Roberta Darling who owns Burt's Inn told her that every month the DOH tests the water of her point well which is downstream, to make sure it is safe for commercial use. Mr. Sawchuk's noted that his concerns center on elements that are not easily detectable. Mr. Grant once again referred to a previous Site Plan that had DEC monitoring and the Board was perfectly aware of it and proceeded with Site Plan Review. Mr. Grant didn't see a difference in the two cases.

Attorney Dow pointed out that the objective of the Board is to try to determine what an applicant can do with an existing parcel going forward and a lot of what is being talked about now are existing conditions that have been there and are irrespective of the Site Plan. He questioned how the Site Plan that is being reviewed is responsible for those things that have been there in excess of forty or fifty years and if the project never happened would remain there. He also added that if these are not affected or aggravated by the Site Plan then they are probably not within the scope of the Site Plan Review. Attorney Dow pointed out that the question is how what is being proposed is going to affect things. Ms. Becker pointed out that the Board couldn't know if anything was going to be amplified without knowing if anything was there. Mr. Haight once again pointed out that this is why this is being directed to the Building Department. Mr. Sawchuk didn't want to surrender the Board's judgment to the Building Department as he feels this subject should rest with the Board. Ms. Metz made note of the fact that GRJH does not have a choice in the matter as whatever is required by the DEC to remediate the site has to be done, and done the way the DEC requires it be done. She also pointed out that having this under the jurisdiction of the Building Inspector is just another entity of the Town overseeing it.

Mr. Sawchuk questioned whether this impacts the Negative Declaration. Attorney Dow acknowledged that this was done three years ago and this has been gone over several times and is presently being litigated. He explained that this has been brought up and it has been questioned as to whether the issue could be reopened. Attorney Dow added that there is appellate division case law that says it cannot be rescinded and reopened once the Lead Agency issued its approval. It was noted that this is in front of the Courts and the Courts will make this decision.

Ms. Metz made note of the fact that the DEC will assess what the issue is and will determine whether it needs to be removed, will remain or whether it needs to be addressed in some other way. Ms. Metz also noted that sometimes the DEC will determine that it remain in place. Mr. Grant questioned how this would impact the applicant's development plan. Ms. Metz felt there wouldn't be an impact unless the DEC says it isn't going to be excavated and it needs to be treated on-site. Mr. Grant asked whether there could be a scenario that would dictate changes to the Site Plan. Ms. Metz didn't foresee this scenario as the building is such a small portion of the property. She wouldn't be surprised if it stalled some of the construction process but she did not see it modifying the plan. Ms. Becker made note of the fact that the applicant would be starting the building process with a clean site and anything being done would not be exacerbating what is already there. Ms. Metz agreed. Mr. Urban asked if the applicant needed to act within a certain amount of time after the DEC made their determination. Ms. Metz did not believe there to be any specific timeline associated with this however she did note that some aspects might need to be accomplished within a certain period of time.

Mr. Sawchuck asked whether the Board could request that the DEC provide a status report on their letterhead. Mr. Haight noted that the Board could ask this.

ZONING DISTRICT:

Mr. Sawchuk questioned the correct Zoning District. Attorney Dow reminded him that the Zoning Districts were re-zoned in July of 2018. Ms. Metz also made note of the fact that the project was changed to accommodate the new zoning.

TRAFFIC STUDY:

Mr. Sawchuk also questioned the Traffic Study and felt it did not take into consideration the “attractive nuisance” aspect of this facility. Mr. Haight did note that this does take into consideration the traffic and everything going to this spot. Mr. Sawchuk did not see any mention of pedestrians and youths on bicycles in the Traffic Study. He did make note of the fact that he still had issue with the traffic at this intersection. Mr. Sawchuk did not see a way to address this. Mr. Grant questioned what the Town could do and advised that nothing can be done by the Town on Route 23. Mr. Haight did acknowledge that the only road that the Board could address is Craryville Road and brought up the fact that a crosswalk had been mentioned. He did point out however that there are no sidewalks on either side of the road. Mr. Grant said that he would like to see sidewalks incorporated over time but pointed out this was a Town issue.

Mr. Haight brought up the fact that after the DOT originally approved the Traffic Study they looked at it a second time to consider a left-hand turn lane. He added that they later made the decision that a left-hand turn lane was not required. Mr. Grant did point out that the DOT is a state agency and the Board does not have the authority override them. He added that only the Board can consider is to enhance the walk-ability of the hamlet area. Ms. Becker acknowledged the June 18, 2019 letter Lance Gormley of the DOT that stated that the Data does not support a Traffic Signal to be installed and the need for a left-hand turn lane needs to be further investigated. Ms. Becker also noted the July 2, 2019 letter from Mr. Gorney that stated that the analysis demonstrates the requirement for a left turn has not been met. Mr. Haight made note of the fact that the Board only has so much control over the intersections as well. Mr. Sawchuk reiterated his opinion that the intersection of Route 23 and Craryville Road is just not safe. Mr. Haight disagreed and stated that the site lines at that intersection are greater than any other intersection in the Town.

DRIVEWAY ENTRANCE:

Ms. Becker addressed the September 28, 2017 email from Highway Superintendent Bill Gregory that stated that there is already an existing entrance in place and in use. She also referenced his September 25, 2017 letter that acknowledged his approval and the fact that he had no objections to upgrading and improving the entrance.

STORMWATER PLAN:

The Board next reviewed the Stormwater Plan. Mr. Haight acknowledged the detention pond on the Plan that will capture and slowly release the water into the DOT system to prevent an unmanageable amount of water and remediate any issues. Mr. Haight also pointed out the gate valve on the plans which would shut off any flow going into the DOT system in the event of a spill. Mr. Haight made note of the fact that this was added on the recommendation of the Town Engineer as an added security.

Ms. Becker addressed the Hydrodynamic Separator the system that will need to be monitored and pumped out with a vacuum truck on an as-needed basis. She asked Ms. Metz how often this will need to be done. Ms. Metz noted that there is no answer to this at this time, however once this is done for the first time it will be able to be scheduled accordingly.

Ms. Becker read the September 19, 2019 letter of acceptance from the DOT into the record. It is addressed below:

The existing State drainage system under Route 23 has the capacity to handle the stormwater discharge from this site. The requirement pertaining to drainage impacts from private development adjacent to State Highways, that the development does not significantly increase either runoff or velocity as it enters the State highway drainage system, has been met. The development has revised the drainage plan to include a detention pond, which will result in a net decrease to the peak flow entering the State drainage system.

This letter does not address or alleviate the requirement to obtain permits from other outside agencies that are involved or have jurisdiction with this development, i.d. NYSDEC, Department of Health, etc.

Mr. Grant asked what the status of the Stormwater Prevention Plan was. He was advised that this was approved. The August 23, 2018 approval letter from the DOH was also acknowledged and read into the record.

COLUMBIA COUNTY PLANNING BOARD:

Ms. Becker also acknowledged the July 18, 2019 response from the Columbia County Planning Board which stated that “they found that this proposed action has no significant county-wide or inter-community impacts associated with it.”

LIGHTING:

Mr. Haight made note of the fact that the Board reviewed all the safety issues associated with the tanks, fuel and Lighting Plan. Mr. Haight noted that there is no spill-over of lighting and Ms. Becker acknowledged that recessed down lighting is proposed around the perimeter of the building. Ms. Metz also pointed out that the Town Engineer reviewed the Lighting Plan. Ms. Becker had questions regarding the nighttime lighting as she noted that this intersection is rather dark at night. Ms. Metz acknowledged that when it is operational the canopy lights will be on at night for safety purposes as well as straight down lighting that won't wander off the property. Ms. Metz then added that when the store is closed the lighting will be reduced. Mr. Grant asked if the signage would remain illuminated at night. Ms. Metz stated that the sign that is internally lit with LED light will most likely stay on at night.

Ms. Becker referred to the July 17, 2019 letter from Daniel Biggs of Weston and Sampson which stated that “light levels below the Canopy quickly drop at night within ten feet of the fuel canopy and minimum light levels are achieved on the paved portion of the site to meet safety guidelines for pedestrians and vehicles.” Ms. Becker mentioned that the letter did not say anything about lighting around the sign. She was advised that the sign will be lit internally. She questioned whether this was allowed by Town Code and was then advised that this is allowable in the code

as there is no scrolling on the sign which is what would not be allowed. Mr. Grant noted that concerns centered on whether the lighting would affect the residents of adjacent properties

LANDSCAPING:

Mr. Haight acknowledged that the landscaping plan has been reviewed previously and additions were made to the plans. Mr. Grant made note of the fact that there are three types of trees on the plan which are Birch, Apple and Spruce. It was also pointed out that there are no evergreens on Route 23 so as not to obstruct vision.

DESIGN STANDARDS:

Mr. Haight made note of the fact that the Commercial Design Standards of the building have been reviewed

AQUIFER:

Mr. Haight acknowledged that two Geologists as well as the Town Engineer have addressed the issue of an aquifer at the site. Mr. Haight referred to the July 17, 2019 letter from Town Engineer Daniel Biggs which stated that they “conclude that the proposed GRJH Craryville Gas Station has provided the proper precautions to minimize potential impacts to the surrounding environmental resources, and does not present a concern to local groundwater and nearby wetlands.”

Ms. Becker felt some clarification was needed regarding the Aquifer as there were conflicting reports as to whether there is or is not an aquifer below the site. Ms. Becker questioned whether the issue of the site over an aquifer was sufficiently addressed in the record. Mr. Haight made note of the fact that whether the aquifer was or was not beneath the site it was treated as if it were. He added that it was reviewed by Geologists as well as the Town Engineer as being over an aquifer no matter which map was correct.

Ms. Becker also questioned whether the issue of the surficial geology was sufficiently addressed. Mr. Haight felt this was addressed sufficiently as far as Site Plan Review was concerned. Ms. Becker referred to the subsurface of the site being glacial outwash and glacial till. Mr. Haight made note of the fact that Ms. Becker got her information from the same place as the Columbia County Planning Board (CCPB) does.

PARKING:

Mr. Haight asked the Board if they felt that they covered everything. Ms. Becker questioned whether the issue of parking was addressed sufficiently. She made note of the fact that there are nine spaces at the site and asked if that included employee parking. Ms. Metz was not sure if there was a break down to include employee versus regular parking. She also addressed the fact that there are eight spaces with one handicapped. Attorney Dow mentioned the fact that at one point Banked Parking was included on the plans. Ms. Metz wasn't sure the banked parking was still required after the new Town Zoning Code reduced the amount of parking spaces required. Ms. Becker addressed the part of the Code that stated that one space per employee was required for any business or commercial use. Both Ms. Metz and Ms. Becker believed the banking requirement went away. Ms. Metz acknowledged that there are five additional spaces by the dumpster which were designated for employee parking.

IN CONCLUSION:

Attorney Dow will draw up documentation for the Board to review at the next meeting.

Inasmuch as the Board has covered pretty much everything Mr. Haight advised everyone to be prepared for a vote at the March 5th meeting.

Ms. Becker also made note of the fact that the DEC should be contacted regarding Spill #1906329 as referenced by Mr. Sawchuk. Mr. Haight asked Mr. Sawchuk to provide him with the contact information for this.

ADJOURNMENT

There being no further business...

- **On a motion made by Mr. Grant and seconded by Mr. Sawchuk the Board voted unanimously to adjourn the meeting. The meeting was adjourned at 11:50 p.m.**

Bob Haight, Chair

Please note that all referenced attachments, comprising 15 pages, are on file with the Copake Town Clerk and in the Planning Board office. The referenced attachments are filed in the individual project files. An annotated listing follows:

ADMINISTRATION

GRJH INC.

September 28, 2017	Gregory to Haight/CPB (5)
August 23, 2018	DeRuzzio/DOH to Haight/CPB (1)
June 18, 2019	Gorney/DOT to Smith/GRJH (1)
July 2, 2019	Gorney/DOT to Smith/GRJH (1)
July 17, 2019	Biggs/Weston & Sampson to Haight (4)
July 18, 2019	Stalker/CCPB to Haight (2)
September 19 2019	Gorney/DOT to Haight/CPB (1)