

**RUSH PLANNING BOARD  
REGULAR MEETING  
MINUTES OF DECEMBER 18, 2012**

A regular meeting of the Rush Planning Board was held on December 18, 2012 at the Rush Town Hall, 5977 East Henrietta Road and was called to order at 7:30 PM.

**MEMBERS PRESENT:** John Morelli, Vice Chairman  
Don Sweet  
Rick Wurzer  
Scott Strock  
Meribeth Palmer, Deputy Town Clerk  
John Mancuso, Town Attorney

**EXCUSED:** John Felsen, Chairman

**OTHERS PRESENT:** Councilman Bill Riepe, Town Board Liaison  
Gerry Kusse, Code Enforcement Officer (CEO)  
Todd Ewell, Town Engineer  
William Pollock, Rush business owner  
Scott Phetteplace, Land Surveyor  
Bruce Hellman, Resident  
Linda Hellman, Resident  
Edward Heise, Resident  
Gavin Burke, Resident  
Paul Ciminelli, Attorney  
Daniel Briggs, Rush non-resident home owner  
Joseph Taddeo, Attorney

Vice Chairman John Morelli welcomed all to the November Planning Board meeting and introduced all Board Members and Town Staff.

**APPROVAL OF MINUTES:**

The Minutes of November 20, 2012 were reviewed.

Corrections/additions to the November 20, 2012 minutes:

Page 1, last paragraph remove "the" replace with "his". Page 2, paragraph 3, change "northwest" to "northeast". Page 2, paragraph 6 add the word "session" after the word informal. Page 3, first line remove "they" replace with "the Board". Page 4, paragraph 2, last sentence, remove "he" replace with "this staff member". Page 4, paragraph 4, add "as that neighbor" after the word himself. Page 8, paragraph 3, remove "calf hold and feedlot" replace with "Concentrated Animal Feedlot Operation (CAFO)". Page 9 last sentence add the word "piles" after top soil. Page 11, paragraph 8, remove the word "he" replace with "Mr. Caley".

Don Sweet made a motion to accept the minutes of November 20, 2012 as amended.

Rick Wurzer seconded the motion and the Board members polled:

|       |              |     |          |
|-------|--------------|-----|----------|
| Roll: | John Morelli | aye |          |
|       | Don Sweet    | aye |          |
|       | Rick Wurzer  | aye |          |
|       | Scott Strock | aye | carried. |

**PUBLIC HEARING:**

**Application 2012-07P** by William Pollock requesting re-subdivision approval to combine two existing parcels into one parcel, no further development is planned. Properties are located at 30 and 50 High Tech Drive and zoned light industrial.

Mr. Pollock explained to the audience the history of his properties and businesses on High Tech Drive. Mr. Pollock's two previous business entities are now one entity. Mr. Pollock is requesting to combine the two parcels for tax purposes thus reflecting one lot for the business. Mr. Pollock was also given a zero setback variance and ownership has not changed. Therefore the variance is still valid.

Mr. Pollock stated that he has addressed all comments by the Town Engineer and Monroe County Department of Planning and Development (MCDP&D).

Vice Chairman Morelli read all comments into the record from Town Engineer Todd Ewell, MCDP&D, Rush Conservation Board and Rush Board of Fire Commissioners.

Mr. Pollock stated that the final Mylar will be stamped and signed by a licensed engineer prior to Planning Board Chairman's signature.

With no further comments Vice Chairman Morelli declared the public hearing closed.

**Application 2012-08P** by Bruce and Linda Hellman requesting approval to re-subdivide 5.956 acres including an existing house from a 69.630 acre lot. No further development is planned to the remaining property. Property is located at 901 Rush Scottsville Road. Property is in an R-30 zoning district.

Engineer Scott Phetteplace appeared on behalf of Jim Parker, Engineer for the Hellman's. Mr. Phetteplace submitted a revised subdivision map that addressed comments from the Town Engineer and MCDP&D.

Vice Chairman Morelli read all comments into the record from the Town Engineer Todd Ewell, MCDP&D, Rush Conservation Board and Rush Board of Fire Commissioners.

The Board inquired about the wetland on the property. The location of the creek and the wetland area has been indicated on the new map. However, the 100 foot buffer was not required to be shown on the map. Town Engineer Ewell stated that in the future if anything is built on the rear property that the 100 foot buffer would be required on the map.

In addition the applicants were informed that the town requires easements for waterways and designated streams. The required right of way is 20 feet either side from top of bank. Easements are to be shown on the map and a legal written description of the easement is to be reviewed by the Town Attorney, Town Engineer and filed with Monroe County Clerk's Office.

Resident Edward Heise owns neighboring property to the Hellman's and viewed the subdivision map.

With no further comments Vice Chairman Morelli declared the public hearing closed.

**Application 2012-10P** by Gavin Burke requesting a special permit for a two family dwelling in a residential zone. Property is located at 1868 Rush Scottsville Road and is in an R-20 zoning district.

Vice Chairman Morelli explained to the applicant Gavin Burke that the list of required items on the Special Permit Application was missing the New York Stated Short Environmental Assessment Form (Short EAF).

This Special Permit request is not identified as exempt. Therefore, this Board will adjourn the application until they can make a determination on the newly submitted Short EAF.

Mr. Burke asked how long the determination will take. Town Attorney John Mancuso stated that everything can be discussed tonight. When the Board reconvenes on January 15, both items can be ruled on. Mr. Burke stated that this additional delay interferes with the closing on his house.

Vice Chairman Morelli asked Mr. Burke about the independent engineer building inspection showing compliance with state building and fire codes for two family dwellings. The inspection is required in order for Mr. Burke to receive a Certificate of Occupancy from CEO Kusse. Mr. Burke stated the inspection is complete and has submitted the results to CEO Kusse. Mr. Burke was required to move two smoke detectors. The rest of the dwelling passed inspection. Availability of parking and the existing septic system were also discussed.

Town Attorney John Mancuso informed CEO Kusse that he could now perform his final inspection. The Planning Board will require CEO Kusse's inspection report prior to approval.

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Vice Chairman Morelli read into the record all comments from the MCDP&D and the Conservation Board. A letter of support from Gail & Peggy Mack was also read in its entirety.

After further discussion and due to all the unusual delays, the Board agreed to reconvene for a special meeting on December 26<sup>th</sup> to assist Mr. Burke.

With no further discussion Vice Chairman Morelli made a motion to adjourn the public hearing.

**Application 2012-09P** by Jennifer and Daniel Briggs requesting a special permit for a two family dwelling in a residential zone. Property is located at 65 Creekside Drive and is in an R-30 zoning district.

Mr. Briggs explained that he bought the property over the summer, did some work on the house and his bank is looking for a Certificate of Occupancy for refinancing. Mr. Briggs would like to continue to use the home as a non-owner occupied two family rental. Mr. Briggs is also aware of the required Short EAF form. With the upcoming holidays Mr. Briggs is not in a hurry and would like to appear again in January.

Mr. Briggs stated that there are 3 bedrooms upstairs and 3 bedrooms downstairs. Mr. Briggs also had Vern Vallance do a septic inspection at the time of purchase. Mr. Vallance determined that the 1000 gallon tank was adequate.

CEO Kusse stated that the same independent engineer building inspection showing compliance with state building and fire codes will be necessary for Mr. Briggs as well.

CEO Kusse explained the difference between independent inspections and his inspections. Independent inspectors write a prescription for items that need to be brought up to code and how to fix them. CEO Kusse can inspect, however, he cannot inform as to how to fix items. Therefore, he only enforces the code rather than inspecting for code.

Vice Chairman Morelli read into the record all comments from the MCDP&D and the Conservation Board.

Resident letters from Leola Porter and Polly Hanna were read in their entirety. Both letters expressed concerns regarding parking and the unkempt property consisting of trash and debris.

Mr. Briggs addressed the Board regarding items stated in the resident letters. Mr. Briggs was appreciative of information regarding tenant issues of garbage and debris. Mr. Briggs disputed the implication of quick fix ups and house flipping. Mr. Briggs stated he

and his wife own several rental properties throughout Monroe County; these are investments and they have no intention of selling them in the near future. Mr. Briggs stated that he would like to speak with the neighbors in person to address their concerns.

Attorney Joseph Taddeo also spoke on Mr. Briggs' behalf stating that over the last 10 years Mr. Briggs has never had any troubles with other municipalities.

Board Member Strock stated that he would like the garbage clean up and containment to be a condition of approval. Mr. Briggs stated that he lives five miles from the property and would be able to monitor the property regularly. Mr. Briggs also stated they allow cats, however, they do not allow dogs at this property because it is a two family dwelling.

Vice Chairman Morelli read 120-57A regarding parking requirements for two family dwellings. Parking locations and screening were further discussed.

With no further discussion Vice Chairman Morelli made a motion to adjourn the public hearing.

**DECISSIONS:**

**1. Application 2012-07P by William Pollock**

Vice Chairman Morelli made a Motion **WHEREAS**; this Board has examined **Application 2012-07P** by William Pollock requesting subdivision approval to combine two parcels at 30 & 50 High Tech Drive in a Light Industrial zoning district with no other action proposed and the maps and other materials which were filed with the application including the Environmental Assessment Form, and

**WHEREAS**, the proposed action is a Type II action under the State of New York SEQR laws, no further related action is required by this Board.

Don Sweet seconded the motion and the Board Members polled:

|       |              |     |          |
|-------|--------------|-----|----------|
| Roll: | John Morelli | aye |          |
|       | Don Sweet    | aye |          |
|       | Rick Wurzer  | aye |          |
|       | Scott Strock | aye | carried. |

Vice Chairman John Morelli made a Motion to grant preliminary subdivision approval for **Application 2012-07P** by William Pollock conditioned upon:

The applicant meeting the requirements set forth by Town Engineer Todd Ewell and the Monroe County Department of Planning and Development.

Don Sweet seconded the motion and the Board Members polled:

|       |              |     |          |
|-------|--------------|-----|----------|
| Roll: | John Morelli | aye |          |
|       | Don Sweet    | aye |          |
|       | Rick Wurzer  | aye |          |
|       | Scott Strock | aye | carried. |

Vice Chairman John Morelli made a Motion to wave the final subdivision hearing for **Application 2012-07P** by William Pollock conditioned upon:

The applicant meeting the requirements set forth in the preliminary approval.

Don Sweet seconded the motion and the Board Members polled:

|       |              |     |          |
|-------|--------------|-----|----------|
| Roll: | John Morelli | aye |          |
|       | Don Sweet    | aye |          |
|       | Rick Wurzer  | aye |          |
|       | Scott Strock | aye | carried. |

## **2. Application 2012-08P by Bruce and Linda Hellman**

Vice Chairman Morelli made a Motion **WHEREAS**; this Board has examined **Application 2012-08P** by Bruce and Linda Hellman requesting subdivision approval to divide a 5.956 acre lot including an existing house from the existing 69.630 acre parcel in an R-30 zoning district with no additional development proposed and the maps and other materials which were filed with the application including the Environmental Assessment Form, and

**WHEREAS**, the proposed action is a Type II action under the State of New York SEQR laws, no further related action is required by this Board.

Rick Wurzer seconded the motion and the Board Members polled:

|       |              |     |          |
|-------|--------------|-----|----------|
| Roll: | John Morelli | aye |          |
|       | Don Sweet    | aye |          |
|       | Rick Wurzer  | aye |          |
|       | Scott Strock | aye | carried. |

Vice Chairman John Morelli made a Motion to grant preliminary subdivision approval for **Application 2012-08P** by Bruce and Linda Hellman conditioned upon:

1. The applicant adding bearings and distances to the easement to match the written description,

2. The applicant obtaining approvals from the Town Attorney and Town Engineer for the legal easement and easement description prior to filing the document with Monroe County Clerk's Office.
3. The applicant meeting the requirements set forth by Town Engineer Todd Ewell and the Monroe County Department of Planning and Development.

Rick Wurzer seconded the motion and the Board Members polled:

|       |              |     |          |
|-------|--------------|-----|----------|
| Roll: | John Morelli | aye |          |
|       | Don Sweet    | aye |          |
|       | Rick Wurzer  | aye |          |
|       | Scott Strock | aye | carried. |

Vice Chairman John Morelli made a Motion to wave the final subdivision hearing for **Application 2012-07P** by Bruce and Linda Hellman conditioned upon:

The applicant meeting the requirements set forth in the preliminary approval.

Don Sweet seconded the motion and the Board Members polled:

|       |              |     |          |
|-------|--------------|-----|----------|
| Roll: | John Morelli | aye |          |
|       | Don Sweet    | aye |          |
|       | Rick Wurzer  | aye |          |
|       | Scott Strock | aye | carried. |

### **3. Application 2012-10P by Gavin Burke**

Vice Chairman Morelli made a Motion to adjourn Application 2012-10P by Gavin Burke in order to give the Board sufficient time to review the newly acquired Short EAF and the Board will reconvene on December 26, 2012 to rule on above said application.

Don Sweet seconded the motion and the Board members polled:

|       |              |     |          |
|-------|--------------|-----|----------|
| Roll: | John Morelli | aye |          |
|       | Don Sweet    | aye |          |
|       | Rick Wurzer  | aye |          |
|       | Scott Strock | aye | carried. |

Town Attorney John Mancuso informed the Board that at the December 26, 2012 meeting, the Board must rescind their prior determination that Mr. Burke's dwelling is a pre-existing, non-conforming use.

**4. Application 2012-09P by Jennifer and Daniel Briggs**

Vice Chairman Morelli made a motion to adjourn the public hearing for Application 2012-09P by Jennifer and Daniel Briggs in order to give the Board sufficient time to review the newly acquired Short EAF and will reconvene on January 15, 2013 rule on above said application.

Don Sweet seconded the motion and the Board members polled:

|       |              |     |          |
|-------|--------------|-----|----------|
| Roll: | John Morelli | aye |          |
|       | Don Sweet    | aye |          |
|       | Rick Wurzer  | aye |          |
|       | Scott Strock | aye | carried. |

**BOARD DISCUSSION:**

CEO Kusse informed the Board that New York State Uniform Code (NYSUC) does not allow grand fathering. Properties must comply with current NYSUC building codes.

Board Member Sweet provided some local history regarding the property located at 65 Creekside Drive.

There was a further discussion as to the length of time that 65 Creekside Drive has been documented as a two family home. Deputy Town Clerk Palmer will inquire with the Assessor's Office as to how far back their assessment records go for that property.

As stated previously by Town Attorney John Mancuso, the assessed description of a dwelling does not always coincide with the local zoning.

Deputy Town Clerk Palmer's research on 65 Creekside Drive revealed a permit for a deck and a building permit for an addition in 1984.

Town Attorney John Mancuso stated that the Board, as part of their review process of the Briggs Special Permit can require building, fire and septic system inspections.

The Board further discussed the septic system at 65 Creekside Drive.

CEO Kusse stated that independent engineer inspections include inspection of sanitary waste systems. CEO Kusse has the ability to request a septic system inspection from the Monroe County Department of Public Health (MCDPH). There is continued concern regarding the capacity of the current septic tank. Should the current system become stressed, there is concern for potential leakage into the Honeoye Creek.

CEO Kusse will contact the MCDPH and request any information on the current septic systems and ask if it will accommodate a 6 bedroom dwelling.

**BOARD BUSINESS:**

**Application 2012-06P by Kyle Stevens**

Town Attorney John Mancuso informed the Planning Board that the granting of the permit itself is a general category. However, what is being granted or the nature of the activity pursuant to the permit determines the New York State Environmental Quality Review Act (SEQRA) type. The Planning Board as lead agency determines the SEQRA type and completes the lead agency portion of the SEQRA form.

Vice Chairman Morelli made a Motion regarding **Application 2012-06P** by Kyle Stevens for a special permit to allow the outdoor storage of commercial vehicles at 2500 Rush Mendon Road, which the Planning Board reviewed and approved at the November 20, 2012 meeting, and

**WHEREAS**, this Board has not appropriately completed a review of the application pursuant to the New York State Environmental Quality Review Act prior to approving this application, and

**WHEREAS**, The Town Attorney has informed the Board that a rescission of its vote is therefore warranted and necessary so that a New York State Environmental Quality Review may be completed,

**THEREFOR**, Vice Chairman Morelli made a Motion to rescind the Planning Board vote made on November 20, 2012 for Application 2012-06P by Kyle Stevens, and

**WHEREAS**, the vote for application 2012-06P by Kyle Stevens has been rescheduled for January 15, 2013 and the applicant has been informed to cease and desist from any outdoor storage of vehicles or related activities contemplated by the complications.

Rick Wurzer seconded the motion and the Board members polled:

|       |              |     |          |
|-------|--------------|-----|----------|
| Roll: | John Morelli | aye |          |
|       | Don Sweet    | aye |          |
|       | Rick Wurzer  | aye |          |
|       | Scott Strock | aye | carried. |

The Board acknowledged the receipt of the letter from New York State Agriculture and Markets forwarded from Town Supervisor Anderson regarding the approved Farmland Protection Plan and suggestion to move forward with developing a right to farm law. Informal discussion regarding the right to farm law will be added to the January meeting agenda.

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With no further business, a motion was made by John Morelli and agreed by common consent that the meeting be adjourned at 9:40 PM.

Respectfully Submitted,

Meribeth Palmer  
Deputy Town Clerk