

PLANNING BOARD
TOWN OF COLONIE

COUNTY OF ALBANY

THE PROPOSED PROJECT OF CEDARVIEW CONDOMINIUMS
6-14 CEDARVIEW LANE, REVIEW AND ACTION ON CONCEPT
ACCEPTANCE AND FINAL PLANS - CONTINUED

THE TAPED AND TRANSCRIBED MINUTES of the above
entitled proceeding BY NANCY STRANG-VANDEBOGART
commencing on October 13, 2009 at 7:08 p.m. at the
Public Operations Center 347 Old Niskayuna Road,
Latham, New York 12110

BOARD MEMBERS:

JEAN DONOVAN, CHAIRPERSON
TOM NARDACCI
GEORGE HOLLAND
MICHAEL SULLIVAN
ELENA VAIDA
CHARLES J. O'ROURKE
PETER STUTO, Jr. Esq., Attorney for the Planning
Board

Also present:

Joseph LaCivita, Director, Planning and Economic
Development

Kevin DeLaughter, Planning and Economic Development

Ed Esposito, Monarch Design Group

Mike Magguilli, Esq., Town Attorney

Victor Caponera, Esq.

1 CHAIRMAN DONOVAN: Okay, we're here
2 tonight for Cedarview Condos.

3 At the last hearing we felt that we did
4 not have a complete application for this
5 project and this is one of the problems that
6 the board has. We feel that sometimes that
7 we're not given all the information that we
8 need to make decisions and we asked for some
9 more information which the department has
10 given us.

11 It's difficult for a board like this and
12 the individuals on the board. We all have
13 full-time jobs and we work outside the board
14 to be getting one day part of a package and
15 two weeks later another part of a package. We
16 should have an entire package in front of us
17 for each meeting.

18 I think that one time I gave Kevin a memo
19 outlining the things that I wanted included in
20 our packet.

21 This gentleman was in front of the board
22 in 2006, is that correct?

23 MR. ESPOSITO: Yes.

24 CHAIRPERSON DONOVAN: And now he's coming
25 back again.

 C.J., I know that you had a comment about
the current submission that you got.

 MR. O'ROURKE: This is the first
rendering of what it looks like.

 MS. VAIDA: If I'm not mistaken isn't
this the project the one that we talked about
in general when there is prior concept
approval?

 MR. O'ROURKE: One of them, yes.

 MS. VAIDA: And the current Land Use Law
now says that they expire after two years.

 MR. LANE: Well, a year and then they get
an extension for a year.

 MS. VAIDA: Right and they extend it
another year upon request. If there is no
other condition than it could continue to be
extended. I assume that there was a reason for
implementing that law. It must be based upon
the fact that circumstances change, the
environment changes, the laws change so that
something like this can't be extended more
than two years total.

1 It's troubling then when you get a
2 project that was granted back in '06 and it
3 comes before us being called a renewal of
4 concept approval when there is actually no
5 procedure in the Land Use Law to renew concept
6 approval. I don't want to say a lot, but it
7 comes up often enough and I think that we need
8 to know what to do with those projects that we
9 get.

10 CHAIRPERSON DONOVAN: Do we have to go
11 through a new SEQRA? Do we have the right to
12 act on prior concept acceptance? I think
13 that's the question.

14 MS. VAIDA: Right. I mean, to me, it
15 expired.

16 MR. DELAUGHTER: I think that the memo
17 that Mike put on the cover with the initial
18 materials provided to you indicates that this
19 is issuance of concept acceptance and now
20 renewal and not extension. It's issuance of
21 concept acceptance. Given that the departments
22 have reviewed the final plans and there is no
23 change in the project, we would be looking
24 obviously at compressing the timeframes. I
25 think that we also provided a new SEQRA
recommendation.

 CHAIRPERSON DONOVAN: But we should have
had this the last time, Kevin.

 MR. DELAUGHTER: I don't think that there
was an issue raised at that point as to the
process and that having come up, we have gone
back and have redone some things and
anticipated what we might need.

 MS. VAIDA: When these projects come up
like this, they have to start from scratch in
a sense so that it's a brand new concept?

 MR. DELAUGHTER: Concept has expired
outright, yes.

 CHAIRPERSON DONOVAN: This is another
thing. I asked at the last meeting if there
were any variances granted on the site and to
please give me copies of that and the variance
applications. I've always been told that we
don't need those and that it doesn't matter
any more because we have a new Land Use Law
and the zoning has changed.

1 This memo that I received from Mike Lyons
2 today says that: attached is a copy of
3 October 20, 2005 ZBA variance decision and
4 memo dated October 2, 2009 from Bob Cordell of
5 the Building Department stating that the
6 zoning verification issued on October 27, 2005
7 based on a ZBA variance granted on
8 October 20, 2005 remains valid since the
9 applicant has exercised his authority by
10 receiving an improved zoning verification and
11 has progressed the project through the site
12 plan review process.

13 MR. O'ROURKE: Right, when it expired.

14 MR. LACIVITA: No, not according to Mike
15 Rosch. According to Mike Rosch, what I've been
16 told is a zoning verification or a condition
17 does not expire as long as the applicant is
18 advancing his project through the process.

19 MR. O'ROURKE: Where does it say that?
20 Where can we read that?

21 MR. LACIVITA: I had to go to Mike myself
22 to ask him if that in fact is true?

23 MR. MAGGUILLI: Was this grandfathered?
24 Did they ever amend the Local Law?

25 MR. DELAUGHTER: It does fall under the
26 grandfathering provision in the original
27 adoption of the Land Use Law, as it's been
28 extended. There is a provision dealing
29 specifically with project that has variances
30 issued. So, basically the zoning verification
31 is based on the Zoning Law as it existed at
32 the time. That is according to the Building
33 Department still in effect.

34 The Planning Board's initial concept
35 acceptance based on that zoning verification
36 has expired, but the underlying zoning
37 verification still stands.

38 MR. MAGGUILLI: The zoning verification
39 is just that. At the time that he applied, it
40 complied with the zones of the then existing
41 Land Use Law. That's all it does. It doesn't
42 do anything else. If there is no provision in
43 the Land Use Law that allows for this type of
44 procedure then I don't think that we can do
45 it.

1 MR. DELAUGHTER: But there is a provision
2 that allows for grandfathering in terms of
3 zoning.

4 MR. MAGGUILLI: But that requires an
5 amendment to the Local Law if he wants to rely
6 on the previous approvals that he received
7 back in '05 or '06 whatever it was. That's
8 what we have done in the past. We have gone to
9 the Town Board, called for a public hearing,
10 went through all the concept and then amended
11 the Land Use Law to grandfather in this
12 project.

13 MR. DELAUGHTER: You've done general
14 amendments to the grandfathering provisions
15 under the Land Use Law.

16 MR. MAGGUILLI: Right.

17 MR. DELAUGHTER: To extend them a year
18 out.

19 MR. MAGGUILLI: Right.

20 MR. DELAUGHTER: Then this falls under
21 those general amendments.

22 MR. MAGGUILLI: The last one that we did
23 I think expired long before this. We haven't
24 done one in quite awhile. There is an
25 application pending now but I don't think that
26 we have extended past 2008.

27 MR. LACIVITA: In 2008 was the last one
28 that we did, yes.

29 MR. MAGGUILLI: I think that the last
30 grandfather -

31 MR. DELAUGHTER: Runs up through the end
32 of this year.

33 MR. MAGGUILLI: Was it this year or was
34 it last year?

35 MR. DELAUGHTER: This year.

36 MR. MAGGUILLI: And you think that this
37 would come under that?

38 MR. DELAUGHTER: In terms of the
39 applicability of the zoning regulations, yes.

40 MR. MAGGUILLI: I would have to check
41 that. I'm not familiar with this project at
42 all. It's been my experience that these things
43 come up with respect to specific projects
44 rather than generally extended.

45 MR. O'ROURKE: Obviously if Mike is going
46 to check stuff, it's going to get tabled
47 again.

1 Can I please get some renderings of the
2 buildings and some renderings on the roadways
3 to make sure that it does meet the conditions
4 of the ZBA that was granted in 2005? In two
5 packets, I have not received any of them.

6 CHAIRPERSON DONOVAN: We have a tax map
7 but we don't have a site plan.

8 MR. O'ROURKE: That's what I mean. I'd
9 like to see a site plan that has the three
10 conditions from the Zoning Board of Appeals
11 from 2005. So, if I could get all of that in
12 one packet, I would be very happy.

13 CHAIRPERSON DONOVAN: Kevin, do you want
14 to comment anymore on this?

15 I feel sorry for the applicant. I feel
16 sorry for him that he has to go through this
17 and he's not being advised as to what he has
18 to present to this board. This is the third
19 time and I still don't have a site plan.

20 MR. DELAUGHTER: I'd be astounded if the
21 site plan was not provided to you when this
22 was first put on the agenda for final review.
23 That doesn't happen. I'm not sure when that
24 was but it would have been provided to you
25 then, but not with subsequent packets.

CHAIRPERSON DONOVAN: This is what I've
been saying, Kevin, from day one that we
deserve full packets at the time that a
hearing is coming on. It's unfair to the
applicant and it's unfair to the board to send
the applicant back all the time because we
don't have the complete packets. I'm not going
to say it again, but I don't know how many
times I have to say it. We don't seem to have
that problem with we get packets from the
TDEs. We have everything in it. This is very
unfair to the applicant.

MR. O'ROURKE: It's embarrassing to this
board. I'm embarrassed to sit in front of this
gentleman and say, I'm sorry sir. I don't have
all the information that I need to be able to
make a decision on your project. I'm
embarrassed.

FROM THE FLOOR: You looked at this thing
a month ago when we were here. Why wouldn't we
be told? We had a whole month to prepare

1 whatever you needed. We would have provided
2 it.

3 MR. DELAUGHTER: And I didn't hear last
4 time that you were missing any of those
5 materials. I heard that there were questions
6 on procedure.

7 MR. O'ROURKE: That's why we tabled it.

8 MR. DELAUGHTER: No. There were questions
9 on procedure. You were looking for updated
10 application forms and updated SEQRA. I never
11 heard that you were not provided with site
12 plans, building elevations - none of that was
13 ever mentioned.

14 CHAIRPERSON DONOVAN: Don't you look at
15 the packets before they're sent to us?

16 MR. DELAUGHTER: In this case, no. This
17 was not my project. I didn't prepare the
18 packet but if you didn't have it, I'm sure
19 that you would have told us before. As far as

20 I know, I never heard anything like that.

21 CHAIRPERSON DONOVAN: We sent it back for
22 the complete paperwork. I'm not going to argue
23 with the department what I consider complete
24 paperwork. I already sent out a memo about
25 everything that I wanted in the packets,
26 Kevin. I'm still not getting it. I get part of
27 it one week, a month later I get a part of it
28 again. It should be a complete packet before
29 the board reviews it.

30 MR. DELAUGHTER: And as far as I know you
31 were provided with the complete packet that we
32 had at the time that this was put on the
33 agenda. We gave you supplemental information
34 as you requested at the last meeting.

35 CHAIRPERSON DONOVAN: Does anybody have
36 the site plan for this?

37 MR. LACIVITA: Did you have it in your
38 last packets?

39 MR. O'ROURKE: I checked my last packet.

40 MR. LACIVITA: You didn't get a full site
41 plan?

42 Were eight copies provided to the
43 Planning Board?

44 FROM THE FLOOR: There were 15.

45 MR. LACIVITA: Fifteen copies were
46 provided to us to distribute?

1 FROM THE FLOOR: Yes.

2 MR. LACIVITA: Then I don't know what
3 happened to them. I thought that they were
4 given to you guys at the last meeting.

5 MR. O'ROURKE: Like I said in our
6 conversation on Friday, I wanted to make sure.
7 I went back through and I didn't have it.

8 MS. VAIDA: I think that part of the
9 problem is sort of what Kevin said is that the
10 procedure was not clear. I guess until tonight
11 I didn't realize that we agreed that projects
12 like this where you have expired concept
13 approval require a new concept approval
14 process. All the documents that would be
15 required from the initial concept approval
16 need to be resubmitted. And if they need to be
17 updated, then update or whatever so that we
18 should have a complete package so that we can
19 look at all the criteria that we're supposed
20 to look at to decide whether or not concept
21 approval should be granted. I think that the
22 problem is that we have all those documents or
23 we have gotten them at different intervals -

24 MR. LACIVITA: One of the things that
25 I'll do from this point forward is if we table
a project, I will pull every single packet for
that project that evening and make sure that
any supplemental items -- so that we don't
have to go back and say, did you get this? Did
you get this? I will pull every packet when we
table a project, moving forward.

MR. DELAUGHTER: We did have a cover
memo, August 24th from Mike Lyons when the
project was originally scheduled. It does say
attached for your review site plans, color
renderings, application, declaration of
protected covenants, narrative, prior SEQRA
determination and department comment letter.

All of that was - as far as this memo
goes, was provided to you August 24th.

MR. MAGGUILLI: Is there any response to
that memo, Kevin?

MR. DELAUGHTER: These were materials
provided to the Planning Board but there is no
response in the file.

MS. VAIDA: The period was from '06,
correct?

1 MR. DELAUGHTER: That would have been the
2 final site plans as reviewed by the
3 departments.

4 MR. MAGGUILLI: Is there anything in the
5 file that indicates that any of that was
6 missing? Was there any response to that?

7 MR. DELAUGHTER: No and as I said at the
8 last meeting, I never heard anything from the
9 board that any of those materials were not
10 provided.

11 CHAIRPERSON DONOVAN: I think that we
12 said to go back and provide us the full packet
13 because we didn't have it. I'm not going to
14 sit here and say that I want X, Y and Z. It's
15 your job to give us what we need.

16 MR. DELAUGHTER: I guess what you're
17 saying is not what I heard. When we get the
18 transcript we can certainly review that. I
19 didn't hear that.

20 CHAIRPERSON DONOVAN: Yes, sir.

21 FROM THE FLOOR: Ms. Chairman, we were
22 told at the last meeting that this was tabled
23 because our concept approval had expired. I
24 was told to go back to the Building
25 Department, which I did the following day. I
saw Bob Cordell and he looked at the whole
thing.

Ed and I sat down for a couple of hours
and filled out all new documents and then Bob
Cordell called me two days later and said this
does not expire. I said, I was told by the
Planning Board that it had. It has not. So, he
said, you don't need to do this.

What I'm doing is that I'm getting all
different types of things. It's getting really
confusing and it's not a fun position to be
in.

CHAIRPERSON DONOVAN: I understand.

FROM THE FLOOR: I'm a small business
guy. I've had a lot of money invested in this
project for years. To keep coming to these
meetings and be told new things that we have
to accomplish, I don't think that it's fair
and you really all should be on the same page.
I want to understand what I have to accomplish

1 to get this done. Every time we do it, it's
never enough.

2 CHAIRPERSON DONOVAN: You first appeared
3 in front of the town in 2005 for a variance
for the site, is that correct?

4 FROM THE FLOOR: This was my attorney
5 here.

6 MR. CAPONERA: Yes, absolutely. I handled
the variance in 2005.

7 CHAIRPERSON DONOVAN: But this time we
8 did get a copy of the decision that was
granted back on 10/25. It gave us three
9 conditions that no parking is permitted on the
10 easement road coming off of
11 Watervliet-Shaker Road, all vehicular access
to and from the property shall be off the
entrance road of Cedarview Lane, and then of
course it's subject to any site plan review in
front of the Planning Board.

12 I honestly do not remember seeing any
plot plan for this.

13 MR. O'ROURKE: That's why when I got this
14 I went back through and I couldn't find the
site plan so I called Joe.

Did I, or did I not?

15 MR. LACIVITA: Yes.

16 MR. O'ROURKE: The day that I got my
packet I called him.

Sir, I'm trying to help you.

17 FROM THE FLOOR: What happened when you
18 asked him? Did they have one? Did you receive
19 one?

20 MR. LACIVITA: We had it and I went back
to the file. I saw that memo. I asked Mike
Lyons regarding it. We looked at the plot plan
21 and that's why I asked your engineer today. I
asked how many documents did you send? He said
22 15 copies. I don't know where they went.

23 FROM THE FLOOR: Tori signed for them,
Joe. I delivered them.

24 MR. LACIVITA: Even though you did, I
can't tell you where they went. If seven
25 members are sitting before me saying that they
did not get them, I have no idea what was in
that packet.

1 MR. DELAUGHTER: What about in August?

2 MR. O'ROURKE: No, I went back into my
3 August packet.

4 CHAIRPERSON DONOVAN: Besides, Kevin, I
5 don't want to have piecemeal packages.

6 MR. DELAUGHTER: Well, this is just a new
7 wrinkle. When something comes before you and
8 you put it off to another meeting, if we then
9 need to give you all new materials -- we're
10 talking about a small developer here. Who is
11 going to pay for all those additional copies?

12 MR. NARDACCI: We're all saying that we
13 didn't receive it. There are a lot of
14 documents that we receive.

15 CHAIRPERSON DONOVAN: You don't have
16 seven people sitting here lying. Once again,
17 Kevin, it's one of those things that everybody
18 can't be wrong and the Planning Department is
19 always right.

20 MR. LACIVITA: I will pull a packet if a
21 project is tabled. I will pull your packet
22 before we leave that evening so that we can
23 move forward and get you all the supplemental
24 documents that you want and then we put it
25 back on.

FROM THE FLOOR: Nobody is saying that
you're lying. Nobody is saying that. But had
we talked about it last month, we would have
gotten them. We would have bought new ones. We
had a month to prepare.

MR. O'ROURKE: As you look over project,
when you review them -- and again, most times
we have four days to go through them. I'm very
thorough. I go through my material. I was
looking for the Zoning Board of Appeals. I was
looking for what came in this packet. When I
got it and I went to find my site plan, I
didn't have it. I called Joe on Friday. I
picked my packet up on Thursday. Nobody is
trying to delay your project.

FROM THE FLOOR: What I'm saying is last
month why didn't someone say, we don't have
them. We could have prepared for that.

MR. O'ROURKE: I agree. I wish that I had
caught it but again, the reason that it got
tabled last time is because we were missing
stuff out of our packet.

1 MS. VAIDA: If I could just ask a
2 question so that we're clear? The prior zoning
3 variance that was granted in '05 - is that
4 valid today?

5 MR. O'ROURKE: Mike said that he had to
6 check.

7 MR. MAGGUILLI: I do have to check.

8 MR. CAPONERA: It is valid. There is
9 nothing to check. It runs with the land. There
10 is not even an issue there.

11 CHAIRPERSON DONOVAN: I've been told by
12 the Planning Department that because when we
13 had a new Land Use Law, it doesn't matter.
14 That's been my argument right from the start,

15 Victor. Variances go with the land.

16 MR. CAPONERA: I respectfully disagree
17 with that. I have cases all the way up the The
18 Court of appeals on that, but regardless.

19 CHAIRPERSON DONOVAN: We've been told
20 right along that is not the case.

21 MS. VAIDA: Maybe you could submit that
22 to our counsel. I think that we need an answer
23 to that question as to prior approvals.

24 CHAIRPERSON DONOVAN: I would like to get
25 this gentleman back on, immediately. I want
everything in front of us. I want to get him
on next week.

MR. LACIVITA: On the 20th?

CHAIRPERSON DONOVAN: Yes, on the 20th. I
don't want him to sit here and have to wait.
He'll be 7:00 on the 20th. I want this
gentleman on and I want my packets complete.

I'm sorry.

MR. ESPOSITO: It's no one's fault
Mrs. Chairman.

CHAIRPERSON DONOVAN: Well, it is but
it's not yours.

MR. O'ROURKE: I also have a problem with
Bob Cordell telling him about the planning

process.

CHAIRPERSON DONOVAN: He was mentioning
the zoning verification and you know -

FROM THE FLOOR: He was just talking
about the concept approval expiring. He wasn't
talking about what you guys do.

1 MR. O'ROURKE: Bob Cordell runs the
2 commercial end of the Building Department. His
3 comments in regard to the Land Use Law
4 probably should be left to counsel.

5 FROM THE FLOOR: I think that it was just
6 an interpretation at that point.

7 MR. O'ROURKE: Right, but it misled you
8 to believe his knowledge.

9 FROM THE FLOOR: Well, because we were
10 trying to reapply for the concept approval and
11 he said that you can't do that. That's why he
12 made that comment. You said I can't reapprove
13 this. It's against the law, he said. I'm only
14 telling you what he told me.

15 CHAIRPERSON DONOVAN: He didn't say
16 anything about the concept approval. He states
17 in his memo that the zoning verification issue
18 on October 27, 2005 based on the ZBA variance
19 granted on October 20th remains valid.

20 MR. O'ROURKE: But that's from Mike
21 Lyons.

22 CHAIRPERSON DONOVAN: But it's based on
23 what Bob Cordell said.

24 MR. O'ROURKE: Right, but that's Mike
25 Lyons. That's not his conversation with Bob
Cordell at the Building Department.

CHAIRPERSON DONOVAN: Can we get this
gentleman back on the 20th at 7:00?

MR. LACIVITA: The plans that we have in
this file right now haven't changed?

MR. ESPOSITO: They haven't changed.
We've been in hot pursuit for two years of
legal easements and filing for stormwater
management purposes. That really took two
years.

CHAIRPERSON DONOVAN: And the plans
mirror the conditions that were in the zoning
variance, is that correct?

MR. ESPOSITO: Yes. That was the closure
of the driveway.

MR. LACIVITA: The only thing that we're
really going to need to see, as far as I'm
concerned -- I don't think that we need a full
set. We don't need all ten pages of this. The
documents that you guys are requesting are
really of the site plan and the driveway
concerns.

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If you can submit to me eight sets of SP1 and SP2 and then we'll go from there.

MR. DELAUGHTER: And building elevations?

MR. LACIVITA: We actually have those here in the file, I think.

FROM THE FLOOR: Joe, she mentioned that maybe you might have them somewhere upstairs. Could take a look and see?

MR. LACIVITA: Oh, I will look around if we do have them. I'll let you know tomorrow.

CHAIRPERSON DONOVAN: October 20th first one. You don't even have to sit down. You can come in and stand right in front of me. Don't sit down as a matter of fact. You don't know what's going to happen.

(Whereas the proceeding concerning the above entitled matter was adjourned at 7:31 p.m.)

CERTIFICATION

I, NANCY STRANG-VANDEBOGART, Notary Public in and for the State of New York, hereby CERTIFY that the record taped and transcribed by me at the time and place noted in the heading hereof is a true and accurate transcript of same, to the best of my ability and belief.

NANCY STRANG-VANDEBOGART

Dated October 30, 2009