TOWN OF WARWICK PLANNING BOARD
January 16, 2008

Members present: Chairman, Benjamin Astorino
Russell Kowal, Dennis McConnell
Roger Showalter, Carl Singer
Zen Wojcik, Tectonic Engineering
J. Theodore Fink, Greenplan
John Bollenbach, Planning Board Attorney

The regular meeting of the Town of Warwick Planning Board was held Wednesday, January 16, 2008, at the Town Hall, 132 Kings Highway, Warwick, New York. Chairman, Benjamin Astorino called the meeting to order at 7:30 p.m. with the Pledge of Allegiance.

PUBLIC HEARING OF Black Meadow Club

Application for site plan approval for the construction and use of a 4-foot high chain link fence running a total of 4100 feet and clearing over ¼-acre in the Ridgeline Protection Overlay District, situated on tax parcels S 23 B 1 L 2 and S 23 B 1 L 30; project located on the eastern side of Black Meadow Road 3600 feet north of East Ridge Road, in the LC/RU zones, of the Town of Warwick, County of Orange, State of New York. Continued Public Hearing from the 12/19/07 Planning Board meeting.

Representing the applicant: Michelle Babcock from Jacobowitz & Gubitz. Edward Marron, Applicant.

The following review comments submitted by Tectonic:

1. Board to discuss SEQR.
2. Applicant to discuss project.
    A. Status of legal proceedings.
    B. Proposed use of SBL 23-1-30.
3. Applicant has cleared approximately 0.8 Acres of trees and vegetation on their property along a portion of their boundary for the purpose of constructing a fence. The site is located in the Ridgeline Overlay District where permission from the Planning Board is required for clearing in excess of 0.25 Acres.
    A. Plan shows fence to be constructed in two sections, A & B. Board to discuss special conditions for fencing in each section.
    B. Revise the fence construction note to the Planning Board Attorney's specifications.
4. Applicant has complied with the requirements for a Timber Harvest Permit per §164-47.1F(3)(c)[2][a] by providing information and notes on the plans. Applicant shall obtain all building department permits for tree clearing and fence construction.
5. Include a Location Map showing SBL (tax map). Clarify affected lots.

BEFORE FINAL APPROVAL:

6. Provide the declaration and the recording information on the plan for Ridgeline Overlay Notes. Note the recordation date and provide a copy of the recording receipt to the Planning Board Attorney.
7. Pay performance bond and construction inspection fee for tree clearing and mitigation landscaping.

8. Pay outstanding review fees.

The following comment submitted by the Conservation Board, dated 1/16/08:

Black Meadow Club – None submitted.

The following comment submitted by the ARB, dated 1/16/08:

Black Meadow Club – None submitted.

Comment #1: Board to discuss SEQR.

Mr. Fink: The Planning Board has declared itself as Lead Agency. We have been reviewing this application with a short EAF. There had been (3) reports prepared by Robert Torgersen. He looked at (3) principal issues which were SEQR issues. One issue was a character issue, another issue was wildlife habitat, and the third issue was esthetics. I will give you a brief cap of what was found while going through the SEQR review process. The character issue was whether or not the fence because the length would be within the character of the community. They already have over 11,000 feet of fence that has been constructed on their other lands of approximately 700 acres of property for the hunting preserve. There are numerous other fences that also exist within the surrounding area. As far as the community character issue, it is certainly something that is found on both this property already as well as the surrounding area. From a habitat issue standpoint, there were no significant habitats found such as streams, wetlands, or ponds that are in the area of the proposed fence. In order to deal with the potential for any disruption of wildlife movements, the applicant has proposed to limit the height of the fence to 4 feet. They have also proposed to allow for space underneath the fence so that small mammals and reptiles could continue to move back and forth across the fence. The third issue as far as the esthetic issue, the applicant proposed the least visually intrusive type of material which is a black coating on a chain link fence to make it almost invisible within a visual standpoint. On Silvertail Road, which is the area where there is high visibility from public viewing locations, the applicant proposes to put evergreen plantings of Norway Spruce and a type of a Juniper. I believe they have addressed all of the mitigations appropriate for the issues that were identified.

Comment #2: Applicant to discuss project.

A. Status of legal proceedings.
B. Proposed use of SBL 23-1-30.

Michelle Babcock: With respect to the status of the legal proceedings, there is nothing new to report. With respect to the proposed use of SBL # 23-1-30, we have revised the plan to include a note that states that there would be no hunting on lot 30.

Mr. Astorino: Ok. John, are you ok with that note? Have you seen that?

Michelle Babcock: I have submitted a revised plan for John.

Mr. Bollenbach: Comment #2A should read as follow; *Provide proposed use of SBL 23-1-30 to indicate no hunting with map note to the Planning Board Attorney's specifications.*

Mr. Astorino: Ok.

Comment #3: Applicant has cleared approximately 0.8 Acres of trees and vegetation on their property along a portion of their boundary for the purpose of constructing a fence. The site is located in the Ridgeline Overlay District where permission from the Planning Board is required for clearing in excess of 0.25 Acres.

A. Plan shows fence to be constructed in two sections, A & B. Board to discuss special conditions for fencing in each section.

Mr. Astorino: Zen, correct me if I am wrong, but did we go through these comments at the last meeting?

Zen Wojcik: It was something for the record.

Mr. Astorino: Ok. But, are all of these comments the same?

Zen Wojcik: Yes.

B. Revise the fence construction note to the Planning Board Attorney's specifications.

Michelle Babcock: We have done that.

Mr. Bollenbach: Let comment 3B stand.

Mr. Astorino: Do you also want to keep comment 3A?

Mr. Bollenbach: No. That has been taken care of.

Comment #4: Applicant has complied with the requirements for a Timber Harvest Permit per §164-47.1F(3)(c)[2][a] by providing information and notes on the plans. Applicant shall obtain all building department permits for tree clearing and fence construction.

Michelle Babcock: We agree.

Comment #5: Include a Location Map showing SBL (tax map). Clarify affected lots.

Michelle Babcock: That has been done.

BEFORE FINAL APPROVAL:

Comment #6: Provide the declaration and the recording information on the plan for Ridgeline Overlay Notes. Note the recordation date and provide a copy of the recording receipt to the Planning Board Attorney.

Michelle Babcock: We will do that. I have provided John a draft copy of the declaration this evening.

Comment #7: Pay performance bond and construction inspection fee for tree clearing and mitigation landscaping.

Michelle Babcock: We agree.

Comment #8: Pay outstanding review fees.

Michelle Babcock: We agree.

Mr. Astorino: Do any Board members have any comments?

Mr. Bollenbach: Zen, I was looking at comment #5. Have you seen those notes on there regarding clarifying the affected lots?

Zen Wojcik: No.

Mr. Bollenbach: Ok. We will keep that on there.

Mr. Astorino: It is on there now? You will need to submit it.

Michelle Babcock: It is the same plan that we presented at the work session.

Mr. Astorino: Before I open the public hearing, we received a letter from Alan Lipman, dated 1/16/08 addressed to the Planning Board. We also received a letter from Jacobowitz and Gubits, dated 1/16/08 addressed to the Planning Board. This is a public hearing. If there is anyone in the audience wishing to address the Black Meadow Club application, please rise and state your name for the record.

Bill Leritz: I am the managing member of the Grange, LLC., and the developer of Hambletonian Hills. I am also the president of the Hambletonian Hills Homeowners Association. The HOA consist of (10) members. This is a subdivided residential building lot, which was subdivided in 1965. It was sold as a building lot in September of 1965. That was done 42 years ago. More than ¼ acre of land has been cleared on that lot. That has not been addressed.

Mr. Lipman: Bill, I don't think they understand which property that you are talking about.

Mr. Astorino: Is it SBL # 23-1-30?

Bill Leritz: Looking at the map, that is where they cleared more than ¼ acre.

Mr. Astorino: Is that the lot that they said there would be no hunting on?

Bill Leritz: Correct.

Mr. Astorino: Ok.

Bill Leritz: This thing that I have here should be in your file somewhere. It was Open Area Development that was approved by the Town Board. The plat K gives you a good clue. There was an A and an M. They previously bought M and merged it into their land. A through G have been built on in the Town of Chester. The Hambletonian Hills HOA, which I have said consists of currently (10) members with the Grange being the 10th member. It does not allow fences. This is in the document file with the subdivision that you all have worked on. A Liber Page 4 was filed on November 1, 2004. It is people's opinion that it is not out of character with the neighborhood. They are dead wrong. One half of this on this

side of it does not allow any fences at all, except for safety ordinance fences or swimming pool fences. I do not therefore feel that the members who live here should have this fence jammed into their face. The fence that is on the property line for Lot W4 will be about 160 feet from the house. I don't think it bothers him because he is bothered by other fences up there. On Lot W5, it is about 75 feet from the house. On Lot W6, it is about 114 feet from the house. When people see clearing activity and fences, they think of two things. They think about what it would look like. More importantly, they would think about how it is going to affect my property value. It will affect property values. It has affected property values. I am the one that suffers for that regarding the dollar damage. Do you follow what I am saying? I think you need to address that and modify the plan to account for that. I don't think that Torgersen's implication that there is no impact no affect. It is an implied thing that I read. It is not just for wildlife. It is for everything. There is an affect. I could say the same thing about the Warwick Conservation Board. There is an affect. I have regrettably written proof of that. That could come out later if it needs to. Once again, I am saying that fence should not be located on or very near the property line. It will affect the community and the neighborhood. The neighborhood adjoining does not allow fences. John, you have a copy of that document in your file.

Mr. Bollenbach: That is the declaration for the HOA subdivision.

Bill Leritz: I wanted to ask Mr. Fink if endangered species have been addressed?

Mr. Fink: The Habitat Report that was prepared by Robert Torgersen examined species on the site. He did not look specifically for endangered species as far as I know.

Bill Leritz: Did you know that there are endangered species on the site?

Mr. Fink: Yes.

Bill Leritz: Ok. I know that also.

Mr. Fink: There are endangered species throughout the Town of Warwick.

Bill Leritz: There are specific endangered species that were discovered on that site. There are also (2) vernal ponds that need to be examined by a Biologist. I am specially referring to the Salamander in those vernal ponds. This would be an addition to something else west of there. You would know about that. I am not talking about the Northern Cricket frog. There is an open factor as far as I am concerned that there are endangered species that have not been adequately looked for. How would this fence affect them? There is another thing that I wanted to ask. Have you completed your review for Garling's July 18th letter? I gather you have not yet.

Mr. Fink: Regarding Garling's letter, yes, I have completed a review of that quite some time ago.

Bill Leritz: I have never heard anything about it. Since I represent (10) different lot owners, I would like to know about it. I would like to know about all the different points in there. Is there anything in writing anywhere?

Mr. Fink: Yes. There are (3) reports that Torgersen completed. He examined the issues that were raised in there. We have a memorandum that I have prepared to the Planning Board where I had asked for further information to be evaluated on the site.

Bill Leritz: Could I get copies of all (4) of those?

Mr. Astorino: You could stop at the Planning office for that.

Bill Leritz: Ok. I have another thing that you might not be aware of. The lot owners of Lots W4, W5, and W6 have sued Black Meadow for trespassing and cutting of trees on their property. There was a considerable number of trees that have been cut.

Mr. Astorino: I believe that Marinucci was here. He had mentioned that.

Bill Leritz: There are maps in each of those (3) lawsuits that specifically site the trees.

Mr. Astorino: I am sure that will be taken care of in a civil matter.

Bill Leritz: That is all.

Mr. Astorino: Is there anyone else wishing to address the Black Meadow Club application?

Mr. Lipman: I represent the HOA and the Grange, LLC. My comments are expressed in my letter to you today that relates to this Lot K or SBL # 23-1-30. I heard you say that there will be a note placed that will say that there would be no hunting. What other use will be made of Lot K?

Mr. Astorino: John, I believe you had discussed that earlier. I believe it will be used just as open land.

Mr. Bollenbach: If there is any permitted use, they could use that. If there is any special use then they would have to obtain approval from the Planning Board. It would be to the Planning Board Attorney's specification. I believe it was Use # 73 or #74. I don't remember the Use number. That is why I have indicated on there to the Planning Board Attorney's specifications. We could work out the precise verbiage of that.

Mr. Lipman: We have a slightly different interest.

Mr. Bollenbach: *It is Use #73, General Uses: Annual membership clubs providing outdoor recreational facilities such as; private playgrounds, golf, swimming pools, tennis courts, fishing, and hunting preserves and trap and skeet shooting.* I believe those last two are activities that are ongoing on other Black Meadow property. I think Mr. Lipman had raised the issue previously as to whether a special use permit would be required for this particular parcel also. The applicant had indicated that they would not use it for those hunting preserve purposes. I would be satisfied with that map note.

Mr. Lipman: There are (2) Black Meadow Clubs. There is an entity that owns land. There is a membership club that is functioning. It functions on all of its lands with the exception of that parcel. I do not understand for that reason on why the fence is running around that parcel so it is to incorporate it within the rest of their property. If it isn't going to be used for hunting, and it is going to be used for some other purpose of the club, I would like to know that. If it is not going to be used for any purpose of the club, then it ought to be fenced out of the area that the club occupies lawfully. This parcel is not a parcel that they occupy lawfully for club purposes. It was not part of the club.

Mr. Astorino: They purchased this parcel. Is that correct?

Mr. Lipman: Correct.

Mr. Astorino: They purchased this parcel so whichever entity that you are explaining to us, one of the Black Meadow Clubs purchased this extra lot.

Mr. Lipman: Yes.

Mr. Astorino: At least in my opinion, they will not allow hunting on this section. I assume what they are going to do is to put some signage or what have you to that matter so that people could not hunt or discharge a firearm. I don't know if they are going to have passive walking or recreation. I cannot answer that at this point. If the applicant would like to touch base on that to the Board, they would be more than welcome to do so.

Mr. Lipman: Before you invite that, it has to be made very clear to you that parcel although owned by the same entity, it is not a part of what is now lawfully occupied and used as a membership club. It is not. It is not subject to anybody's opinion. This use was established decades before that parcel was acquired. If that parcel is to be used for any purpose of the membership club, it is an enlargement of what is now a non-conforming use. It is non-conforming in the sense that it does not have a special permit, as your ordinance requires for this use currently. It is therefore, not conforming without that permit. If the membership club has any purpose at all in mind for that parcel then that is an enlargement whether they hunt or not. First by statue, they may not discharge a firearm within 500 feet of a house. I don't need them to restrict this parcel against the discharge of firearms. I need this parcel restricted against any use by the club. If it is restricted against any and every use by the club, there is no reason for the fence to run around the parcel so as to include it in the club's property. The fence would be the proper way to prevent parcel K from being used for club purposes. I don't plan to have a policeman around to determine whether any use is being made. There is absolutely no reason if no use is to be made of it. They should be part of the same property that is fenced for club use. If it is, I would like to know. Is it going to be used for any club purpose?

Mr. Astorino: We will get to that. John, I am going to ask for your legal opinion.

Mr. Bollenbach: That was why I suggested to him to include a map note that it may not be used for those gun club; membership club purposes. This is a parcel that is within a residential zone. The supplemental regulations is where fencing is found. It is supplemental regulations for residential districts. That does permit the construction of fencing. I just wanted to make a differentiation that there were declarations and restrictions placed on the Hambletonian Hills portion of it. But, the Zoning Code for the other portions that are not encumbered by the declaration have certain requirements for fences. That was why the applicant had agreed to reduce the height to the 4-foot limit. In resident districts in the Town of Warwick, fences are permitted.

Mr. Lipman: I don't have a problem. If they want to fence parcel K in, that would be fine. Just put a fence along the southwesterly line of Plat K, so that it is maintained separately. I don't have a problem if they want to fence Parcel K in. But, let them do it completely and not to leave the boundary between the area that is used by the club and this other parcel open so that it may be used by the club. I am not quarreling with their right to fence it. I understand that John is correct. You could put a fence up in any residential area. Keep it separate. We have an issue here about club members using the road that we built to gain access to other club properties behind Parcel K. We don't want that.

Mr. Astorino: Do you mean Silvertail Road?

Mr. Lipman: Yes. Plat K needs to be maintained as a separate parcel and club members prevented from using it for club purposes.

Mr. Showalter: Mr. Lipman, wouldn't it make sense then if they were allowed to erect the fence along the boundary that would keep their members from going into the property from Silvertail Road?

Mr. Lipman: I don't know what gates they would put in.

Mr. Astorino: Isn't Silvertail Road a private road?

Mr. Showalter: Yes.

Mr. Astorino: Someone from Silvertail Road could call the Police Department if that happens.

Mr. Lipman: They benefit from an easement over at Silvertail Road. They own Plat K.

Mr. Showalter: Yes, they own Plat K, but you would have to go through Lot #W14 to get to Silvertail Road as what I see on the map in order to go to that little existing unpaved road.

Bill Leritz: Looking at the map, here is where there is an 8-foot access going out there.

Mr. Showalter: That is by Mr. Marinucci's house.

Mr. Lipman: There is a claim that they have the right to use it by going this way.

Mr. Astorino: That is the contention of the legal proceedings.

Mr. Lipman: The access of this parcel historically has been right across from here.

Mr. Vanderberg: Where is it now?

Mr. Lipman: Looking at the map, it is right there.

Mr. Vanderberg: Could you mark it on the map?

Mr. Lipman: I can't tell you precisely. There are other maps that show it. It goes out on an angle.

Mr. Vanderberg: Would you please mark it? How wide is that R.O.W.?

Mr. Lipman: I don't know. I don't have the map in front of me that shows it.

Mr. Vanderberg: Do you have a map that shows where the R.O.W. is?

Mr. Lipman: There is a filed map that shows it.

Mr. Vanderberg: Could you send us that map?

Mr. Lipman: Do we have a copy of a miniature filed map?

Bill Leritz: Yes. What do you want to see?

Mr. Astorino: That still needs to be determined. Let us get back on track.

Mr. Lipman: Looking at the map, here is Plat K. This is where it comes off. That was how our access was achieved in order to get to Plat K.

Mr. Vanderberg: I don't see where the R.O.W. is?

Mr. Lipman: It is right here. Whatever was left of that way from here to here, is no longer apparent. It has not been used.

Mr. Vanderberg: You just said that we had a R.O.W. in that area.

Mr. Lipman: I said that you have access to Silvertail Road.

Mr. Vanderberg: I am asking you where is that?

Mr. Lipman: I am showing you where that is. It is right here.

Mr. Vanderberg: What do we do? Do we jump over this spot?

Bill Leritz: It is not we. You have to get rid of the we.

Mr. Lipman: You don't have any frontage on this road.

Mr. Vanderberg: How do we have a R.O.W. to this road? How do we get to the road?

Mr. Lipman: The deed contains a reference of the right to use that road.

Mr. Showalter: Mr. Lipman, who's deed?

Mr. Lipman: It is the deed of Plat K. Historic description of Plat K includes an easement or a R.O.W.

Mr. Astorino: That issue is going through the legal proceedings as what I understand.

Michelle Babcock: That is correct.

Mr. Lipman: It is absolutely clear that is the way that access has been achieved. Nobody has ever lived there except for the camper.

Mr. Showalter: I am talking about the surrounding lots.

Mr. Lipman: I am talking about Plat K in relation to the rest of their lands. It is not the same. It is not part of their operation. I would like to hear them tell you that.

Mr. Astorino: Ok. Do you have any other issues?

Mr. Lipman: I haven't seen the Jacobowitz & Gubits letter. I don't know if any of the Planning Board members had a chance to read mine.

Mr. Astorino: We have your letter for the record. We will get you a copy of Jacobowitz & Gubits letter.

Michelle Babcock: I could place a copy in the mail to Mr. Lipman.

Mr. Astorino: Ok. If not, Connie could get you a copy. Do any Board members have any other questions at this point about the access? John, do you want to give us an explanation of your opinion?

Mr. Bollenbach: The applicant has addressed that.

Michelle Babcock: It has already been covered. That lot is not being used for hunting purposes. That is why we had agreed to place a note on the map that says there would be no hunting under #73 of the Code. We have already revised the map to include that note. As John had said, we are looking to have a fence under the Code. We are entitled to have the fence. We meet the requirements of the Ridgeline Overlay District. That is it. All of these other issues with respect to access are all part of the litigation that is not a matter before this Board.

Mr. Astorino: Does anybody have any questions?

Mr. Lipman: I am going to ask a question to the applicant. I heard Ms. Babcock say that it is not being used for hunting purposes. That is not the use for this applicant. It is a membership club. John, isn't that correct?

Mr. Bollenbach: I will read it again. It is General Use #73 Town of Warwick under the Table Use Requirements §164-40M. It reads as follow: *"Annual membership clubs providing outdoor recreational facilities such as; private playgrounds, golf, swimming pools, tennis courts, fishing and hunting preserves, and trap and skeet shooting."*

Mr. Lipman: The Use is an annual membership club.

Mr. Bollenbach: Correct. It would be under the sub-category; providing outdoor recreational facilities such as; fishing, and hunting preserves, and trap, and skeet shooting.

Mr. Lipman: Is there going to be any fishing on this parcel?

Mr. Bollenbach: The condition that we have, #2B is to read; provide proposed use of SBL #23-1-30 to indicate no hunting with map note to Planning Board Attorney's specifications. I have specifically discussed this use. I would list the entire section #73. It is not going to be use for the membership club purposes.

Mr. Lipman: It is not going to be used for any purpose of the membership club.

Mr. Bollenbach: That is what I plan .

Mr. Lipman: Is that correct?

Mr. Bollenbach: I will list the entire use in the note.

Mr. Lipman: It is not going to be used for any purpose of the membership club. Why shouldn't the membership club be separated from everything else as it is everywhere else? Why shouldn't there be a fence along the common boundary of this parcel and the parcel used as a facility for the membership club? It ought to be separated.

Mr. Astorino: In your opinion.

Mr. Bollenbach: That is not an application before us.

Mr. Astorino: Right. I am not understanding this. If they are agreeing not to site that entire section that they are not going to use that parcel for A, B, C, and for whatever else is in there… For us to require them to run a fence there to prove what? You are looking at a hypothetical here. Silvertail Road is a private road that is owned by Mr. Leritz or the HOA. If there is other vehicular traffic on there that is in essence trespassing, I would call the Police Department and make a complaint.

Mr. Bollenbach: That would be a civil or criminal matter.

Mr. Astorino: Exactly.

Mr. Lipman: I want you to understand the letter that I submitted to you tonight. John, did you see the letter?

Mr. Bollenbach: Yes.

Mr. Astorino: Mr. Lipman, do you have anything further?

Mr. Lipman: I want you to understand my position that nothing should be approved on this property that is at all possibly an expansion, or an enlargement, or an extension. An extension is not necessarily in area. Preserving it is an extension. This fence may very well be intended to preserve this use. It requires a special permit to be looked at with your current standards for this use. You have a site plan. I don't know if the site plan shows all the structures or not. It is not a big deal to require them to apply for a special permit and legitimize the whole thing.

Mr. McConnell: Mr. Lipman, where is this going? Is the purpose here to discourage the applicant from putting up a fence? Is that the bottom line?

Mr. Lipman: Where is what going?

Mr. McConnell: This whole thing regarding where the buildings are and whether it is a extension of the use or not an extension of the use. What is the point? Is the point that you don't want the fence built?

Mr. Lipman: Certainly. We would prefer not to have this fence built because it affects the value of our properties.

Mr. McConnell: I disagree. A 4-foot high fence that is being designed to blend into a wooded back drop…

Mr. Lipman: It is right on the edge of the road. It is right on the front lot line.

Mr. McConnell: And, that reduces the value of the property?

Mr. Lipman: I think so.

Mr. McConnell: I think I could point out about 100 homes within the Town that have the fence on the front property line. Those people would disagree if anything that it would reduce their property value. Some people would tell you that it enhanced it.

Mr. Lipman: You asked me where this was going.

Mr. McConnell: Right.

Mr. Lipman: It goes wherever the law goes with respect to whether they are entitled to this relief regarding the right to put this fence up without acquiring a special permit that is required for this use.

Mr. McConnell: If a special permit was necessary, arguendo, and they obtained one, would you and your client be satisfied?

Mr. Lipman: I would be satisfied if you followed the law.

Mr. McConnell: I see. The point is that we are not following the law. That is what you are saying.

Mr. Lipman: I think that granting the permit is not to follow the law. That is what I am saying. I think that when you put one use on a map and put a fence all the way around it, then remove the fence in an area where there is an additional lot that has been acquired, but not permitted… I can't imagine the Planning Board saying let's put a fence around the whole thing eventhough one parcel is used for one purpose and the other is used for no purpose at this time, but doesn't qualify for use for the first purpose. I don't see any reason to allow that.

Mr. McConnell: Ok.

Mr. Lipman: I think they should be separated. They should be separated by the same fence. I don't have a problem if they want to circle the rest of that residential lot.

Mr. Astorino: Do any Board member have any further questions. Is there anyone else wishing to address the Black Meadow Club application? Let the record show no further public comment.

Mr. Bollenbach: Does the applicant have any comments?

Michelle Babcock: I think we have addressed all of the comments.

Mr. Showalter: As I have recalled, there is going to be some mitigation done here. There was going to be some mitigation where the fence was going to be visible to the Grange and the resident's lots.

Mr. Astorino: Yes. Ted, I think you have touched on that?

Mr. Fink: Yes. The applicant has proposed (20) Norway spruces and (20) Hetzi Junipers within the area along Silvertail Road. That was the primary buffering that they had proposed. There is also some additional clearing that the applicant may need to do within the disputed area. They had done an assessment of the trees that were within that area. They estimated that approximately (25) additional trees may be removed. All of those would be less than 8" in diameter. Any trees within that area that are larger than that, what they would do in the field they would build a fence around those and would not locate a fence closer than 2 feet of trees over 8". They would not locate any fence posts within 5 feet of the mature trees.

Mr. Astorino: Zen, what is the requirement for a fence to the adjoining property or to a road? What are the setbacks?

Zen Wojcik: I think John had just addressed that. It would be right on the line.

Mr. Astorino: It would be right on the line.

Mr. Showalter: Especially with this being at the 4-foot height, etc…

Mr. Fink: They propose 1-foot from the line and in some cases up to 10 feet from the line. None, right on the line as far as I know.

Mr. Bollenbach: Ted, were there any special features to address any potential for endangered species in the area?

Mr. Fink: That was why we came up with the solution of having the fence elevated above the ground surface. What they are looking to do is maintain a 4" elevation above the ground surface to allow for the movement of reptiles, amphibians, and small mammals. In Torgersen's report, he looked very carefully at the ecological communities that are found on the site. He looked at wildlife. He prepared an inventory of the wildlife that was found on the site.

Mr. Showalter: What he said was that there were some mice and some small mammals. The largest mammal that he observed was the deer. He did not see a lot of evidence of small amphibians.

Mr. Fink: Correct. He did it on a basis of direct observation, calls, and animal tracks. Those were the methods that he used to identify wildlife on the site. Within the area of the fence, according to Torgersen's report, there are no water features. There are (3) reports. The first report that was done is dated October 26th. A follow up report was done on November 27th and a final report was done on December 19th. He had a total of (3) reports where he had addressed questions that were raised during the SEQR review process.

Mr. Astorino: Thank you. Does the Board have any further questions?

Mr. Showalter makes a motion for the Negative Declaration.

Seconded by Mr. McConnell. The following Resolution was carried 5-Ayes.

617.12(b)

State Environmental Quality Review (SEQR)

Resolution Authorizing Filing of Negative Declaration

Name of Action: Black Meadow Club Fence

Whereas, the Town of Warwick Planning Board is the SEQR Lead Agency for conducting the environmental review of a proposed fence to enclose a portion of the Black Meadow Club, Town of Warwick, Orange County, New York, and

Whereas, there are no other involved agencies pursuant to SEQR, and

Whereas, the Planning Board has reviewed an Environmental Assessment Form (EAF) for the action dated 5/25/07, the probable environmental effects of the action, and has considered such impacts as disclosed in the EAF.

Now Therefore Be It Resolved, that the Planning Board adopts the findings and conclusions relating to probable environmental effects contained within the attached EAF and Negative Declaration and authorizes the Chair to execute the EAF and file the Negative Declaration in accordance with the applicable provisions of law, and

Be It Further Resolved, that the Planning Board authorizes the Chair to take such further steps as might be necessary to discharge the Lead Agency's responsibilities on this action.

Mr. Showalter makes a motion to close the public hearing.

Seconded by Mr. Kowal. Motion carried; 5-Ayes.

Mr. Kowal makes a motion on the Black Meadow Club application, granting site plan approval for the construction and use of a 4-foot high chain link fence running a total of 4100 feet and clearing over ¼-acre in the Ridgeline Protection Overlay District, situated on tax parcels S 23 B 1 L 2 and S 23 B 1 L 30; project located on the eastern side of Black Meadow Road 3600 feet north of East Ridge Road, in the LC/RU zones, of the Town of Warwick, County of Orange, State of New York, subject to the following conditions:

1. Provide proposed use of SBL 23-1-30 to indicate no hunting with map note to Planning Board Attorney's specifications.
2. Revise the fence construction note to the Planning Board Attorney's specifications.
3. Applicant has complied with the requirements for a Timber Harvest Permit per §164-47.1F(3)(c)[2][a] by providing information and notes on the plans. Applicant shall obtain all building department permits for tree clearing and fence construction.
4. Include a Location Map showing SBL (tax map). Clarify affected lots.
5. Provide the Declaration and the Recording Information on the plan for Ridgeline Overlay Notes. Note the recordation date and provide a copy of the recording receipt to the Planning Board Attorney.
6. Pay Performance Bond and Construction Inspection Fee for tree clearing and mitigation landscaping.
7. Pay Outstanding Review Fees.

Seconded by Mr. Showalter. Motion carried; 5-Ayes.

Michelle Babcock: Thank you.

Other Considerations:

1. **Nick & Dromgold Subdivision –** Letter from ERS Consultants, dated 12/12/07 addressed to the Planning Board – in regards to the Nick & Dromgold Subdivision requesting a 1st 90-Day Extension on Final Approval of a proposed 2-Lot subdivision, SBL #10-1-58. Final Approval was granted on 7/19/07. 1st 90-Day Extension becomes effective on, 1/19/08.

   Mr. McConnell makes a motion on the Nick & Dromgold Subdivision, granting a 1st 90-Day Extension on Final Approval of a proposed 2-Lot Subdivision, SBL # 10-1-58. Final Approval was granted on 7/19/07. The 1st 90-Day Extension becomes effective on, 1/19/08.

   Seconded by Mr. Kowal. Motion carried; 5-ayes.

2. **Thompson-Ruhl Lot Line Change –** Letter from Lehman & Getz, P.C., dated 12/28/07 addressed to the Planning Board – in regards to Thompson & Ruhl Lot Line Change requesting a 6-Month Extension on Final Approval of a proposed lot line change, SBL # 15-2-6 & 7 and 12-4-40. Final Approval was granted on 8/15/07. The 6-Month Extension becomes effective on, 2/15/08.

   Mr. McConnell makes a motion on the Thompson & Ruhl Lot Line Change application, granting a 6-Month Extension on Final Approval of a proposed lot line change, SBL # 15-2-6 & b7 and 12-4-40. Final Approval was granted on 8/15/07. The 6-Month Extension becomes effective on, 2/15/08.

   Seconded by Mr. Kowal. Motion carried; 5-Ayes.

3. **Vincent Czubak Lot Line Change –** Letter from John McGloin, Surveyor, dated 1/2/08 addressed to the Planning Board – in regards to Vincent Czubak Lot Line Change requesting a 6-Month Extension on Final approval of a proposed lot line change, SBL # 6-1-40, 41, 42, & 46.1. Final Approval was granted on 7/18/07. The 6-Month Extension becomes effective on, 1/18/08.

   Mr. Kowal makes a motion on the Vincent Czubak Lot Line Application, granting a 6-Month Extension on Final Approval of a proposed lot line change, SBL # 6-1-40, 41, 42, & 46.1. Final Approval was granted on 7/18/07. The 6-Month Extension becomes effective on, 1/18/08.

   Seconded by Mr. Showalter. Motion carried; 5-Ayes.

4. **Lands of Ansley –** Letter from Kirk Rother, P.E., dated 1/9/08 addressed to the Planning Board – in regards to the Ansley Subdivision requesting 1st 90-Day Extension on Final Approval of a proposed 4-Lot Subdivision, SBL # 63-1-16. Final Approval was granted on 8/15/07. 1st 90-Day Extension becomes effective on, 2/15/08.

   Mr. McConnell makes a motion on the Lands of Ansley application, granting a 1st 90-Day Extension on Final Approval of a proposed 4-Lot Subdivision, SBL # 63-1-16. Final Approval was granted on 8/15/07. The 1st 90-Day Extension becomes effective on, 2/15/08.

   Seconded by Mr. Kowal. Motion carried; 5-Ayes.

5. **Lands of Tougas –** Letter from Kirk Rother, P.E., dated 1/9/08 addressed to the Planning Board – in regards to the Tougas Subdivision requesting 1st 90-Day Extension on Final Approval of a proposed 2-Lot Subdivision, SBL # 44-1-27.4. Final Approval was granted on 8/1/07. 1st 90-Day Extension becomes effective on, 2/1/08.

   Mr. McConnell makes a motion on the Lands of Tougas application, granted a 1st 90-Day Extension on a proposed 2-Lot Subdivision, SBL # 44-1-27.4. Final Approval was granted on 8/1/07. The 1st 90-Day Extension becomes effective on, 2/1/08.

   Seconded by Mr. Showalter. Motion carried; 5-Ayes.

6. **Conklin-Kunisch Lot Line Change –** Letter from Robert McManus, Attorney, dated 1/10/08 addressed to the Planning Board in regards to the Conklin-Kunisch Lot Line Change requesting 1st 90-Day Extension on Final Approval of a proposed Lot Line Change. SBL # 25-4-2 & 24-1-31.211. Final Approval was granted on 7/18/07. 1st 90-Day Extension becomes effective on, 1/18/08.

   Mr. Kowal makes a motion on the Conklin-Kunisch Lot Line Change application, granting a 1st 90-Day Extension on Final Approval of a proposed lot line change. SBL # 25-4-2 and 24-1-31.211. Final Approval was granted ion 7/18/07. The 2st 90-Day Extension becomes effective on, 1/18/08.

   Seconded by Mr. Showalter. Motion carried; 5-Ayes.

7. Planning Board Minutes of 12/5/07 & 12/19/07 for Planning Board Approval. (On 1/10/08 @ 3:40 p.m. – I emailed to PB).

   Mr. McConnell makes a motion to Approve the 12/5/07 and 12/19/07 Planning Board minutes.

   Seconded by Mr. Kowal. Motion carried; 5-Ayes.

Correspondences:

1. **Chooljian –** Letter from Karen Emmerich, Engineer, received on 1/16/08 addressed to Planning Board in regards to the Chooljian 3-lot Subdivision SBL # 31-1-67. Final Approval was granted on 1/17/07. Applicant needs to get re-approval.

   Representing the applicant: Bob Krahulik, Attorney.

   Mr. Krahulik: This is a proposed 3-lot subdivision. The primary reason for the delay was that he had to get a release from their Lending Institution for the 25-foot strip of land within the bed of the road for road widening purposes. Everything had been submitted. But, by the time the Chairman signs the map, we will be beyond our one-year timeframe.

   Mr. Bollenbach: It has been scheduled before the Town Board for the acceptance of the dedication strip tomorrow evening. This is just a formality. Ted, has everything been addressed in SEQR?

Mr. Fink: Yes.

Mr. Bollenbach: There is no change in circumstances. It is the same approval that was just approved one-year ago. If the Board wants to entertain it, would the applicant request a waiver of the public hearing?

Mr. Krahulik: Yes.

Mr. Singer makes a motion on the Chooljian applicant to waive the public hearing.

Seconded by Mr. Showalter. Motion carried; 5-Ayes.

Mr. McConnell makes a motion on the Chooljian Subdivision application, granting **Re-Approval** of final approval for a proposed 3-Lot Cluster subdivision, situated on tax parcel S 31 B 1 L 67; parcel located on the northern side of Sleepy Valley Road, 3,200± feet south of West Ridge Road, in the RU zone, of the Town of Warwick, County of Orange, State of New York, subject to the conditions of Final Approval granted on 1/17/07. (See attached).

Dear Applicant:

By Resolution of the Town of Warwick Planning Board during its regularly scheduled meeting held on January 17, 2007, final approval was granted (Vote 5-0-0) for a proposed 3-Lot Cluster subdivision, situated on tax parcel S 31 B 1 L 67; parcel located on the northern side of Sleepy Valley Road, 3,200± feet south of West Ridge Road, in the RU zone, subject to the following conditions:

1. Label the grass swale on plans. Label the size of the culvert pipe (±Sta. 8+20) on the plans.
2. Show setback on proposed lots.
3. Provide a copy of the submitted NOI.
4. Note that silt fence shall be installed parallel to the contours. Revise where proposed silt fence will concentrate runoff flows.
5. Provide rock outlet protection at proposed culvert. Provide design calculations and details.
6. Roof drain/foundation drain for residence on Lot #2 is crossed by swale and does not outlet perpendicular to contour. Revise outlet location.
7. Applicant to provide detail for paved common driveway than a per §164-41.2K. to Town Engineer's specifications.
8. Complete metes & bounds along Sleepy Valley Road.
9. Provide the declaration and the recording information on the plan for Ridgeline Overlay Notes, Agricultural Protection Notes, Common Driveway Use and Maintenance Agreement Notes, and Open Space Notes.
10. Certify setting of iron pins. Surveyor to certify that iron rods have been set at all property corners and corners of open space.
11. Provide dedication strip on Sleepy Valley Road for Town Board Approval.
12. Pay Parkland Fees.
13. Pay Outstanding Review Fees.

Seconded by Mr. Showalter. Motion carried; 5-Ayes.

2. **Brian Singer –** Letter from Kirk Rother ,P.E. dated 1/10/08 addressed the Planning Board in regards to the Brian Singer 2-lot subdivision SBL # 66-1-75. Requesting a recommendation for their project to be reviewed by the Zoning Board of Appeals for a 280A Variance.

Mr. Astorino: Do any Board members have a problem with that? John, will you take care of that? What do you need? Do you need a positive or negative from us?

Mr. Bollenbach: Do we have a consensus from the Planning Board for a favorable recommendation?

Mr. Kowal: Yes.

Mr. Singer: Yes.

Mr. McConnell: Yes.

Mr. Showalter: Yes.

Mr. Astorino: We have a favorable recommendation from the Planning Board. We will take care of that.

Privilege Of The Floor For Agenda Items!!

Mr. Astorino: If there is anyone in the audience wishing to address any of the agenda items, please rise and state your name for the record. Let the record show no public comment.

Mr. Showalter makes a motion to adjourn the January 16, 2008 Planning Board meeting.

Seconded by Mr. Singer. Motion carried; 5-Ayes.