

**Wilmington Planning Board**  
**September 14, 2015**

Board members present: Bob Peters, Judi Gould, Ray Curran, Ginny Crispell, Bert Yost .

Public present: Steve & Susan Corvelli, Randy Preston, Marcia McClelland, Renate Schneider, Judy Wilkins, Rarilee Conway, Janet Bliss, Cliff Holzer, Kyle Hewey, Ralph Schissler, Tom LaBombard, Attorney Dean Schneller and Shirley Lawrence.

**REGULAR MEETING CALLED TO ORDER** at 7:00 p.m. by Bert Yost. Motion to adjourn to executive session to discuss possible future litigation by Ginny Crispell, seconded by Bert Yost; carried unanimously. Janet Bliss questioned if Bob Peters would recuse himself from the executive session. Attorney Schneller explained that there were issues to discuss not related to this project.

Bob Peters returned to the meeting at 7:07

Bert Yost reconvened the meeting from the executive session at 7:22 p.m. There were no decisions made at the executive session.

**APPROVAL OF MINUTES**

\*A motion to approve the August 3, 2015 minutes was presented by Judi Gould, seconded by Ray Curran; carried unanimously.

**OLD BUSINESS:**

1. 2 lot subdivision for Todd Ottenstein on Hardy Road. Bert Yost will be acting Chairman.
2. Have received APA project permit. Conditions relate to signage approval. This should be taken care of the by the applicant. Also the Stormwater Prevention Plan is signed but not dated. DEC has sent a notice of intent and were not concerned over the missing date. Document was dated and initialed by Tom LaBombard.

\* Ginny Crispell summarized the project and where the board stands as of this date as follows

The original application from the Ottensteins was for a site plan review for the 15-acre lot on Hardy Road. This review was needed because the applicants felt they needed to build inside the 150-foot buffer of the scenic corridor. Later, at the Planning Board meeting in March, the Board was presented with a sketch plan for a subdivision. In June, the attorneys from the town and the Ottensteins, corresponded, dropping the site plan review, and the town's attorney stated than any minor subdivision required its own review. In addition, he reminded the Ottensteins' attorney that the Board, at any time, may require outside expert review.

The Planning Board did not receive the new, complete subdivision plans from Ralph Schissler until June 25, 2015. The new application to the APA was submitted on July 1, 2015. We reviewed these items at our July 6, 2015 meeting. Because of the concern about the wetlands, the Planning Board opted to have an expert review the wetland boundaries. This report was forwarded to the Planning Board on/about July 31, 2015. The Planning Board was to review the findings with the Ottensteins' representative at our August 3rd meeting, but the Ottensteins' representatives were advised by their attorney not to attend the meeting, mere hours before the meeting, and the Board was advised, by the Ottensteins' attorney, not to discuss the plans and wetlands delineations. Instead the Board reviewed a list of questions to be submitted to the APA. Members of the audience asked questions about the project as well.

.On August 28, 2015, the APA approved the project with conditions. Tonight's meeting is the first opportunity the Board has had to discuss that conditional approval, in order to move ahead with the next steps in the timeline. From the letters that were read (or will be read, depending on when the readings occur at the meeting, or if you want me to read them at all), there are those who imply that the Planning Board can deny a public hearing--this is not true. We are mandated to hold a public hearing, but there are time restrictions for notification of such a hearing, and the application has to be deemed complete to do so. The application is deemed complete when all items on our checklist have been received and reviewed. Once the application is deemed complete the Planning Board MUST schedule a public hearing. Tonight is the first opportunity that we've had to discuss/review the application and deem it complete.

Other letter writers are asking the Board to postpone the public hearing, until the delineation of the wetlands by the Board's representative are clearer. Again, we are mandated to hold a public hearing within 62 days of deeming the application complete.

Some letter writers have implied that the Planning Board doesn't want growth, or wants to discourage business/employment in our town. According to the letter of the law, the Planning Board is tasked "to broadly protect the public health, safety, and welfare of the residents of the Town of Wilmington and to protect their property through the land use regulations...as well as guiding appropriate infill development in the hamlet in order to protect the open lands in the surrounding areas of the community. And, "to support the conservation, protection, development and use of the unique scenic, aesthetic, wildlife, recreational, open space, historic, ecological and natural resources of the community. It is also the purpose and objective of this chapter to preserve the beauty and character of the Adirondack Park setting to the benefit of the Town of Wilmington, its resident, visitors, and business community."

For those of you who may not have followed Planning Board activities until now, I can assure you that the process we follow has nothing to do with who is developing, or why property is being developed, unless such development is unlawful. The process is simply mandated by the ordinances we must work under. Just as an aside, several subdivisions have taken far longer, between the APA and the town. I was personally involved in a development with my husband and a partner that took three years before any lots could be sold. And we have definitely used the services of outside experts on a few other occasions.

\*It was noted that the timing is the most important part of the process. This is the first opportunity the board has had to review this.

\*Bert Yost noted that he and Ray met with the APA on September 1st. They went over the questions regarding environmental issues and asked for written replies. Talked about approval for the septic system and asked about signage; impact to the wetlands etc. They would not answer the questions in writing and did not feel they needed to attend this meeting. At this point that the permit had been approved. Judi Gould asked that the questions and comments be made a part of the minutes.



## Input from APA on their Ottenstein permit review.

Bert Yost and Ray Curran met with Richard Weber and Susan Parker of APA staff on Tuesday September 1, 2015 concerning the Ottenstein Site on Hardy Road.

They declined to let us record the meeting and did not promise to respond to our questions with a written response, nor did they provide us with access to the three technical people that have had input into the review. The three other staff would be the wetlands, soil and waste-water engineering specialists.

They told us they had approved the subdivision the week before and gave us copies of the permit they have issued. Basically they said the permit contained the written response to our questions.

Nevertheless we went through our list of 11 Q's and one additional question. The dialogue follows:

Answers from APA to our questions:

Q.	What are the technical criteria observed in the soil assuring the site's adequacy for OSWD?
A.	<i>Less than 4 feet and more than 2 feet of soil above high seasonal groundwater in the observed test pit.</i>
Q.	Test pits reveal a minimum depth to seasonal high ground water of about 24 inches that is barely adequate for OSWD. Is this correct?
A.	<i>Yes.</i>
Q.	We believe that the site will need to have 24 inches of soil added to meet standards. Is this correct?
A.	<i>Yes</i>
Q.	We have observed the location of the logged test pits used to justify OSWD but recognize that the areas in which the pits are located are tiny. To what degree is staff confident that an adequate depth of soil exists over the entire area scheduled for placement and replacement of OSWD, not just in the spot with the test pit?
A.	<i>They looked around when they were on the site and took into account the size of the system proposed. But they did not know exactly where the system was to be placed nor was the area flagged where the system would be going.</i>
Q.	In addition to the observations of the independent wetlands expert, several members of the Planning Board have observed conditions on this site over the past five months. Has APA staff made any subsequent trips to the site to observe the wet soils conditions in or near the area marked for installation of the OSWD and the replacement area?
A.	<i>No.</i>
Q.	Is the staff concerned about nutrients or poorly treated sewage reaching the nearby wetlands complex of Beaver Brook?

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A.	<i>No.</i>
Q.	Since wetlands soils (with seasonal high groundwater at or close to the surface) were shown to be closer to the sites marked for OSWD than what is shown on the current plans, is staff concerned about the proper functioning of the OSWD systems?
A.	<i>No.</i>
Q.	Similarly with respect to erosion and sedimentation is staff concerned and, moreover, should any other conditions for development be added?
A.	<i>No.</i>
Q.	Is staff aware that immediately downstream of the wetlands on this site and along Beaver Brook there is popular trailhead on State Land and a swimming hole in Beaver Brook? Was this a factor in review?
A.	<i>No, not specifically.</i>
Q.	Is staff aware of several active wildlife trails across the site leading into and out of the wetlands complex? Was this a factor in review?
A.	<i>No, not specifically.</i>
Q.	Are there any other issues that you believe the Wilmington Planning Board should take into account in order to render a decision on this two lot subdivision?
A.	<i>No. But talked about signage.</i>
Q.	We believe that with the new wetlands boundary some of the proposed construction may be within the boundary of the wetland. Does this concern you?
A.	<i>No. Our staff made their determination.</i>
Q.	<i>To clarify an issue that has been brought up, does APA have exclusive wetlands jurisdiction?</i>
A.	<i>No. You must follow your law. The most restrictive will prevail.</i>

At the end we discussed why they had not taken the step of scheduling a public hearing, as the Planning Board had requested. The reply was they did not have any new information, which would warrant a public hearing, and they had time schedules to keep. We asked about the new wetlands boundary, But they said that had not been delineated on a map, therefore they had no new information to go on.

Review of the Waterfront Assessment Form: Bert Yost explained what the LWRP was.

\*The form was reviewed as presented.

\*Section 3 items were read and reviewed with section j being changed to yes instead of no. The attorney noted that a yes answer can be explained by the applicant. SWWPPP prepared to address erosion control issues for construction phase.

\*Bert noted there should be a date added to the application. Date it today.

\*Ray noted there are still questions of the wetlands. Without knowing where the wetland boundaries are it is tough to make a decision.

\*There was a discussion about having the delineations by Spada marked on the plans/maps. The applicant had felt that since APA had done it, it wasn't cost effective for them to do it again.

\*The attorney noted that APA as well the town has input on DOH regulations. Both entities need to apply the same standards. There is not a more stringent requirement for wetland than APA. Any waterfront development must assure that wetlands are protected. The Waterfront Assessment Policy addresses this for the town.

\*The board would like to see the discrepancies between the two delineations on a map.

\*Ray Curran noted that Dan Spada gave a report based on scientific study and is hard to understand by most people. The APA delineation was more of a casual delineation. He feels it is to everyone's benefit to know what the scientific study says.

\*Janet Bliss asked if the APA was given a copy of Dan Spada's report before they gave their approval of the project? She didn't feel this board should decide whose professional opinions are correct. She felt the applicant had done what was required of them.

\*It was stated that APA did get a copy of this report.

\*Ray questioned if anyone knew how much closer the wetland delineations are.

\*The consultant hired by the town had stated that the town needed to have a wetland expert and that was Dan Spada and the board was told that the findings would be shown on the map/plans.

\*Janet Bliss felt the services of Dan Spada was not part of what the applicant had agreed to pay for.

\*Janet further stated that the APA did not have to issue a permit and could have put a condition on the approval.

\*Attorney Schneller questioned the difficulty of putting the delineations on the map/plans. Ralph Schissler stated it would take one day in the field and a few hours mapping time.

\*It was noted that the public hearing would be the time for and place for public comments. Renata Schneider questioned how she could ask an intelligent question at the public hearing if she did not understand what is going on with the delineation of the wetlands and is not able to see a map.

\*The board reviewed the application checklist to determine if the application can be deemed as complete.

\*Judi Gould presented the following resolution: The application submitted by Todd Ottenstein for a two lot subdivision shall be deemed complete with the condition that the wetland delineation as defined in the Adirondack LLC Project Report submitted on July 31, 2015 by Daniel M. Spada is added to map, site plan and detail sheet by September 21, 2015.

Resolution was seconded by Bert Yost.

Discussion: Resolution needs to be worded differently

Three copies will be needed.

Janet Bliss noted that the site plan and detail sheet is not correct.

Motion to withdraw resolution by Judi Gould, seconded by Bert Yost; carried unanimously.

Judi Gould presented the following resolution:

The application submitted by Todd Ottenstein for a two lot subdivision shall be deemed complete with the condition that the wetland delineation as defined in the Adirondack LLC Project Report submitted on July 31, 2015 by Daniel M Spada is added to existing Adirondack Survey Subdivision map by September 21, 2015.

Discussion on signage and it was determined that signage is not part of this application and that the applicant would come back to the board for signage issues.

Resolution was seconded by Ginny Crispell; carried unanimously.

A motion was presented by Ray Curran to set the date for the public hearing on October 5, 2015 pending conditions are met; motion was seconded by Bert Yost; carried unanimously.

Ray Curran felt there should be a field inspection at the site done by the Planning Board. A date of September 28 at 10 a.m. was set upon permission of the owner. This would be for informational purposes only for the Planning Board.

Attorney Schneller reminded the board that they need to do SEQR review.

The board has determined to be an unlisted action under SEQR.

After review (Ray Curran questioned 13b since they do not have the wetland delineation) Ginny Crispell made a motion to issue a negative declaration, motion was seconded by Judi Gould; carried unanimously. (If there is a change in circumstances the SEQR can be addressed again at a later date)

Bob Peters took over the Chairman role for the rest of the meeting.

#### **PUBLIC COMMENTS:**

Judy Wilkins of 126 Hardy Road thanked the board for their thoroughness with the project. It is her wish to do everything they can to protect the wetlands. She is not anti-growth or anti-building but wants to make sure everything is being done to protect the neighborhood, the scenic corridor and the wetlands.

#### **CORRESPONDENCE**

1. Essex County Clerk-One new filing for July, 2015-Grace DeMacy estate-exempt August, 2015-no new filings.

#### **DISCUSSION**

1. Vacation rental tax being considered by Essex County on September 28th.
2. APA map amendments have been done on 24 acres on the corner of Fox Farm and Route 86. They have been reclassified to allow for development.

**ADJOURNMENT:** Motion to adjourn at 8:46 by Ray Curran; seconded by Bert Yost; carried unanimously.