

February 8, 2012

**PINE PLAINS PLANNING BOARD MINUTES  
FEBRUARY 8, 2012**

**IN ATTENDANCE:** Don Bartles, Jr., Chair  
John Forelle  
Steve Patterson  
Sarah Jones  
Vikki Soracco  
Ken Mecciarello  
Kate Osofsky (arrived 7:40 PM)  
Louisa Grassi, Alternate  
Peter Salerno, Alternate

**ALSO PRESENT:** Sandra David  
Drew Weaver  
Warren Replansky  
Lauren Kingman, Town of Milan  
Twelve members of the public

Chairman Bartles called the meeting to order at 7:30 pm. He introduced Town Justice Christi Acker and asked her to administer the Oath of Office to all Board members who had not already taken it. Justice Acker administered the oath to Mecciarello, Bartles, and Patterson.

**THIS 'N THAT:** Mrs. Nuccio and her daughter were present for the discussion. This is for a proposed site plan review for a retail operation located at 7711 South Main Street and 9 Railroad Avenue. Bartles asked if this is the existing ceramics shop. Ms. Nuccio stated yes. The shop has been closed for quite some time. Bartles stated that he knew it was a retail business forever and questioned whether or not the Board actually had to do a site plan review. Bartles stated he read the requirements and spoke with Weaver about whether or not it was really necessary. Bartles asked if the applicant was making any changes to the business. Ms. Nuccio stated no. Bartles asked if they would be making any alterations to the building. Mrs. Nuccio stated no. Bartles stated the biggest criteria under the site plan section for having a site plan review would be alterations to the building. Bartles asked the Board if they felt a site plan review was necessary. Short discussion followed. Bartles stated he would like to waive the requirement of the site plan review. Jones made a motion to waive the site plan review requirements for This 'n That as there was a business there previously and there will be no alterations to the building; second by

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Patterson. All in favor; Osofsky absent for the vote. Motion passed. The Board moved on to discuss the proposed signage for the business. Bartles asked where the sign is going to be placed. Ms. Nuccio stated it would be underneath the Country Car Care sign. Bartles stated that is a plus. Bartles stated the only thing the applicant is in conflict with is the size of the sign. Short discussion followed. Bartles stated that obviously they would want the sign where it is going to be placed but the sign exceeds the maximum that is allowed. Bartles asked if the sign could be reduced to 4 sq. feet. Bartles stated if the applicant could change the dimension to a 2 X 2 sign it would be fine. Bartles stated a combination that adds up to 4 sq. feet with an extra 20% bonus for stacking that would be another square foot. Bartles stated a little less than 5 square feet would be fine. Short discussion followed. Jones stated it is better if it is more uniform with what is already there. Weaver advised the applicant that it will require a sign permit. The Board agreed on allowing a 4 sq. foot sign with a 20% bonus for stacking.

**MAIN STREET CAFÉ:** The applicant was present. They want to enlarge the existing sign outside the building so oncoming traffic can see or locate the business. The applicant would like to increase the size to 4 square feet; the sign will be made out of wood and supported by the previous sign bracket. The applicant stated it is not the sign flat on the building but the one that was sticking out. The bracket is there. Weaver stated the old sign was a little less than 3 square feet. Weaver stated since it was an increase in size it had to come before the Board. Bartles stated it is staying within the regulations. Board agreed to allow the sign increase as submitted.

**CARVEL PROPERTY DEVELOPMENT:** Jennifer Van Tuyl represented the applicant. She stated that she understood there had been discussions about a joint Planning and Town Board meeting for a presentation on March 14<sup>th</sup>. Van Tuyl asked if that was going to be at a special venue or if that had been decided. Bartles stated that the meeting will be that night and will reserve the 2<sup>nd</sup> floor of the Library for the meeting venue. Van Tuyl asked if the Board wanted the applicant to arrange for anything or do anything in preparation to let her know. Bartles stated that the applicant should supply anything they need for the presentation as far as electronics. Van Tuyl stated they would supply that and coordinate with Proper if anything

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else was needed. Bartles stated he wasn't sure if anyone had reserved the Community Room yet but would take care of that. Van Tuyl asked if the meeting would be at 7:00 pm or 7:30 pm. Bartles stated the time would be determined. Van Tuyl stated the Supplemental Draft EIS, which they believe is the most appropriate way to address the SEQR issues, is not in any way a short cut. She stated the SEQRA handbook does specifically state that an SDEIS before a final EIS is an appropriate way to address the situation where new zoning laws have been enacted while the DEIS is under consideration. Van Tuyl stated it is also clear that the Town's Zoning Law, Section 100-7G, provides that the existing SEQR that has been done on an application is appropriately considered where appropriate and relevant to the permitting and SEQR review of the amended application. Van Tuyl stated the applicant feels that all the work that was done on the DEIS is relevant. She stated it is the same property and the same natural resources and fundamentally the same project as it is a master plan community oriented around golf. Van Tuyl stated that she feels the SDEIS provides all the benefits to the Town of what might be called a do-over but it adds the benefit of having all the information that the Board has already amassed. Van Tuyl stated that doing the supplement is more procedure and more fairness than a do-over because in the SDEIS the applicant would do the supplement which would involve scoping, public input on scoping, preparation of a draft EIS that would go before the Lead Agency for determination of completeness, a full public hearing on the SDEIS, comments, a comment period, responses to the comments and an FEIS which would answer not only the comments on the SDEIS but also the comments made on the original draft. Van Tuyl stated in a do-over they would disenfranchise all the people who commented previously because they would start all over. Van Tuyl stated that there is information that needs to be updated and it could be updated in any SEQR document whether it was a FEIS or a SDEIS so the applicant is recommending the appropriateness of the SDEIS alternative because they think that it gives the Town and the applicant and the public all the benefits of the procedure of a DEIS while acknowledging all the work that was done and keeping the benefit of that. Van Tuyl stated that Replansky had stated that before issuing any opinions he wants to discuss all of this with the Town's planners. Van Tuyl stated that she knows they have not officially been hired and hopes that the process moves forward so the discussions can happen. Van Tuyl stated she

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is not putting the Board on the spot tonight to make a decision as the Board has consultants that they want to talk to. Van Tuyl stated it is important to recognize that the applicant believes there is no option under SEQRA of a do-over. She stated that what has happened does not fall into any of the categories that justify a re-designation of Lead Agency. They believe that the SDEIS option that is subject to all the full provisions and requirements of SEQR, meets the requirements of SEQR, meets the requirements of the Town code and is an appropriate way to complete the record. Van Tuyl stated she hopes the Planning Board, guided by its counsel and consultants, can move forward to consider that option. Replansky stated he has a different opinion. He agrees that an SDEIS is a process that the Lead Agency can follow and follows the same procedures as what Van Tuyl calls a do-over. He stated the SDEIS doesn't short circuit the process. Replansky stated there may be a benefit if the Town Board determines to go forward with considering the NND application to folding into that process a lot of the environmental work that was done both by the applicant and the consultants. Replansky stated that is something the Lead Agency will have to make a determination on. Replansky stated his position in terms of moving forward with the application is that a threshold decision has to be made by the Town Board because that is the Board to whom the NND application has been submitted under the new Zoning Law. Replansky stated it is not a tweak or a modification of the previous application that was made under the old Subdivision and Site Plan Review Law; it is an entirely new application under the NND provisions of the Zoning Law. Replansky stated the record of the processing of this application is replete with references and acknowledgements and agreements that when the new Zoning Law came into effect, the applicant had the discretion of coming in under the new Zoning Law with an application. He stated it could have been an application for a conservation subdivision or an NND but it is not the same application that was before the Board before the Town had Zoning. Replansky stated that the NND provisions are pretty specific in terms of how you deal with an application for an NND that has been filed. Replansky stated there has to be a re-designation or a designation or a threshold designation (however you want to put it) of a Lead Agency. Replansky stated it was assumed that the Planning Board would retain Lead Agency status but it is not a given or a requirement. He stated that issue has to be resolved by the Town Board and the

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other involved agencies. Replansky stated the Town of Milan is an involved agency and has to be brought into the determination of Lead Agency status under the new NND provision. Replansky stated he is not saying that ultimately the Town Board or the Planning Board will be determined to be Lead Agency, as it has to be decided. Replansky stated it is quite possible that the Lead Agency will decide that a SDEIS is more appropriate than a do-over but it is a decision that has to be made with the sound advice of the consultants. Replansky stated he feels the next step is for the Town Board at the next meeting to decide where it is going with this project under the NND law and then move forward from there. Replansky stated he sees no harm in tentatively scheduling a joint meeting. Replansky stated it is not simply a matter of picking up where we left off. Osofsky asked if the Town Board will be asking the Planning Board about all the work that has been done and how they feel. Replansky stated what he is advising is absolutely consistent with what has been stated before. Van Tuyl asked for a copy of the material Replansky provided the Board. Replansky stated it is material she already has, as it is a compilation of existing memos that he wanted to give the Board in one package because if you read through it, it brings you up to date on where we are. Replansky stated it has always been understood that under the new NND law there would be a Lead Agency determination and the requirements of proceeding with the application under the new law would be adhered to. Replansky stated this shouldn't be a surprise to anybody. Van Tuyl stated she would very much like to see the documents that were provided to the Board. She stated she has read all of the prior documents and doesn't see anything that compels a Lead Agency designation. Bartles stated Replansky would provide them to her. Bartles stated there is one document that is not public record. Replansky stated there is one confidential memo but the rest is all information that Van Tuyl already has. Van Tuyl reserves the opportunity to respond if there is anything that is relevant as she doesn't know of anything in the documents that changes what the SEQRA says about the appropriateness of SDEIS's or what the code says about the relevance of previous SEQR reviews and doesn't feel there is any basis for a re-designation of Lead Agency. Van Tuyl stated the purpose of the meeting is not to argue but to determine the right way to go and the applicant certainly wants to cooperate with the Town and all the Town's agencies. Van Tuyl stated that this is a situation where a legislative

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decision is involved and at the end of the day they want the Town to be satisfied that there is a benefit for the Town. Van Tuyl stated there also is a mountain of work that has already been done and they believe it is an important part of the review. Van Tuyl stated that SEQRA has worked and wants projects to change and get better and better and that has been happening. She stated there is a very easy way to integrate the NND process into the SEQR that has been ongoing and at the same time have all the new processes where everyone's questions and comments are answered. Jones stated she doesn't understand why the applicant is so insistent that it not be a new process because she feels everyone would all is better served by starting over with a clean record because what was presented was presented as a conservation subdivision and it wasn't. Jones stated that is what came out in the public hearings. Jones stated they have all of this material that is not relevant now and there are new Board members and it is going to be a lot of work any way you slice it. Jones stated she is willing to do that work but thinks it would be easier for all of us if we didn't have to worry about what went before. Van Tuyl stated one of her concerns is the appropriateness of the process because whatever option is chosen could be challenged by people who are dissatisfied with the decision. She stated she honestly does not see a basis in the SEQRA law for starting over again. Van Tuyl stated she doesn't want to put the Town or the applicant in a situation where someone later on is going to say there wasn't a basis for this and it shouldn't have been done. Van Tuyl stated that the SDEIS option allows all of the new issues to be addressed and the scope of the SDEIS would address any impacts related to the changes in the process and at the same time not throw the baby out with the bathwater by starting all over again. Van Tuyl stated she doesn't claim to know everything and is willing to talk to Replansky and have a dialogue with the Board. She stated you can only designate a new Lead Agency when SEQRA says you can. Replansky stated the pending application before the Planning Board must comply with the Zoning Law when the Zoning takes effect. Replansky stated it doesn't comply but if the applicant wanted to take the old application, which was arguably a high-density conservation subdivision they would have to reface that in accordance with the new law and apply under the new law for a conservation subdivision, but they opted to apply for an NND that is a different approval process. Replansky stated he is not suggesting that all the work that has been done

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has to be redone or reduplicated but that is a decision that will have to be made by the Lead Agency and should be made after receiving advice from the consultants and counsel. Replansky stated it may be a good deal of the work that has been done could be folded into the re-consummation of the environmental review process whether you call it starting from square one or supplemental the process is almost identical. Replansky stated he is not worried about semantics but is more concerned with substance and the issue is how the environmental impacts of this proposed project are going to be evaluated. He stated this decision will have to be made by the Lead Agency with the help of the consultants. Replansky stated when the project was being worked on before we had sub-consultants on habitat issues and archeological issues. Replansky stated that how the Lead Agency is sorted out is not an issue he is prepared to advise the Board on this evening, as he would like to speak to the consultants about this. He does believe that the Lead Agency is an open issue. Jones stated that under SEQRA Lead Agency has the decision making power and in the NND process the Town Board has the decision making power. Replansky stated that is not exactly correct. Replansky stated in order to vie for Lead Agency you have to be an agency that has permitting or decision-making power over the application so in any one project there could be five Lead Agencies. Replansky stated if there becomes a dispute in the Lead Agency decision-making process that can't be resolved among the agencies, DEC can make the decision. Replansky stated that when DEC makes the decision it is based on which agency has the most interest and ability to deal with the application before it in terms of planning sophistication and resources. Van Tuyl agreed with Jones in that if this were an initial Lead Agency circulation in a case that involved zoning and the Town Board asserted Lead Agency status that would prevail in any argument with the Commissioner. Van Tuyl stated there is a designated Lead Agency to which the Town Board consented and she doesn't find any basis in SEQRA for a re-designation. Van Tuyl stated the original application was filed on June 6, 2003. This is the application on which the initial review was based and the Town's Zoning Law, Section 100-7G, states applications pending on the effective date of the new zoning may continue to be processed if they are amended to comply with zoning. Van Tuyl stated the application has now been amended to comply with the NND because it does not allow a subdivision application to be filed until the NND

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preliminary approval is given by the Town Board through the zoning. Van Tuyl stated they have amended the application in the only way they legally can. Jones stated the Board stopped working on the FEIS very shortly after the public hearing when the applicant came in with a new proposal. Jones stated it could be looked at as an abandonment. Van Tuyl stated that in almost every case when you get to the FEIS there is something important about the application that is different than when you started, as that is the whole point of SEQOR to improve the project. Van Tuyl stated that there is nothing in the record that shows abandonment. Replansky stated the issue is not going to be resolved tonight and he doesn't feel comfortable in debating until the consultants look at this. Supervisor Coons stated that they want the consultants to look at the NND application so they don't keep circling around and pushing the applicant in many different directions. Supervisor Coons stated on the 14<sup>th</sup> the applicant will be making a presentation to the Boards and the public. Bartles asked if the Town Board wanted to schedule the joint meeting for the 14<sup>th</sup>. Supervisor Coons stated yes. Supervisor Coons stated it is not for the Boards to hammer the applicant but to present it to the Boards. Supervisor Coons stated he reserved the Community Room at the Library. Bartles asked Replansky to draft a quick response about what was discussed tonight with his belief and how he feels it should proceed. Replansky stated he will have a response to Van Tuyl by next week and will send a copy to the Planning Board. Replansky stated he would like to get the consultants reviewing what has been submitted just to make sure all the prima fascia criteria are there. Van Tuyl stated they have no dispute over that. Van Tuyl stated they want to proceed with the NND and the decision of what's the next SEQOR step is part of completeness of the NND. Van Tuyl stated that during discussion and the review of the new escrow agreement they realized that it covers three consultants but not a fourth. She stated she will process that very quickly if someone could speak with Franson and get a proposed scope sent to the applicant. Replansky stated he will contact Franson and Stolzenburg and ask them to give a scope. Replansky stated he wants to hold off doing a more formal escrow agreement until they are on course with the project. Van Tuyl stated she has no objections at all. Van Tuyl feels that Franson, Stolzenburg, Jurkowski and Replansky are enough consultants to figure out the next step with SEQOR and the subs would come in when the issue of scoping is involved. Van Tuyl

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stated all materials were submitted to all consultants. Van Tuyl stated the NND is also on the Carvel website.

**OTHER BUSINESS:**

Bartles asked Replansky about the Open Meeting Law changing on February 2, 2012. Replansky stated there was an amendment that he sent on. He asked if he sent it to Proper. She stated no. He stated it has to do with posting resolutions prior to the meeting on the website. Replansky stated he will send that out to the Board. Replansky stated the resolutions that are going to be considered should be posted on the website.

Bartles stated that the Board is in receipt of a letter from Paraco withdrawing their application and asking for return of escrow funds. Proper was asked to check with the consultants to make sure there are no outstanding bills before returning any escrow funds.

Bartles asked if the agenda was online as there were some questions about that. Proper stated it was online.

Bartles asked if anyone read the article about the distillery. Bartles spoke with Weaver about it. Bartles stated that Weaver has been addressing it and asked him to speak about it. Weaver stated the applicant came to the office in December of 2010 to discuss this project that is a farm distillery on Ryan Road. He stated this is an agricultural operation. He stated he had gone back and forth and received some documentation from NYS Ag and Markets. Weaver asked them to get something specifically for this project from Ag and Markets and this was done. Bartles stated it was a distillery and a farmer's market but then they were talking about opening up a tour. Bartles stated that he felt at some point it should not go beyond the agricultural operation. Weaver stated what they have advised is that they will be processing spirits and the on-site sell. He stated the phase two will be something that will probably have to come before the Board.

Bartles stated he received a letter from Replansky with regard to the Pindt/Sava dispute about boundary line issues. Bartles stated the judge evidently submitted an order directing the parties to execute a boundary line agreement in accordance with the specifications set forth in that order. Replansky stated if they do so in

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accordance with Judge Pagonos' order and file the same in the Dutchess County Clerk's office, it would be Replansky's opinion that no subdivision approval for that boundary line process would be required.

Bartles stated that an application has been received for another co-locator on the cell tower. He stated he believes the original agreement allows for five on the tower. Bartles stated he doesn't believe there would be need for a site plan approval but will read through the original approvals. Replansky stated the Town would be entitled some increased fees.

Bartles asked the Board to look at the fee schedule and comment if they would like.

Bartles stated the joint meeting is on the 14<sup>th</sup>, which is the normal meeting date. Bartles asked if the Board wanted to set an alternate date for regular business. It was decided to start the regular meeting at 6:00 pm for regular business and 7:00 pm for the joint meeting/presentation.

Motion by Patterson to approve December 2011 and January 2012 minutes; second by Jones. All in favor. Motion passed.

Motion by Osofsky to adjourn; second by Patterson. All in favor. Motion passed.

Respectfully submitted by:

Nancy E. Proper  
Secretary

Don Bartles, Jr.  
Chairman