**RUSH PLANNING BOARD**
**REGULAR MEETING**
**MINUTES OF JANUARY 15, 2013**

A regular meeting of the Rush Planning Board was held on January 15, 2013 at the Rush Town Hall, 5977 East Henrietta Road and was called to order at 7:30 PM.

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

**EXCUSED:** John Morelli, Vice Chairman

**OTHERS PRESENT:** Councilman Bill Riepe, Town Board Liaison
Gerry Kusse, Code Enforcement Officer (CEO)
Todd Ewell, Town Engineer
Daniel Briggs, Rush non-resident home owner
Joseph Taddeo, Attorney
John Clark, Engineer
Thomas Tuety, Rush property owner
Henry Hansen, Rush property owner
Robert Turner, Attendee
Debbie Stevens, Resident
Fred Calev, Resident
Nancy Calev, Resident
Kyle Stevens, Resident

Chairman Felsen welcomed all to the January Planning Board meeting.

**APPROVAL OF MINUTES:**

**The Minutes of December 18, 2012 were reviewed.**

Corrections/additions to the December 18, 2012 minutes: page 3, paragraph 8, insert the word “he” before the word “has”. Page 4, paragraph 5, remove “it” and replace with “is”.

Board Member Wurzer made a motion to accept the minutes of December 18, 2012 as amended.

Board Member Strock seconded the motion and the Board members polled:

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

Chairman Felsen was excused from the December 18, 2012 Planning Board meeting.

**The Minutes of December 26, 2012 were reviewed.**

Board Member Sweet made a motion to accept the minutes of December 26, 2012 as written.

Board Member Wurzer seconded the motion and the Board members polled:

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

Board Member Strock was excused from the December 26, 2012 Planning Board meeting.

**ADJOURNED APPLICATION:**

**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 his application was adjourned pending the submission of the required New York State Short Environmental Assessment Form (Short EAF) in addition to having an independent engineer inspect the dwelling.

Both of the above said items have been completed.

Mr. Briggs asked CEO Kusse if he reviewed the independent engineer's inspection report that he submitted the week prior. Mr. Kusse stated that he has not seen the report. Chairman Felsen stated CEO Kusse sent him the report via email. CEO Kusse stated that he does not recall seeing the report or sending it to Chairman Felsen.

Chairman Felsen stated that there are concerns regarding the septic system. Chairman Felsen inquired as to how many bedrooms are currently in the dwelling.

Mr. Briggs stated that there were 6 bedrooms at the time he purchased the dwelling. Mr. Briggs did not alter the structure, he has only made cosmetic improvements.

Mr. Briggs understands that if this was new construction the septic system is undersized and he would be required to update the system to accommodate 6 bedrooms. Chairman

Felsen informed Mr. Briggs that the policy of Monroe County Department of Public Health (MCDPH) implies that if the septic system is not failing at this point in time, MCDPH does not require the home owner to upgrade the system. However, CEO Kusse may require upgrading the septic system to today's standards in order to issue a Certificate of Occupancy (C/O). Chairman Felsen noted that if the Town of Rush requires the upgrade, then the MCDPH would require it as well. Chairman Felsen also clarified that MCDPH does not have a written code. Mr. Briggs' Attorney Joseph Taddeo asked if updating the septic system upon failure could be a condition of the C/O.

CEO Kusse stated that he would be able to inspect the dwelling for C/O purposes. CEO Kusse is concerned with the current sub-standard septic system and does not want any liability to be placed on the town, therefore, prior to issuing a C/O he will consult with the Town Attorney.

Mr. Briggs stated that Vern Vallance Septic Service has been servicing the septic system at that location for years and looked over the system prior to his purchase. Mr. Tobey, owner Vern Vallance Septic Service was able to determine that the system is currently performing adequately. The numbers of occupants has been unclear over the years in comparison to today's occupancy load. The current system was designed and installed in 1982 for a 2 bedroom dwelling.

Board Member Sweet asked what would be required to update the system. Depending on available land space, the addition of another tank and expansion of the leach field. If the lot is not large enough to accommodate an additional tank, an alternative such as an aeration system may be required.

The Board remains concerned as the use has increased from the designated 2 bedrooms to 6 bedrooms. Mr. Briggs has been utilizing both units, all 6 bedrooms since November of 2012. Chairman Felsen stated that it's not failing now but it will fail in the near future.

After the discussion of the lot size, CEO Kusse told the Board the property is zoned R-20 not R-30.

Deputy Town Clerk corrected CEO Kusse stating that the R-30 zoning originally indicated is correct and was promptly confirmed on the town zoning map.

Mr. Briggs is hoping for a conditional approval based on the MCDPH determination. Additionally, Mr. Briggs stated that he is very conscientious when it comes to maintenance and he has an obligation to his tenants. Mr. Briggs stated that he would be willing to sign a contract for regular pumping of the septic system.

Mr. Taddeo also stated that the MCDPH could have Mr. Brigg's sign a waiver if the septic does not meet current standards. Chairman Felsen clarified that is the practice of MCDPH when repairs are made to non-conforming systems.

Town Attorney Mancuso stated that he has not looked into the issue of septic requirements for this particular property and does not have an opinion at this time. Town Attorney Mancuso will look into to the concerns that CEO Kusse expressed regarding issuing a C/O.

While the current system is presently working, Town Engineer Todd Ewell suggested that the applicant submit a future system plan in order to predetermine what type of system will fit on the property and conform to current MCDPH standards.

Town Attorney John Mancuso stated that the Board can adjourn the application or approve the application conditioned upon the following three items:

1. the applicant submitting a future septic system plan that meets MCDPH standards.
2. requiring the applicant to upgrading the septic system upon failure.
3. CEO Kusse issuing a C/O.

Mr. Taddeo suggested issuing a C/O as built with conditions that would require renewal upon the failure of the current septic system. Reapplying for a new C/O would be based upon the applicant meeting the current MCDPH septic system standards.

Board members further discussed conditions of approval, the importance of protecting the town and property maintenance issues that were brought up at the December 18, 2012 meeting.

**The Short EAF was completed by the Board at this time.**

Chairman Felsen made a motion:

**WHEREAS,** the Board has examined the Application requesting a special permit for the use of a two family dwelling in a residential zone on property which is located at 65 Creekside Drive; and

**WHEREAS**, maps and other materials were filed along with the Application, including the Short Environmental Assessment Form (“Short EAF”), pursuant to the New York State Environmental Quality Review Act (“SEQRA”); and

**WHEREAS,** the Board has referred the application to the Town of Rush Conservation Board for its consideration and recommendations; and

**WHEREAS,** The Conservation Board has reported to the Board that it has not found any aspect of the proposed action to be environmentally significant.

**NOW, THEREFOR**, upon consideration by the Board of the Application and the other materials submitted by Briggs, including the Short EAF, and the Board having given the submitted documentation matter due consideration; it is

**RESOLVED**, that the Board declares itself Lead Agency for purposes of conducting an Uncoordinated Review of the Application pursuant to SEQRA; and it is further

**RESOLVED**, the Board classifies the Application as an Unlisted Action, as that term is defined pursuant to SEQRA subject to uncoordinated review under 6 N.Y.C.R.R. § 617.6; and it is further

**RESOLVED,** that upon its examination and study of the Short EAF and the maps and plans submitted with the Application, and upon the advice and recommendations of the Conservation Board, the Board determines that the Application will not present a potential significant adverse environmental impact and thus issues a Negative Declaration concluding the SEQRA process. The reasons for this determination are that the proposed action cannot reasonably be expected to lead to any of the following consequences:

A. a substantial adverse change to ambient air or water quality or noise levels or in solid waste production, drainage, erosion or flooding.

B. The removal or destruction of large quantities of vegetation or fauna, the substantial interference with the movement of any resident or migratory fish or wildlife species, impacts on critical habitat areas, or the substantial affecting of a rare or endangered species of animal or plant or the habitat of such a species.

C. the encouraging or attracting of a large number of people to a place for more than a few days, relative to the number of people who would come to such place absent the action.

D. the creation of a material conflict with the Town's existing plans or goals as officially approved or adopted.

E. the impairment of the character or quality of important historical, archaeological, architectural or aesthetic resources or of existing community or neighborhood character.

F. a major change in the use of either the quantity or type of energy.

G. the creation of hazard to human health or safety.

H. a substantial change in the use, or the intensity of use of land or other natural resources or in their capacity to support existing uses where such a change has been included, referred to, or implicit in an official comprehensive plan.

I. the creation of material demand for other actions which would result in one of the above consequences.

J. changes in two or more elements of the environment, no one of which is substantial, but when taken together result in a material change in the environment.

Board Member Wurzer seconded the motion and the Board Members polled:

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

Chairman Felsen made a Motion to grant approval of **Application 2012-09P** by Jennifer and Daniel Briggs requesting a special permit conditioned upon:

1. The applicant receiving a Certificate of Occupancy from the Town of Rush Code Enforcement Officer Gerry Kusse for the dwelling.

2. The applicant updating the septic system to current MCDPH standards upon failure.

Board Member Wurzer seconded the motion and the Board Members polled:

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

**The Public Hearing for Application 2012-11P by Robert Turner and land owner Henry Hansen requesting Subdivision and Site Plan approval has been postponed in order to request a use variance from the Zoning Board of Appeals. The applicants appeared for an informal discussion with the Planning Board.**

**INFORMAL DISCUSSION:**

**Application 2012-11P** by Robert Turner and land owner Henry Hansen requesting Subdivision and Site Plan approval to subdivide 2.75 acres from an 81.6 acre parcel located at 7566 West Henrietta Road. Development of 12,750 square foot building is planned for the 2.75 acre lot and no further development is planned for the remaining land. Property is located in a commercial zoning district.

Chairman Felsen explained to the applicants that the Planning Board cannot act until the applicants obtain a use variance from the Rush Zoning Board of Appeals.

John Clark, Engineer for the Turner project submitted a revised subdivision and site plan to the Board. Mr. Clark has submitted a back flow application to Monroe County Water Authority (MCWA) and a driveway cut request to New York State Department of Transportation (NYSDOT). In addition, Mr. Clark has received comments from Monroe

County Department of Planning and Development (MCDP&D) and from Town Engineer Todd Ewell.

Mr. Clark explained that part of the proposed structure will be a shop for storage of equipment, supplies and an area where minor repairs to the equipment will be conducted.

Mr. Clark questioned the interpretation of the zoning code.

Town Attorney Mancuso stated that the proposed use of the property does not fall within allowable uses covered in Rush Town Code 120-12A(1).

Mr. Clark inquired about Special Permits, could this project fall under a Special Permit for public utilities and installations.

Town Attorney Mancuso informed the applicant that special permits for utility companies would be installing utilities on the site such as substations, switching stations, pumping stations and similar structures. In addition, the Zoning Board is the authority that will assess the proposal in order to determine if variances are needed. Mr. Clark was advised to apply to the Zoning Board of Appeals.

Mr. Clark was informed that the Zoning Board could meet for a workshop on February 14, 2013 and tentatively schedule a public hearing on March 14, 2013 if Mr. Clark can submit an application to the Zoning Board by January 31, 2013. This would make it possible for the applicant to appear before the Planning Board for a public hearing on March 19, 2013.

Mr. Clark addressed the area of disturbance for the proposed project consisting of 2.75 acres. The lot that Mr. Turner will be developing will consist of 25 acres total leaving 57 acres of vacant land.

Town Engineer Todd Ewell noted that the original submittal did not meet the Monroe County requirements for a subdivision map. Mr. Clark stated that not all updates to the map have been made at this point.

**Debbie Stevens regarding revised sight plan for 7272 West Henrietta Road.**

Mrs. Stevens stated that she is unsure of what the Planning Board needed. Chairman Felsen informed Mrs. Stevens that all of the changes that have occurred on the property to date and any potential future changes for the site need to be indicated on a formal site plan map.

The Board asked Mrs. Stevens about the current activities occurring on the premises of Colby's Ice Cream and Bake Shop and if Mr. Kolb (owner of Colby's) has made changes to the kitchen. Mrs. Stevens stated that as far as she knows Mr. Kolb sells ice cream and baked goods and she is unaware of any other changes to the shop. Chairman

Felsen emphasized that additions have been made to the site that are not on the original site plan. Mr. Kolb appeared before the Planning Board to request an addition for an outdoor seasonal deck with an awning. It now appears to be enclosed sit down restaurant addition. Mrs. Stevens stated that she thought that CEO Kusse was working with Mr. Kolb regarding all the changes and permits.

Chairman Felsen stated again that over time changes have been made without obtaining prior approval from the Planning Board and without submission of a revised site plan. In addition to all the current changes, the revised site plan will need to show the revision to the fire lane, parking, hours of operation and number of parking spaces.

Chairman Felsen said there may be an increase in drainage. This is a concern for the existing septic system that services the main house in addition to the businesses on the property. Planning Board approval of the revised site plan may also be subject to review by the Town Engineer.

The Planning Board asked CEO Kusse if the indoor fireplace was permitted. CEO Kusse said that he permitted a no vent ornamental gas fireplace.

Chairman Felsen inquired about the stacked fire wood and what appears to be an additional deck near the bounce house.

CEO Kusse explained that bounce houses are not regulated and that decking boards were placed beneath the bounce house to protect it from the stones and gravel. Although bounce houses are not regulated it will need to be added to the site plan.

CEO Kusse also wanted to clarify that originally the Stevens complied with the requirement of paving. With the addition to the ice cream & bake shop additional parking and paving may be required.

CEO Kusse stated that he was recently informed of a new business in the adjoining retail space that is preforming light manufacturing of medical pumps. Mrs. Stevens stated that it is a medical supply company and she is unaware of any manufacturing.

CEO stated that the occupants of the retail spaces are also required to obtain Certificates of Occupancy. The medical supply business has not obtained the required Certificates of Occupancy.

**BOARD BUSINESS:**

**Application 2012-06P by Kyle Stevens requesting a Special Permit for the outdoor storage of commercial vehicles located at 2500 Rush Mendon Road.**

The Planning Board previously rescinded their approval of Mr. Stevens special Permit pending submission of the required Short EAF. The Board has received the Short EAF and can now proceed with their determination.

Mr. Stevens submitted a detailed sketch showing precise locations for the proposed commercial vehicle storage. Chairman Felsen informed Mr. Steven's that there will be a list of conditions should the Board approved the special permit. In addition should any of the conditions be violated the permit will be revoked.

Chairman Felsen read a draft of proposed conditions for Board discussion. The Board discussed the outside landscape displays. Mr. Steven's stated there are no retail displays. Mr. Stevens will continue to beautify the property for his agricultural business and that should not be confused with displays. The Board agreed that displays were not an issue and would not be part of the conditions of approval.

Residents Mr. and Mrs. Calev expressed concerns regarding the increase in public traffic and safety.

Mr. Stevens stated his intent is not to create a national park. Mr. Stevens does want to grow his seasonal agricultural business and part of that is agritourism. This is all acceptable under New York State Agriculture and Market Laws.

Chairman Felsen reminded the audience that the Board's purpose tonight is to consider conditions of approval and make a resolution regarding Mr. Stevens request.

It was noted that Special Permits become invalid upon sale of the property and change of ownership.

**The Short EAF was completed by the Board at this time.**

Chairman Felsen made a motion:

**WHEREAS,** the Board has examined the Application 2012-06P by Kyle Stevens owner of Stevens and Sons LLC requesting a Special Permit for the outdoor storage of commercial vehicles at 2500 Rush Mendon Road in an R-30 zoning district; and

**WHEREAS**, maps and other materials were filed along with the Application, including the Short Environmental Assessment Form ("Short EAF"), pursuant to the New York State Environmental Quality Review Act ("SEQRA"); and

**WHEREAS,** the Board has referred the application to the Town of Rush Conservation Board for its consideration and recommendations; and

**WHEREAS,** the Conservation Board has questioned if the vehicles will have any impact on the Linear Trail; and

**WHEREAS,** this Board has not found any aspect of the proposed action to be environmentally significant.

**NOW, THEREFOR**, upon consideration by the Board of the Application and the other materials submitted by Mr. Stevens, including the Short EAF, and the Board having given the submitted documentation matter due consideration; it is

**RESOLVED**, that the Board declares itself Lead Agency for purposes of conducting an Uncoordinated Review of the Application pursuant to SEQRA; and it is further

**RESOLVED**, the Board classifies the Application as an Unlisted Action, as that term is defined pursuant to SEQRA subject to uncoordinated review under 6 N.Y.C.R.R. § 617.6; and it is further

**RESOLVED,** that upon its examination and study of the Short EAF and the maps and plans submitted with the Application, and upon the advice and recommendations of the Conservation Board, the Board determines that the Application will not present a potential significant adverse environmental impact and thus issues a Negative Declaration concluding the SEQRA process. The reasons for this determination are that the proposed action cannot reasonably be expected to lead to any of the following consequences:

A. A substantial adverse change to ambient air or water quality or noise levels or in solid waste production, drainage, erosion or flooding.

B. The removal or destruction of large quantities of vegetation or fauna, the substantial interference with the movement of any resident or migratory fish or wildlife species, impacts on critical habitat areas, or the substantial affecting of a rare or endangered species of animal or plant or the habitat of such a species.

C. the encouraging or attracting of a large number of people to a place for more than a few days, relative to the number of people who would come to such place absent the action.

D. the creation of a material conflict with the Town's existing plans or goals as officially approved or adopted.

E. the impairment of the character or quality of important historical, archaeological, architectural or aesthetic resources or of existing community or neighborhood character.

F. a major change in the use of either the quantity or type of energy.

G. the creation of hazard to human health or safety.

H. a substantial change in the use, or the intensity of use of land or other natural resources or in their capacity to support existing uses where such a change has been included, referred to, or implicit in an official comprehensive plan.

I. the creation of material demand for other actions which would result in one of the above consequences.

J. changes in two or more elements of the environment, no one of which is substantial, but when taken together result in a material change in the environment.

Board Member Sweet seconded the motion and the Board Members polled:

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

Chairman Felsen made a motion to grant approval of Application 2012-06P by Kyle Stevens for the outside storage for the outdoor storage of commercial vehicles at 2500 Rush Mendon Road in the Town of Rush conditioned upon:

1. That a maximum of twelve(12) landscape staff can pick up commercial landscape vehicles at 2500 Rush Mendon Road, Town of Rush, for off-site work and return the commercial vehicles to the site Monday through Friday during the hours of 7:00AM until 6:00PM, Saturday during the hours of 7:00AM until 3:00PM.

2. That the maximum number of commercial landscape vehicles allowed to be stored outside at 2500 Rush Mendon Road, Town of Rush shall be eighteen(18).

3. That the following type of commercial landscape vehicles are allowed to be stored outside at 2500 Rush Mendon Road, Town of Rush shall be as follows: 6-wheel dump trucks, pickup trucks, landscape/small equipment trailers, water/seeder trailers, mini excavators, skid steer loaders and backhoe loaders.

4. That the maximum number of landscape employee vehicles allowed to park at 2500 Rush Mendon Road, Town of Rush from Monday through Friday during the hours of 7:00AM until 6:00PM, Saturday during the hours of 7:00AM until 3:00PM shall be twelve(12).

5. That the location of the outside storage of the allowed eighteen(18) commercial landscape vehicles shall be as follows: behind the main building as shown on the submitted sketch.

6. That the location of the twelve(12) landscape staff parking spaces shall be on the southwest side of the building as shown on the submitted sketch.

7. That no materials of any type other than those used directly in the growing of nursery stock or with any on-site agriculture operation shall be stored at 2500 Rush Mendon Road, Town of Rush.

8. That no products or related materials other than defined nursery stock or agricultural products shall be allowed to be stored or marshaled at 2500 Rush Mendon Road, Town of Rush. No stockpiling of any landscape products or materials to be used on-site or off-site shall be allowed.

9. That the retail sales of nursery stock and agricultural products or material grown on-site at 2500 Rush Mendon Road, Town of Rush is permitted. That the retail or wholesale sale of any other products or materials at this site is prohibited.

10. That no retail or wholesale business or office shall be allowed at 2500 Rush Mendon Road, Town of Rush except those associated with the on-site nursery or agricultural operations. That no use is permitted other than that directly related to the planting, care and harvesting of defined nursery stock or agricultural products. The maintenance, repair and storage of equipment used specifically for nursery stock growing or agriculture is allowed.

11. That the Special Permit to allow the outside storage of commercial landscape vehicles at 2500 Rush Mendon Road, Town of Rush shall be immediately revoked upon the applicant's non-compliance with any of the above conditions of approval.

12. That upon revocation of the Special Permit to store commercial landscape vehicles outside at 2500 Rush Mendon Road, Town of Rush, the applicant shall remove all eighteen(18) commercial vehicles from the site within thirty(30) days.

13. That upon revocation of the Special Permit to store commercial landscape vehicles outside at 2500 Rush Mendon Road, Town of Rush, the applicant shall not allow the parking of any landscape employee vehicles on-site.

Board Member Wurzer seconded the motion and the Board members polled:

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

**Revision of Special Permit Application**

The Planning Board agreed by common consent to make the following changes to the Special Permit Application.

1. the addition of a signature line for the property owner.
2. change the word "point" to "arrow" under 3a of the instructions.
3. add to instructions "4. Submit completed New York State Short Environmental Assessment Form".

4. the required New York State Short Environmental Assessment Form will be attached to the application.

**Discussion – Right to Farm Law**

Board Member Sweet provided the Board with a guild book from the American Farmland Trust, titled Planning For Agriculture in New York. Board Member Sweet has been in contact with American Farmland Trust advisor Judy Wright. Ms. Wright has offered her advice and expertise to the town on developing right to farm laws at no charge. It was suggested that we invite Ms. Wright to attend a Town Board meeting and hold an open forum allowing her to address questions. All Rush Boards should be invited to the meeting.

Councilman Riepe stated that he would coordinate with the Town Board to determine a possible future meeting date that will work with Ms. Wright's schedule.

New York State Agriculture and Markets recommended additional action items such as establishing an Agricultural Advisory Committee and creating an Agricultural Zone Overlay for the current town zoning.

Board Member Sweet discussed types of agricultural development pressure. Tract subdivision developments are not the only type of development pressure to consider. The slow gradual large lot development that consumes 5 to 10 acres at a time is also considered development pressure that can slowly eliminate open space. Development pressures are important to keep in mind when developing a right to farm law.

With no further business, a motion was made by Chairman Felsen and agreed by common consent that the meeting be adjourned at 10:10 PM.

Respectfully Submitted,

Meribeth Palmer
Deputy Town Clerk