

**RUSH PLANNING BOARD  
PUBLIC HEARING  
APPROVED MINUTES  
AUGUST 15, 2006**

A regular meeting of the Rush Planning Board was held on Tuesday, August 15, 2006, at the Rush Town Hall, 5977 East Henrietta Road and was called to order at 7:30 P.M.

**MEMBERS PRESENT:**

John Felsen, Chairman  
John Morelli  
Don Sweet  
Al Simon

**OTHERS PRESENT:**

Scott Mooney Esq. Boylan Brown, Attorney for the Town of Rush  
Todd Ewell, Clough Harbour & Associates. Engineer for the Town of Rush  
Gerald Kusse, Code Enforcement Officer.  
Tom Doupe, Town Board Member  
Lisa Sluberski, Town Board Liaison  
Sheldon Boyce Esq.  
William Fletcher Esq.  
Kyle Stevens, 2500 Rush Mendon Rd  
Barb Bock, 1 Pheasant Run  
Betsy Harrison, 2608 Rush Mendon Rd  
Bill Riepe, 40 Horseshoe Lane S  
Mike Duch, 34 Jeffords Rd  
Bill Gaffney, 1899 Middle Rd  
Chris & Lou Ingersoll, 2435 Rush Mendon Rd  
Doug Morrison, 2466 Rush Mendon Rd  
Marion & Joseph West, 2432 Rush Mendon Rd  
Fred & Nancy Calev, 2516 Rush Mendon Rd  
Mr. & Mrs. Charles Ingersoll, 2435 Rush Mendon Rd

**APPROVAL OF MINUTES:**

The Minutes of June 20, 2006 were reviewed. Mr. Felsen made a motion to approve the Minutes of June 20, 2006 as amended. The following changes were made:

On page 3, 2<sup>nd</sup> paragraph, change the word (condition) to (conditioned). At the beginning of each of the conditions, change each as follows:

#1 to read, The Applicant removing

- #2 to read, The Applicant adding
- #3 to read, To the north arrow, adding
- #4 to read, Showing
- #5 to read, Showing

On page 4, change the word (condition) to (conditioned). At the beginning of each condition, change each as follows:

- #1 to read, The Applicant showing
- #2 to read, The Applicant changing Note #7 to indicate
- #3 to read, The Applicant changing Note #23 to read,
- #4 to read, On the property map, the Applicant showing
- #5 to read, On sheet #2 under the soil percolation data, the Applicant removing the reference to Lot R-19A.
- #6 to read, The Applicants Engineer conferring with the Engineer for the Town of Rush regarding the requirements for compaction under the proposed house pad, and the required notes be added to the plans to indicate the specifications for compaction.

Mr. Morelli seconded the motion and the Board polled:

Roll: Mr. Felsen                    aye  
      Mr. Morelli    aye  
      Mr. Sweet                    aye  
      Mr. Simon                    aye    carried.

The Minutes of July 18, 2006 were reviewed. Mr. Felsen made a motion to approve the Minutes of July 18, 2006 as amended. The following changes were made:

On page 7, first paragraph, remove the sentence; One single-family dwelling is planned for each of the lots created. Property is located on Rush Henrietta Townline Road, change Motion to read:

Mr. Morelli made a Motion to Table **Application 2004-08 P** by Arnold Carmichael for Subdivision / Site Plan approval to subdivide a parcel containing 19.9 acres into five (5) lots, until the Applicant submits an acceptable redesign of the proposed road.

**APPLICATION WAS PREVIOUSLY TABLED ON 7/27/04.**

On page 8, 3<sup>rd</sup> paragraph, change the word (condition) to (conditioned). #3 change the word (Works) to (Health).

Mr. Sweet seconded the motion and the Board polled:

Roll: Mr. Felsen                    aye  
      Mr. Morelli    aye  
      Mr. Sweet                    aye  
      Mr. Simon                    aye    carried.

**PUBLIC HEARING:**

**Application 2006-14 P** by David & Barbara Bock for a Special Permit to build an in-law apartment onto the existing house. Property is located at 1 Pheasant Run, south of Jeffords Road. Property is located in an R-30 Zoning District.

Mrs. Bock stated that they were planning to add a single story, approximately 600 square foot in-law apartment for her mother onto the east side of their home. Mr. Felsen read the Zoning Ordinance from the Code of the Town of Rush regarding Accessory Apartments. After reading from the code, it was determined that a 600 square foot one bedroom apartment would be acceptable. Mr. Felsen asked Mrs. Bock to provide a sketch of her home showing the proposed apartment. Mr. Felsen stated that the septic system, water & utilities will need to be approved by the appropriate Monroe County Departments and utility company. No additional parking will be added. A Site Plan showing the addition with all setback measurements will be required for the approval of this application.

There were no further comments and Mr. Felsen declared the Public Hearing closed.

**Application 2006- 15 P** by Kyle D. Stevens, of Stevens & Sons LLC, & Stonewood and Waters, Inc. for a Special Permit to operate a Horticultural Nursery, Lawn & Landscape services and an office at property located at 2500 Rush Mendon Road. Property is located in an R-30 Zoning District.

Mr. Boyce submitted additional exhibits to the Application submitted by Kyle Stevens. Mr. Boyce gave a description of the exhibits submitted. Mr. Boyce felt that an Application for a Special Use Permit wasn't necessary based on the prior determination in the year 2000. Mr. Boyce asked to have testimony from Mr. Stevens in regards to the activities that have taken place over the last 6 years to build up the business.

Mr. Stevens described his operation after coming to the Planning Board in the year 2000. Mr. Stevens stated that he purchased the property, developed to the property, moved driveways, remediated pre-existing non-conformities in what was his great grandfather's gravel pit. Mr. Stevens stated that he has built a building, established a place of employment and has been operating from this location for the past 6 years. He has supported by all governing bodies within the Town. Numerous inspections, questions and concerns have been raised, stating that he has tried to meet all of them to the best of his ability. Mr. Stevens stated that he has invested close to one half million dollars into this property.

Mr. Boyce asked that the Board determine that the Application was not necessary because this was a proper farming activity; pursuant to the Agricultural & Markets Law and that they had provided an opinion letter stating this. Mr. Felsen asked Mr. Boyce what he meant by "this is", asking, what are you saying, what does "this mean this operation". Mr. Boyce stated that "this operation" meant the operation of the nursery. Mr. Felsen asked Mr. Boyce to describe the definition of a nursery. Mr. Boyce read portions

of a booklet titled "Establishing and Operating a Garden Center". There was a discussion regarding if a definition of a horticultural nursery was in the Rush Town Code. Mr. Boyce stated that the operation was protected by the "right to farm law".

Mr. Morelli asked about the selling of baskets and non-grown items. Mr. Stevens described them as a support activity under New York Ag & Markets Law. Mr. Boyce asked the Board, that in the event the Board determined that the Application is necessary, which was submitted in a spirit of cooperation by Mr. Stevens trying to work with the Town, then he would ask that the Board determine that the activities that were described in the brochure of operating a garden center, be considered appropriate as incidental to the horticultural nursery. The Board Members and Mr. Boyce tried to determine if a Horticultural Nursery and a Garden Center were considered the same. Mr. Felsen stated that at this time, Mr. Steven's parcel of land was not in the Agricultural District. There was a discussion regarding the acceptable uses within an Agricultural District and when a parcel was not in an Agricultural District.

Mr. Stevens described the nature of his business as it stands today. He stated that he had a pole barn, an office area for employees, ran the landscaping company from the location; he was growing trees and scrubs. Mr. Stevens has approximately 20 thousand seedlings in the ground; he buys plant materials from other growers for later sale. Mr. Stevens's intentions are to sell his trees and shrubs to the public.

Mr. Steven's stated that he has slowly taken his company and turned it over to an installation company. The operation has gone from mowing 400 properties a week, to now having one crew of 2 people mowing for a 40 hour week. Lawn care and chemical applications have been discontinued with the exception of roundup. Mr. Steven's carries a commercial applicators license, registered with the state, DEC inspected. Mr. Steven's has year round employees; they provide snowplowing in the winter time, which has scaled back by 80 percent. His plans are to grow and develop a strong nursery. As support products and services, they install a lot of garden walls, patio's, sidewalks, accent lighting & irrigation.

Mr. Stevens stated that he now has approximately 8 employees. Mr. Felsen asked Mr. Steven's what percentage of his business was nursery versus landscaping. Mr. Steven's stated that it was skewed heavily towards the installation and maintenance side, because his stock is small, which will take 5 or 6 years to grow anything. He needs more capitol to invest into the business.

Mr. Morelli asked Mr. Stevens if he was going to add more buildings. Mr. Stevens stated that he would like to add a cold storage building to hold seed and to park equipment. Hoop houses and a garden stand would be added to the west side of the building as well. Mr. Morelli asked if Mr. Steven's saw the nursery / farming operation growing and the landscaping shrinking or being relocated. Mr. Steven's stated that he saw this to happen. Mr. Steven's stated that he does sell mulch which is a big part of his business as a yearly sales item.

Mr. Felsen asked Mr. Steven's about his sworn statement dated and notarized 12 / 2000, stating that in that statement it mentions that he was applying for a Special Permit and it mentions what he intended to do. There was no mention of a landscaping business. Mr. Steven's stated that this statement was intended for the State for an application for a curb cut to relocate the driveway. Mr. Boyce stated that he had submitted exhibit C which was the cover letter that went with that statement to the Department of Transportation for the curb cut.

Mr. Morelli asked Mr. Steven's if he could phase his operation. He asked if there were one or two activities or pieces of equipment that caused a problem with the neighbors. Could there be a three or four year period where Mr. Steven's would be growing / farming and phasing out or relocating the other aspects of the operation to accommodate the neighboring residents from noise etc. Mr. Steven's stated that he was willing to do what ever he could do to try to remediate relationships or do things in a fashion that would meet a reasonable level of activity. He is planning on making changes to the property, one being in the form of landscaping berms and plantings to control the noise.

The Board Members tried to determine what would be an appropriate definition of a horticultural nursery using a dictionary and the definition described in correspondence received from the State of New York Department of Agriculture and Markets.

The Board Members referred to Mr. Steven's application which states what he proposes for review for the continued operation located at 2500 Rush Mendon Road. Under Proposal (a) Horticultural Nursery, the Board Members felt that all items listed as well as hardscapable goods such as stones/ rocks and organic fertilizers were acceptable for a horticultural nursery at this location. Proposal (c) meeting place for employees and storage of documents, the Board Members felt that an office was an acceptable use. Proposal (b) Lawn and Landscaping services, was a concern as it is not an allowable use in this district. There was a discussion as to the percentage of lawn & landscaping services verses the horticultural nursery. Mr. Stevens stated that he thought 80 percent of his operation was landscaping and 20 percent was the horticultural nursery. His hopes are to reverse these percentages as the business grows. Mr. Stevens stated that the landscaping portion of his business is operated off site. His equipment is stored at this location.

Mr. Felsen asked where the landscape business fit into agricultural? Mr. Mooney stated that there was no guidance in the Town Code; the reasonable interpretation was exactly what the Board was trying to do, to come up with a reasonable interpretation of what was horticultural and what was landscaping. According to §305 of the Department of Agriculture and Markets Law, landscaping does not fit into the category of a horticultural nursery. Mr. Mooney stated that Mr. Steven's was not located within the Agricultural District at this time; he was located in a Residential Zoning District. A Special Permit for this business will be required no matter what District the property was in.

Mr. Kusse informed Mr. Boyce that Exhibit A was not product of his effort. He did not write it, it is not on his letter head. He asked that this letter (Exhibit A) be removed from

the exhibit submitted. Mr. Boyce thanked Mr. Kusse for clarifying this matter. The letter will be removed from the exhibit.

There was a discussion about the lawn mowing, landscaping and snow plowing. Almost all of the operations are preformed off site. The Planning Board Members and Council stated that they needed to determine what category this operation falls under, what equipment could be stored, what operations could be active or preformed at 2500 Rush Mendon Road, if some of the equipment needed to be stored elsewhere.

The following residents had comments:

Ms. Betsy Harrison, residing at 2608 Rush Mendon Rd was concerned about real estate values of the houses in the area being lowered with a commercial business in a residential district. She has seen an increase in traffic in the area, and has a concern if the business becomes a retail type of business.

Mr. Fred Calev, residing at 2516 Rush Mendon Rd had spoken with Rochelle Bell from Monroe County Planning & Development regarding the allowable uses within an Agricultural District. She had stated that the Ag Law has no jurisdiction or effect on Town Law. It is a notification system for all of the farms that are in the district for when New York State passes laws that would effect them. It doesn't supercede any part of the Town. Also stating that the property was never in the Agricultural District. If Mr. Steven's gets into the Ag District, it has no bearing on any of the Town Ordinance's. Mr. Calev was concerned about the excessive amount of noise, smells and damage to his home. He doesn't understand why he should have to put up with a commercial business in a residential district, he lives 30 feet from this operation. The problems occur everyday for him and his family. He felt that in a few years his home would be considered worthless because of the damage that has occurred so far.

Mrs. Nancy Calev, residing at 2516 Rush Mendon Road commented on the fact that there seems to be no end to the limits to the Ag & Markets Law. How far is Mr. Steven's going to be allowed to grow? She had a conversation with Mr. Steven's a month or so ago, voicing her concern for the problems. Mr. Steven's stated that the noise was going stop. Now there is another proposal, more buildings, more equipment, growing the business, retail: but not in a residential area. There seems to be no limits, it could turn into anything.

Mr. & Mrs. Ingersol, residing at 2435 Rush Mendon Road had concerns for the drainage that goes towards their property. Will pesticides be going into the creek and her yard?

Mrs. Marion West, residing at 2432 Rush Mendon Road didn't understand how the drainage could effect the ground water from the other side of the road. She also stated that she hasn't had any problems with additional noise in the area.

Mr. Mike Duch, residing at 34 Jeffords Road supports Mr. Steven's operation.

Mr. Fred Calev discussed the drain that goes across the road; this could be where the water is coming from. He was also concerned with the amount of mulch that Mr. Steven's will be using. Concerned with using this in a farming operation, how much will be allowed.

Mrs. Nancy Calev stated that there was a natural spring near her home, where did all of the water go since Mr. Steven's made improvements to his property?

Mr. Steven's answered many of the residents concerns.

At this time Mr. Mooney stated that Council would look into Agricultural Markets Law as to what a Horticultural Nursery actually was.

There were no further comments and Mr. Felsen declared the Public Hearing closed.

**INFORMAL DISCUSSION:**

Ron Henkel - Pinnacle Homes, proposing Site Plan and re-zoning for property located between Boulder Creek Drive and Thunderidge Drive.

Mr. Henkel was seeking rezoning of a parcel near the Wildwood Golf Course located between Boulder Creek Drive and Thunderidge Drive. The proposal has 3 entrances for the project. This project would be a multi phased project consisting of a 100 unit townhouse project with approximately 18,000.00 square foot of restricted business / office complex. Zoning is presently R-30 Residential, proposing to change the Zoning to Multi Dwelling, Limited Industrial and or Commercial. After reviewing the proposal, the Board Members suggested that Mr. Henkel speak with the Town Board regarding the re-zoning of this parcel which would include a sewage treatment plant.

**COMMUNICATIONS:**

Rush Town Board request for the Rush Planning Board to pass a resolution to act as Lead Agency for the SEQRA review of the Dorschel re-zoning/site plan proposal.

**RESOLUTION OF THE PLANNING BOARD OF THE TOWN OF RUSH,  
NEW YORK DECLARING LEAD AGENCY STATUS FOR SEQRA REVIEW OF  
PASSERO PROJECT**

**BE IT ENACTED BY THE PLANNING BOARD OF THE TOWN OF  
RUSH AS FOLLOWS:**

**WHEREAS**, on July 21, 2006, the Town Board of the Town of Rush, New York (the "Town Board") received a revised petition from Passero Associates, on behalf of Richard I. Dorschel and the Dorschel Automotive Group / Rush Associates LLC

(“Passero”), to rezone 6.38 acres of property located at 7262 West Henrietta Road in the Town of Rush (the “Petition”), a letter of intent regarding the Petition, a conceptual site plan, a map depicting the potential rezoning, and a Full Environmental Assessment Form prepared in accordance with the New York State Environmental Quality Review Act (“SEQRA”); and

**WHEREAS**, the 6.38 acres of property located at 7262 West Henrietta Road that Passero seeks to rezone to Commercial (C) is located within an R-30 zoning district; and

**WHEREAS**, the Petition proposes the construction of a motor-sports retail center and a bank on the property located at 7262 West Henrietta Road; and

**WHEREAS**, the Petition shall involve the review and approval of additional governmental agencies, including, but not limited to, the Monroe County Department of Health, the Monroe County Department of Planning and Development, the New York State Department of Environmental Conservation, the New York State Department of Transportation, and the Town of Rush Town Board (the “Involved Agencies”); and

**WHEREAS**, on August 9, 2006, the Town Board at a Regular Meeting passed a resolution whereby it referred the Petition to the Planning Board for study and recommendation, as well as deferred its lead agency status under SEQRA to the Planning Board in order to ensure a complete review of the Petition and accompanying site plan proposal;

**NOW THEREFORE**, upon consideration by the Planning Board of the Petition and the EAF; it is

**RESOLVED** that the Planning Board classifies the proposed project identified in the Petition and EAF as an “Unlisted Action” subject to a coordinated review under 6 N.Y.C.R.R. § 617.6(b)(3); and it is further

**RESOLVED** that the Planning Board declares itself Lead Agency for purposes of conducting a coordinated review of the Petition, and the proposed project identified in the Petition, under SEQRA, unless it receives a formal objection from an Involved Agency regarding the Planning Board’s declaration within the applicable timeframe set forth under the SEQRA regulations; and it is further

**RESOLVED** that notice of this Resolution and the Planning Board’s declaration of Lead Agency status shall be filed, circulated and/or published to the extent required by the applicable regulations under SEQRA and/or any other statute or regulation.

### **DECISION**

The within resolution was moved by the Chair of the Planning Board, John Felsen, seconded by Planning Board Member John Morelli, and was voted upon by the

Members of the Planning Board at a Regular Meeting held on August 15, 2006, as follows:

John Felsen	aye	
Don Sweet		aye
Al Simon		aye
John Morelli	aye,	carried.

**DECISIONS:**

Mr. Felsen made a Motion **WHEREAS;** this Board has examined **Application 2006-14 P** by David & Barbara Bock for a Special Permit to build an in-law apartment onto the existing house. Property is located at 1 Pheasant Run, south of Jeffords Road. Property is located in an R-30 Zoning District. Mr. Felsen made a Motion to Table this Application until the Board receives a complete Application from the Applicant including a Site Plan showing the addition and meeting the requirements of § 120-61 of the Zoning Ordinance of the Town of Rush.

Mr. Simon seconded the motion and the Board polled:

Roll:	Mr. Felsen		aye
	Mr. Morelli	aye	
	Mr. Sweet		aye
	Mr. Simon	aye	carried.

Mr. Morelli made a Motion having reviewed **Application 2006- 15 P** by Kyle D. Stevens, of Stevens & Sons LLC, & Stonewood and Waters, Inc. for a Special Permit to operate a Horticultural Nursery, Lawn & Landscape services and an office at property located at 2500 Rush Mendon Road. The Planning Board Tabled this Application pending:

1. Further information from Council regarding the provisions of Agricultural Law and the definition of a Horticultural Nursery.
2. The Planning Board will extend the timetable for decision and enforcement until a decision is made by this Board.

Mr. Felsen seconded the motion and the Board polled:

Roll:	Mr. Felsen		aye
	Mr. Morelli	aye	
	Mr. Sweet		aye
	Mr. Simon	aye	carried.

RUSH PLANNING BOARD  
AUGUST 15, 2006

There were no further comments and the meeting was adjourned at 11:15 P.M.

Respectfully submitted,

Darlene Pilarski  
Deputy Town Clerk