

November 9, 2011

**PINE PLAINS PLANNING BOARD MINUTES
NOVEMBER 9, 2011
7:30 PM**

IN ATTENDANCE: Brian Coons, Acting Chair
Don Bartles, Jr.
Sarah Jones
Ken Mecciarello
Kate Osofsky (arrived 7:35 pm)
John Forelle, Alternate

ABSENT: Vikki Soracco

ALSO PRESENT: Sandra David
Warren Replansky
Drew Weaver
Seven members of the public

Acting Chair Coons called the meeting to order at 7:30 pm.

STISSING FARMS/TOWN CENTRE: John Reilly was present to represent the applicant. Replansky stated he prepared a resolution in keeping with what the Board agreed to at the last meeting. Replansky stated he tried to piece together the entire history of the application. Replansky stated he put provisions in the resolution to amend the site plan approval. Reilly stated that he felt they could skip the first five pages as that was the history of the project. The Board agreed. Reilly stated he had no comments until page five. The Board, Reilly and Replansky reviewed the resolution from page five forward. Discussion followed. Replansky stated that it was necessary to have an approved phasing plan as part of the resolution that should also be on the final site plan map so that the Board has one final, up-to-date site plan map for the project. Replansky stated that the phasing plan should not only include the construction of the units but the completion of the infrastructure and would have to be approved by the Town Engineer. Reilly stated the entire infrastructure is done except for the road which cannot be done until the units are done. Reilly stated he would need 120 days for the phasing plan. Discussion followed. The Board agreed on 120 days. Replansky stated he would like to see the landscaping plan on a map also. Reilly stated the landscaping is completed and has been so and the only additional landscaping will be the perimeter plantings

November 9, 2011

around the units to be built. Replansky stated the site plan should show what the landscaping is and the applicant can indicate what still needs to be done on the site plan. Reilly stated that he cannot do the rescission until he buys back two outstanding units and this will happen at the financial closing at the first phase construction. He stated the financial closing will simultaneously buy out the existing mortgages, pay off the existing construction financing and provide the financing to build the next twenty units so it is going to be all one event and he does not think that event will happen in 120 days due to the HUD financing which will be a longer process. He stated this is usually a nine to fourteen month process. Replansky stated that the offering plan with the Attorney General's office cannot remain in place. Replansky stated no one can own any units in order to rescind the offering plan. Replansky stated the Town will want to see that the condominium offering plan has been rescinded and that the only owner is the developer. Replansky stated that the resolution by the Board will have to have a date on it. Replansky stated he prefers to have a time period and the applicant can always come back to extend it. The Board agreed to twelve months. Reilly stated they have a 2-bedroom, 2-bath unit and sometimes they have 3 people not 2 in the unit. For example they had a couple with a caretaker. Reilly stated that every one of the requirements in the resolution is 2 people or less and they have run into situations where there would be 3 people. Reilly stated he would like to cover those instances. Coons stated that he feels it needs to say the person is an adult or a caretaker. Reilly stated no problem. Board agreed on the language change. Discussion followed. Replansky will prepare a document related to the performance bond. Replansky advised that the resolution now covers everything and the Board will have one complete site approval plus a few tweaks and modifications that were made over the years are now included. Everything will be in the resolution and on the site plan. Replansky stated he will make the changes and submit an amended final resolution to the Board. Replansky stated that he put in the resolution that there are no actual changes to the facility, infrastructure and buildings which would trigger the need for further environmental review because nothing the applicant is doing will require further review. Replansky asked the applicant to state on the record that all the provisions are acceptable. Reilly agree that all the provisions are acceptable to the applicant. Bartles made a motion to

November 9, 2011

accept the resolution as amended this evening; second by Coons. All in favor. Motion passed.

WHEELS OF TIME/BILL BARTOLOMEO: Bill Bartolomeo was present. Bartolomeo submitted a photo of a proposed sign that he would like to erect on his property located at 2964 Route 199. He will be replacing an existing sign that is decaying. Discussion followed. Bartolomeo stated he read the zoning and went with what is allowable and his sign is actually a little bit under sized. Bartolomeo stated it will be 15 feet off the highway. Bartles asked about the lighting. Bartolomeo stated the lighting will be on a timer that goes for two hours after sundown and will not be lit overnight. Bartolomeo stated it will be a brick foundation with a planter. Discussion followed. Bartles made a motion to declare this a Type II action under SEQR; second by Jones. All in favor. Motion passed. Coons made a motion to accept this sign proposal to replace the existing sign; second by Jones. All in favor. Motion passed. Proper gave Bartolomeo a letter of decision for his file.

JENNIFER PINDT: Jennifer Pindt, John Connor, Wesley Chase, Nino and Suzanne Sava were present with regard to the application for an alteration to an existing approved lot line adjustment located at 45 - 49 Britton Street. The Savas stated they were the owners of 49 Britton and requested to be at the table with the applicant. Connor stated there was a real big mix-up. There were two survey maps done in 2002. He stated that back then the Savas owned two parcels and there was a lot line adjustment where they took a little piece of about 1300 square feet and were going to transfer it from lot 67 to lot 66. Mr. Sava stated that his attorney at the closing left the letter P off the map so Pindt owns the piece that is coming down through his garage. Mr. Sava stated that Replansky was Pindt's attorney at the time and wanted \$20,000 to sign the corrected deed and asked that he recuse himself. Coons stated that there is obviously a lot of history to the application and in order for the Board to get through it and come up with a resolution everyone needs to remain calm. Coons stated everyone will have a chance to speak. Coons stated that the application for this evening's lot line is from Jennifer Pindt so that is why she is speaking first and then the Savas will have a chance to speak. Connor stated that the lot line was approved in 2002 but the problem arose when there was one map done for the lot

November 9, 2011

line adjustment and a second map done for the approval for the Health Dept. Connor stated the problem was the lawyer read the wrong map. Coons asked which map was filed for the original lot line adjustment. Connor stated it was #2636B. Discussion followed. Chase stated that the lot line adjustment was done before they sold the vacant lot and it was filed. Connor stated the wrong map was attached to the contract showing the original line. Connor stated the deed was conveyed using the description from the original map. Connor stated that in 2007 the Savas discovered that the strip they thought was theirs in the lot line adjustment is owned by the Pindt's. Connor stated that litigation started and there was trial back in May. He stated there is a stipulation handed down by Judge Pagonis that splits the portion in question giving the front portion back to the Savas and the back portion was to stay with the Pindt's. Mr. Sava stated he would like to see proof that this is what the judge said. Mrs. Sava stated that the judge ordered them to split the portion in dispute and that they would have final say over the map after the title company paid for the survey. Mrs. Sava stated they have not seen a map and knew nothing of this meeting. Connor stated that he sent the stipulation to the Savas' attorney. The Savas stated that they have no attorney as he quit the day the trial started. Bartles stated he wanted a general opinion from Replansky as the Town Attorney. Bartles asked if the Board sees the stipulation and it is as explained, does the Board have any say on that. Replansky stated he has a copy of the transcript and it appears that there is a record of the stipulation. Replansky stated it appears that the map presented by Pindt matches the stipulation on record. Replansky stated that legally there is nothing preventing the Board from approving this but the parties have to come to terms before the Board can act on it. Jones asked if the Board is legally bound by an order from the judge. Replansky stated there is no order by the judge it is a stipulation that the parties would do this. Mrs. Sava stated the reason they discovered this in 2007 was that they had their property sold and they went to Pindt with a corrected deed and she refused to sign. Mr. Sava stated that now that Pindt has her property sold she wants to push this through. Connor stated he can give the Board a copy of the stipulation and will be getting an order from the Court within a week. Connor stated the map that was prepared is in accordance with the stipulation and the court order about to be prepared by Judge Pagonis. Mrs. Sava stated

November 9, 2011

they have not seen the stipulation in writing and the court order has not yet been done. Chase stated he was contacted by the title company to do the survey. Chase stated he was presented with the court documents and read them thoroughly to come up with a solution. Chase explained how he came up with the updated map from his interpretation of the stipulation. Mr. Sava stated they are supposed to sign off and approve everything that is done and have seen nothing. Coons stated if it is not done here then nothing will get done. Mrs. Sava stated the applicant has had the time to privately look this over. Coons stated the meeting is not over yet and the Board has made no decisions. Coons stated both parties and the Board will look at it and come to some kind of agreement or the parties can walk out and come to their own agreement with the judges. Coons stated that maybe Chase has come up with a good idea but if everyone doesn't look at it nothing will get done. Chase went through his determination with both parties and the Board. Chase stated that hopefully an agreement can be reached this evening that is fair and what the court has ordered. Connor stated that the court order will say both parties are ordered to sign a boundary line agreement. Connor stated the reason Pindt made the application is because she owns the entire piece. Discussion followed. Connor stated he would send a copy of the map to the Savas. Heated discussion followed. Coons stated that if there were any more outbursts he would go downstairs and get the police to escort the offending party out of the Town Hall. Replansky stated that when doing a lot line adjustment both parties have to be in agreement before the Board sets a public hearing. Replansky stated the best thing would be for them to agree to a map and then come back with a joint application for the Board to decide on. Discussion followed. Connor asked if the judge hands down a court order would he have to then have a joint application. Replansky stated there would actually have to be an order from the judge requiring both parties to obtain a lot line adjustment then the judge can enforce that if both parties do not agree. Replansky stated the judge can require them to make the application but the Board does not have the jurisdiction to decide unless both parties make the application. Chase explained to the Savas how he came up with the proposed map. Mr. Sava disagreed with how the portion was split according to what his understanding of the stipulation was. Chase read the stipulation to the Savas. Discussion followed. Chase stated for the record he is not on anyone's side and is just doing what the title

November 9, 2011

company requested. Coons stated that the Board will not be taking any action on this application as they do not have both parties in agreement. Replansky stated the judge could order that the boundary line is the one on the revised map and then they would not need to come back before the Board. Replansky stated that everyone should have a copy of the map and come to terms on the boundary line. Coons stated the parties will have to sit down and work things out. Mr. Sava stated he wants the original boundary line and that is all he will agree to. Connor stated they have already agreed to the stipulation. Sava stated he was forced into it. Coons stated he hopes the parties can work things out.

OTHER BUSINESS:

Motion by Bartles; second by Osofsky to accept the October 5, 2011 and the October 12, 2011 minutes. All in favor. Motion passed.

Coons stated that a resignation letter had been received from Bonnie Quaid effective October 28, 2011.

Motion by Bartles to adjourn at 8:50 PM; second by Osofsky. All in favor. Motion passed.

Respectfully submitted by:

Nancy E. Proper
Secretary

Brian Coons
Acting Chair

TOWN OF PINE PLAINS PLANNING BOARD

**RESOLUTION AMENDING SITE PLAN APPROVAL
FOR STISSING FARM INC. SENIOR RESIDENTIAL CONDOMINIUM
DEVELOPMENT**

WHEREAS, the Planning Board of the Town of Pine Plains, Dutchess County, New York, received an application from Stissing Farm Inc. (hereinafter the “Developer”) dated January 3, 2003 for site plan approval (pursuant to its Site Plan Review Law) for development of a senior residential development consisting of 49 attached dwelling units, 400 to 500 sq. ft. maintenance building and related infrastructure and other site improvements, not limited to water supply, sanitary sewage disposal, roadways, parking, stormwater management, lighting, landscaping and pedestrian walkways on Parcel C of Filed Map No. 9918 consisting of a 12.76 acre parcel located at State Route 199 in the Town of Pine Plains; and

WHEREAS, the proposed development has been modified, since the original application, to reduce the number of attached dwelling from 49 to 48 units, together with a reconfiguration of the size and layout of the development; and

WHEREAS, the Planning Board conducted public hearings, and made a determination of non-significance (“Negative Declaration”) for the proposed development dated April 9, 2003, and amended July 9, 2003, in accordance with the requirements of the State Environmental Review Act (“SEQRA”); and

WHEREAS, the Planning Board after the conduct of public hearings, and review of the application and related submittals, granted approval of the site plan on February 9, 2005, subject to satisfaction of certain conditions, including the creation of a condominium in accordance with the requirements of Article 9B of the New York State Real Property Law (the “Condominium

Act”) and the filing of an Offering Plan in accordance with the requirements of §352 of the General Business Law of the State of New York; and

WHEREAS, the said approval was conditioned upon the Declaration of Covenants and Restrictions contained in the Offering Plan requiring the condominium to be restricted to elderly applicants as provided in the Declaration of Covenants and Restrictions, a copy of which was annexed to the Planning Board’s conditional approval, which required, in relevant part, among other things: (i) that the units were to be owner occupied; (ii) that no person or entity shall own more than five (5%) percent of the units upon the original sale; and (iii) that the project sponsor shall not control the Board of Directors of the condominium and/or HOA after the sale of fifty (50%) percent of the units; and

WHEREAS, upon application of the Developer, an Amended Resolution was issued by the Planning Board on July 13, 2003, which removed the requirement that the units be owner occupied, but set forth detailed and specific requirements for restriction of the occupancy of the units to senior citizens; and

WHEREAS, the Amended Resolution required the applicant to execute an Agreement for the Reimbursement for Professional Fees and Funding of Escrow Account with the Town of Pine Plains for reimbursement to the Town for expenses incurred by the Town for services rendered by professional consultants, in accordance with requirement additional approvals and inspections for the project; and

WHEREAS, the Amended Resolution required the applicant to prepare and submit a phased construction plan for the project and submit said plan to the Board within 75 days of the date of the Resolution and the construction of an emergency access road to be included as part of the construction; and

WHEREAS, the Amended Resolution required the Developer to provide a performance guarantee in the amount to be determined by the Planning Board, in the form of a bond or certificate acceptable to the Attorney to the Town to insure construction of all outstanding site improvements for the entire site not completed at the time of issuance of any Certificates of Occupancy; and

WHEREAS, the Amended Resolution provided, in relevant part, that the site plan approval shall be deemed null and void if construction and sale of at least one dwelling unit is not completed within one (1) calendar year of the stamping of the site plan and that the construction and occupancy of all dwellings completed within three (3) calendar years of the stamping of the site plan unless an extension by the Planning Board was granted at the end of the three year period; and

WHEREAS, on September 12, 2007, the Planning Board granted approval to the Developer for amendment of the site plan: (i) for a revision in the layout of buildings numbered 5 and 6 so that there would be a total of six (6) of buildings containing the same total of ten (10) units constructed with the configuration of two duplex buildings located on each side of a smaller single unit building along the north and east side of the cul-de-sac; (ii) to permit the Developer to pave the cu-de-sac roadway leading to buildings 5 and 6 within the development under certain conditions more fully set forth in a letter of the Town Engineer, Morris Associates dated May 14, 2008; and (iii) extending the approval period for a period of three (3) years; and

WHEREAS, the Developer has now made application to the Planning Board for amendment of its approval of the site plan to allow a change in the project: (i) from an age restricted condominium to a 55 and over age restricted rental project with the ownership of the units, common areas and infrastructure vested in the Developer; (ii) to modify the phasing

requirements of the project; and (iii) extend the approval period for the project for an additional period of three (3) years; and

WHEREAS, the Board has referred the Developer's application and its submittals to the Town's engineering and legal consultants for their review and comment; and

WHEREAS, the Planning Board has duly conducted a public hearing on this application, at which time it considered comments, and input, from the public; and

WHEREAS, the Planning Board has determined that the proposed amendment to the site plan approval would not involve any physical change in the site plan, building plans or infrastructure plans; and

WHEREAS, since the original, and amended approval, for this project, the Town of Pine Plains duly enacted a Zoning Law on October 15, 2009, which law superseded the Town of Pine Plains Site Plan Review Law; and

WHEREAS, the Town Board has determined that this project would require the issuance of a special use permit and site plan approval under the Town's current Zoning Law, and, therefore, the development constitutes a "non-conforming use" pursuant to the provisions of Article XIII of the Zoning Law; and

WHEREAS, the Planning Board has determined that the current application does not involve any change or extension to the project which would require an application for special use permit or site plan review pursuant to the requirements of Article XIII of the Zoning Law; and

WHEREAS, the Planning Board has determined that the proposed changes in the project do not have the potential for one or more significant adverse environmental impacts and, as a result, there is no need for the Planning Board to conduct supplemental SEQRA review of this project in conjunction with this application; and

WHEREAS, the Developer has represented to the Planning Board that due to a downturn in the economy and the housing market, it has been virtually impossible for the Developer to market and sell these units as condominiums in accordance with the original site plan approval, and condominium offering plan; and

WHEREAS, the Planning Board has determined that it is in the best interests of the Town of Pine Plains to permit the requested amendments to the site plan approval for this project subject to conditions and that such amended approval would benefit and not be a detriment to the Town of Pine Plains, and its residents.

NOW, THEREFORE, BE IT RESOLVED that the Town of Pine Plains Planning Board hereby amends the Amended Site Plan Approval for this project in the following respects:

1. That paragraph no. 2 at page 2 of the Amended Resolution of the Planning Board dated July 13, 2005 is hereby deleted to remove the requirement that the project be a condominium development, and that a condominium offering plan be filed in accordance with the requirements of Article 9B of the New York State Real Property Law;

2. That multi-family rental units owned by the Developer may be constructed in accordance with the 2005 site plan approval and amended design change approved in May of 2008 and the Amended Resolution for minor modifications to the original site plan, as referenced in this Resolution; and

3. That the current June 2012 date for completion of construction is hereby extended until November 9, 2015 to allow for an appropriate time period for completion of the proposed 48 unit senior multi-family project, subject to the following terms and conditions. The Developer may make application to the Planning Board for an extension of that time period upon good cause demonstrated.

(a) That the Developer within 120 days of the date of this Resolution prepare and submit a phasing plan for construction of the units, and infrastructure, to be approved by the Town's Engineer and the Planning Board, and signed by the Chairman, or Acting Chairman, of the Planning Board.

(b) That the Developer prepare and submit for approval by the Town Engineer and by the Planning Board a current revised landscaping plan for the project within 120 days of the date of the Board's determination to be signed by the Chairman, or Acting Chairman, of the Planning Board.

(c) That the Developer take the necessary steps to rescind the condominium Offering Plan filed in the Office of the Attorney General and file such documentation as may be required to rescind the Declaration of Covenants and Restrictions filed in the Office of the Dutchess County Clerk, in conjunction with said Offering Plan and provide proof of such actions to the Attorney for the Town of Pine Plains and to the Planning Board within twelve months of the date of this Resolution

(d) That the Developer shall take the necessary steps to cause to be reconveyed units which have been sold to third parties to the Developer and to provide proof to the attorney to the Town of Pine Plains and to the Planning Board of the filing of such reconveyances in the Office of the Dutchess County Clerk within twelve months of the date of this Resolution.

(e) That rental the units shall be rented and occupied only by individuals meeting the following requirements:

- (i) to a single individual aged 55 or older;
- (ii) two persons, both aged 55 or older;

- (iii) married persons, the husband or wife is 55 or older;
- (iv) one child residing with one or two parents who are age 55 or older, providing that the child is over the age of 18 years;
- (v) the surviving spouse of a person aged 55 or older, providing the surviving spouse was a resident of the development at the time of the death;
- (vi) An adult 18 years or older residing with one or two persons age 55 or older, provided that they are essential to the long term care of the elderly person as certified to by a physician duly licensed in New York State;

(f) That the Developer shall, within sixty (60) days of the date of this Resolution, file a Declaration of Age Covenants and Restrictions, for the exclusive benefit of the Town of Pine Plains in a form to be approved by the Attorney for the Town of Pine Plains and the Planning Board in the office of the Dutchess County Clerk: (i) restricting the occupancy of the units in accordance with subparagraph “3(e)” of this Resolution; (ii) providing that the Declaration of Covenants and Restrictions run with the land; (iii) granting the exclusive right to the Town of Pine Plains, and its officers, to enforce the terms of the Declaration of Covenants and Restrictions; and (iv) granting the Town and its duly authorized representatives the right to enter the premises at reasonable time and in a reasonable manner when practicable after giving written notice to inspect the records of the occupancy of the project for compliance with the terms of this covenant and that such record be provided to the Town upon request.

(g) That the Developer shall keep on file copies of all leases and applications for leases, together with supportive age qualification documentation and provide copies of such

documentation to the Town's Code Enforcement Officer, as may reasonably be requested, and provide in each lease a provision in which the tenant agrees to waive privacy or confidentiality with respect to the provision of these documents to the Town's Code Enforcement Officer.

(h) That the Developer shall prepare and submit for approval of the Attorney to the Town and to the Planning Board, a set of rules and regulations for the rental community with regard to the use and occupancy of the individual units, and such rules and regulations shall be made a part of each tenant's lease agreement.

(i) That the applicant shall continue to maintain, as required by the Planning Board, an Agreement for Reimbursement for Professional Fees and Funding of Escrow Account with the Town of Pine Plains for reimbursement of all expenses incurred by the Town for services rendered by professional consultants which are employed by Town Planning Board from time to time subsequent to the date of this Resolution for inspection of work performed by the applicant and review of documentation submitted by the applicant and maintain an escrow balance of no less than \$5,000.00.

(j) That the Developer will enter into an agreement with the Town of Pine Plains for a performance bond in the amount of \$155,000.00 in a form acceptable to the Attorney to the Town and the Board, and if the security is provided in the form of a Certificate of Deposit, or other account maintained by the applicant at a banking institution, that the agreement permit the Town to draw on those funds in the event of a failure of the Developer to construct the roads and infrastructure as required by the site plan approval by notification to the banking institution of the breach without the requirement of any further action, or legal action, and that the agreement be signed by the lending institution as well as the Developer and that said agreement be fully executed no less than thirty (30) days from the date of this Resolution.

(j) That the Developer shall comply with all other terms and conditions of the Amended Site Plan Approved and modifications made thereto, that are not inconsistent with the terms and conditions of this Resolution.

(k) That in the event of a breach of any of these conditions and the failure of the applicant to either remedy such breach within thirty (30) days of written notification from the Planning Board, the Attorney to the Town or the Town Code Enforcement Officer, to the Developer, or, if the breach is such that the same cannot be totally remedied within the thirty (30) day period, failure of the developer to provide proof that appropriate steps have been taken by the developer to remedy the violation within a reasonable time period as determined by the Planning Board, the Attorney to the Town or the Town Code Enforcement Officer, the Planning Board and the Town reserve in their discretion the right to: (i) rescind the site plan approval for this project; (ii) refuse to grant and/or withhold any building permits and/or certificates of occupancy for the project; (iii) rescind any building permits or certificates of occupancy issued for this project; and (iv) take such other enforcement action as may be permitted pursuant the Town of Pine Plains Zoning Law for violation of site plan approval.

This above Resolution was offered by _____ and was seconded by _____ on November 9, 2011.

The Planning Board members voted as follows:

Brian Coons _____

John Forelle _____

Sarah Jones _____

Ken Meccariello _____

Kate Osofsky

Vikki Soracco

This Resolution was duly adopted by the Town of Pine Plains Planning Board on November 9, 2011.

NANCY PROPER, Planning Board Secretary