

Planning Board Meeting  
September 17, 2014

Present:	Mary Ann Bachman	Guests:	Amy Charlton
	Anne Caprini		Mark Tayrien-LaBella
	Jim Ely, Chairman		Associates
	Ralph Endres		Three Other Interested
	Ann Jacobs		Parties
	Ann Marie Rotter		
	Mike Staub		
	Rodney Terminello		

Absent: Bessie Tyrrell

The regular meeting of the Town of South Bristol Planning Board was called to order at 7:00 P.M. followed by the Pledge of Allegiance. All board members were present with the exception of Bessie Tyrrell.

Anne Caprini read the Comprehensive Plan Vision Statement out loud.

Chairman Ely then called for a motion to approve the August 20, 2014 minutes as written. Rodney Terminello made said motion which was seconded by Ann Marie Rotter. The motion was unanimously accepted with the exception of Ralph Endres who did not vote as he was not present at the August 20, 2014 meeting.

Old Business

Proposed Logging/Steep Slope Regulations; Animal Control Regulations; Barking Dog Language; Changes to Current Steep Slope Law Permit Application; and Lake Residential Site Plan Review Status Update-Chairman Ely advised the board that the Town Board had sent on to the town attorney all of the Planning Board's proposed changes to be drafted into local law format. Mr. Ely noted that it did not necessarily mean the proposed changes would be adopted but that it was a step forward. Mr. Ely also told the board that with respect to requiring site plan review in the Lake Residential District that County Planning, Kevin Olvany and CEO

Sommer were all very enthusiastic about the proposed change. Chairman Ely added that there had actually been some suggestion that site plan review be extended to other areas of the town but that he felt it best if the board were to take things one step at a time.

Update re BSV Resorts PD Request-Chairman Ely told the board that it was not before the Planning Board as yet and that he gathered that it was still before the Town Board and that the Town Board was still waiting for more information from the applicant before things could move forward. Mr. Ely said he had no idea as to when the application would be referred to the Planning Board.

Update re Bristol Homeowners Environmental Preservation Associates, LLC v. Town of South Bristol-Chairman Ely told the board that with regard to the lawsuit the attorney representing the town for the case had advised him that the oral argument before the Appellate Division went very well and that he anticipates that the court will issue a decision dismissing the complaint. Mr. Ely said that the town would have to wait and see but that it was rare for an attorney, in Mr. Ely's experience, to make that kind of assurance unless they feel quite confident.

Amy Charlton – Agenda 21 – Chairman Ely then turned the floor over to Amy Charlton who was invited to speak to the board regarding the topic of Agenda 21 in follow-up to discussion the board had at their August meeting on the subject. It was also noted that Amy had given a presentation to the Town Board recently as well.

Amy began by saying that she was going to proceed on the basis that most of the board members knew some of the basics about the environmental movement and the interplay with social equity, economics, etc. She said it was a very big topic and that she was still learning herself as there was a lot to it.

Amy said that since the board had other materials that were given to them at last month's meeting that she was going to give the board an update regarding some other material that she had come across.

Amy then told the board that property rights of individuals was a key concern when environmental groups are coming forth. She said that environmental groups can be governmental agencies, international agencies, non-state global action, etc. Amy said that between 2000 and 2012, 81 billion dollars went to green grants. She said grant money comes out through foundations and green organizations to towns like South Bristol and if those grants have stipulations attached then property rights and home rule come into play. Amy said that there was a lot of activity out there. She said that in 2009 there were 16, 000 groups that were active in the United States and by 2012, there were 26,000 groups. Amy said they ranged from big to small such as the Sierra Clubs and groups like that and then some real small ones. Amy said that even the innocuous-sounding ones like “Rails to Trails”, which she felt was great as she said she liked to bike and hike, can impact property rights.

Amy then said that on a national scale a lot of this was coming to light. She said that Senator Ron Paul had introduced a bill to, more or less, reign in some of the regulations of the big federal agencies where a lot of this has impacted communities. Amy said the bill was to have oversight over the EPA, the Army Corp of Engineers, the U.S. Forest Service, the National Park Service, the Fish and Wildlife Service, etc. because a lot of those agencies are having a negative impact on people. She said some of the board members may have watched the ranchers out west back in June.

Amy went on to say that as far as other states go, Virginia had just passed a bill that was to protect small farmers as they had been subject to numerous regulations by several agencies. She said that she believed that the State of Alabama had decided within the last couple of years to pull out of the ICLEI organization which was an international group – the International Council For Local Environmental Initiatives - which came out of the Earth Summit/Agenda 21. Amy also said that she believed that Wisconsin recently passed legislation to protect property owners so that the government could not intrude unnecessarily. She said there is activity now as people become aware that things that sound really good, like sustainable development, sometimes are not as those organizations do not always have the best interest of the people with respect to America’s foundation principles.

Amy then brought her focus to New York State. She said there was a line in the telephone bill where the charge goes to help fund a cleaner, greater New York. She said New York was divided into nine different regions and that there were local developmental regional councils on sustainability to try and impact local regions and implement what they feel is sustainable.

Amy then told the board that she had been asked to see if she could find out what some of the local representatives think about the issue because it is very subtle and coming in from all different angles. She said she did get an appointment with Brian Kolb this summer when he was in Geneva. She said she had a couple of things she wanted to see him about. Amy said she brought this issue up and gave Mr. Kolb the same materials that she had given the Town Board. She said she started out by asking him if he knew that “the new red is green”. Amy said he looked at her as if to say, “What do you mean by that?” She said she then explained that a lot of the green initiatives with respect to social impact, economic impact, environmental impact, etc. change peoples’ lives. Amy said they just talked about it briefly but that she did give him those materials to look over. She said she could not say that Mr. Kolb seemed to have a lot of recognition about it even though it was so big and everywhere. Amy said she did not know about Mike Nozzolio except that he has had to deal with a lot in connection with the lakeshore of Lake Ontario and the effort to raise the water levels which impacts people’s property along the south shore where his population elected him. She said she felt that due to the lakeshore situation that Mr. Nozzolio has come to realize how strong and pervasive these ideas are and the impact that they can have.

Amy said that she had also gone over to the Town of Gorham because one of the things that South Bristol could do on a local level would be to consider having language in place by resolution that would state that South Bristol does not want to belong to a group like ICLEI and have the town’s ideals in place to protect property rights and home ownership when there are grants and things that come to the town. Amy said she thought that Ann Jacobs had a copy of such language. Amy said she had asked the Town of Gorham supervisor whether he felt that it was worthwhile to have in place which was passed this summer or if it was just window dressing. She said that he had said that he was glad to have it in place

because it gives a little bit of a buffer to the town. She said he told her that when grant opportunities come in it was difficult to gauge what is good and what is not but that he was still glad that they had it in place.

Amy then said that some of the folks that were trying to fight back, in terms of the incursions that have already occurred, feel that it is important for towns to have these kinds of things and then they look to a penalty level to see what could be done.

She then told the board that the Village of Rushville had also passed resolutions and that if other towns such as South Bristol, Bristol, etc. were to do so as well then maybe it would generate some interest at the County level to either keep their antenna up and/or pull some of these things back which would be a huge thing. Amy said it would at least get the awareness out there because awareness was coming more and more. She said she had given an example during her presentation to the Town Board about some counties in Florida who had pulled out of regional sustainability planning development because they felt it was not good. Amy said she thought that it was the Planning Board Chair in the Town of Gorham who was also their representative on the County Planning Board and that both he and the Gorham Town Supervisor work closely together and that it was good they both of them were thinking about the potential impact of some of these issues.

Amy then told the board that if anyone was interested that there was a website called the "American Policy Center" ([americanpolicy.org](http://americanpolicy.org)) that holds webinars and that one was called "Introduction to Stop Agenda 21" and that another one was "Attack of the NGOs" (non-governmental organizations). She said that one that she had recently watched was called "Follow The Money" which was about the big foundations who send out the grants. Amy told the board that they were going to have a series starting September 21 which would run through October, November and December entitled "How To Fight Back" which was about people who have done different things to fight back in different locations where some real egregious things have happened. Amy then said that she would leave materials regarding the webinars with the board members. She then added that if anyone was interested in helping to keep the momentum going, learning more

about it, would like to discuss it further, or figure out whether it would be appropriate for South Bristol to not only be aware of in terms of grants but to go so far as to have a sufficient resolution adopted by the town that she would be happy to speak with them. She then thanked the board.

Ralph Endres then said that he had done a little reading on the subject and that we should not give up our home rule rights by joining allegiances and alliances throughout the area without looking at the ramifications of giving up home rule. Ralph said that he felt that in all of the cases that Amy spoke about that was the prime thing. He said that they had given up home rule to join an alliance that appeared to be good but then turned out to be not so good when they found out the real gist behind it. Ralph said that he did not attend the Town Board meeting but that he had read the minutes and he was glad that Amy had spoken on the subject because he felt that it was something that the board should think about when they are acting in an official capacity for the town.

Mike Staub then asked Amy if she had any insight as to what the state legislature's stand was regarding the issue. Amy said her only glimpse on that was talking with Assemblyman Kolb and that due to the fact that the issue was pervasive and subtle it seemed like there wasn't a lot of recognition there that these things could undermine to the degree that they do. Mike then said that it had been going on for a long time (20 years) and that every legislation that goes by, every term that goes by, every election that goes by, they are more and more discreet. Mike also said that home rule was one thing but that it was also giving up our sovereignty as a country. He said that a lot of Agenda 21 was tied in with the United Nations and that needed to be fought on a higher level. He said that the money was the bait and that they use a lot of great sounding names for their organizations. Mike said they always sugar coat it and it actually has nothing to do with what is actually in the bill. He then asked Amy if anyone was keeping a pulse on the matter as far as our legislators were concerned. Amy said she did not know about New York State but that Tom DeWeese, who had set up the "American Policy Center" and the website, was funneling or a focal point for a lot of the information and that Tom talks about getting people revved up and that he was willing to do seminars and that kind of thing. Amy then said one thing she found very interesting in the webinar entitled "Follow The Money" was that Tom

interviewed a gentleman from a group called "CVAC". She said she did not know what the letters stood for but that it was a free market organization which was allowed by the United Nations and that the CVAC group went to the 20<sup>th</sup> anniversary celebration in Brazil for the Earth Summit in 2012 and that the man was a younger gentleman and his goal was to get different chapters of that group on college campuses. Mike Staub then said that the whole country was peppered with these issues. He said that there was a family in Colorado where the EPA came in, after they had obtained all of the necessary permits and started building their house, and declared their backyard a wetland and said that they could not finish building their house. Ralph Endres then said it was not under state standards because they were approved by the state but that it was under federal standards. Amy said that was why there was concern being generated in connection with the EPA declaring that every puddle is a wetland and why Ron Paul was getting involved on that.

Jim Ely then said that he knew that Amy had already spoken to the Town Board on the subject previously and that the Town Board was the decision-making body ultimately. He said that they would be the ones who would have to adopt any statement on behalf of the town or any limitations on grants they might receive. He then told Amy that the most the Planning Board could do would be to ask that the Town Board take a serious look at the issue. Ralph Endres then said that the Planning Board, however, could keep themselves aware of what was going on. Amy then said perhaps the Planning Board, if they felt that having a resolution in place like the one in Gorham would be beneficial to South Bristol, could recommend it to the Town Board. A question was then asked of Amy as to when the Town of Gorham passed their resolution. Amy said it was on July 20, 2013 and that Rushville had passed their resolution around the same time. Chairman Ely then asked Amy if she knew of any other towns in Ontario County that were considering passing a similar resolution. Amy said she did not know. Chairman Ely then thanked Amy for her time.

Bessie Tyrrell-Chairman Ely told the board that Bessie Tyrrell had a serious accident and ended up in the hospital so she was not with the board at the meeting. He then said that Ralph Endres had spoken with Bessie's husband so Ralph could give the board more information. Ralph told the board that he had

spoken with Bessie's husband around 6:30 P.M. that evening. Ralph said Bessie fell off of an ATV and had fractured her pelvis. Ralph said she had no head injuries but that she had a bruised heart. He said that Bessie was in intensive care overnight. Ralph said Bessie was now home and was sore and that the prognosis was good. He said that the doctor said that there really was nothing they could do for the pelvis as far as a cast or anything and that the best thing she could do for the pelvis was to stand on it because that actually compresses the bone so it will heal better. Ralph said that Bessie would probably be at the board's next meeting. Ralph said that Bessie's husband was working on an excavator and that Bessie was about 75 yards from him when she fell off the ATV and she laid there for about 45 minutes as she could not get her husband's attention.

Preliminary Board Discussion-Everwilde Inn & Spa PD Request-Chairman Ely noted that the Town Board had referred Everwilde's PD application on to the Planning Board for an assessment and recommendation in connection with their request for an amendment to the zoning map involving rezoning property currently zoned R-3 to PD. Mr. Ely then pointed out that any recommendation the Planning Board might make to the Town Board would not be binding upon the Town Board. He said that the Town Board would be the decision-maker and that the Planning Board would only be making a recommendation. Chairman Ely said that the fact that the application had been referred to the Planning Board did not preclude the Planning Board from seeking additional information or requiring additional expert studies before making any recommendation back to the Town Board. He then reminded the board that their October and November meetings were being combined and that the date chosen for their next meeting was November 5, 2014. Mr. Ely went on to say that he had invited representatives of Everwilde to come to the November 5 meeting and make a presentation to the board which would be the Planning Board's first chance to review their material and ask them questions. Chairman Ely said he saw the November 5 meeting as an informational session and that he did not anticipate any decisions being made by the board at that time, in part, because it seemed to him that the board might want to have some additional studies before the board makes any recommendation.

Chairman Ely then said that because this was a new process for most of the board members, he had invited Mark Tayrien with LaBella Associates which was the

engineering firm that the town had engaged to assist the boards with the application process to be present. Mr. Ely said that he had asked Mark to come to the meeting particularly to get a sense of how the Planning Board should go about structuring their analysis of the application and what was expected of the board in terms of their report and recommendation back to the Town Board. Chairman Ely then turned the floor over to Mark Tayrien.

Mark began by telling the board a little bit about himself and the people on LaBella's team the board might see. Mark said that he leads the Planning Division and another individual that the board might see as they get into more technical issues was Steve Metzgar who leads the Civil Engineering Division. Mark said his focus was land use, zoning, SEQR and process whereas if the board were to have a conversation about the efficiency of a waste water treatment plant or any challenging soil, water and sedimentation type issue then he would probably bow out in lieu of having Steve come to a meeting instead. He also said that the board might see both of them at a meeting at some time or another.

Mark then gave the board a planner's perspective on PD's. He noted that he would not be talking specifically about South Bristol's code. Mark said he wanted to describe how a planner sees what the board calls a PD. He said a PD includes a rezoning and that in his mind as a planner he encounters what he considers to be two different types of rezoning. He gave the example that if he owned a piece of property in a five acre residential district and he decided that it really should be zoned three acre residential he would come in and request that the town rezone it. Mark said that was one type of rezoning in his mind because inherent in that would be his claim that the property was improperly zoned – zoned one way and that it really should be zoned another. Mark said that in his mind as a planner the process the board was involved in currently was different because a planner actually has a name for these PD's. He said some towns call them PUD's (Planned Unit Developments) and some call them Planned Development Districts. He said planners call them floating zones. Mark said the reason for that was the zoning code will specify or identify particular types of uses and to get a building permit to develop a use like that it is incumbent upon the applicant to find a site and get it rezoned to that purpose. He gave the example that if he were to hypothetically come in and want to develop a use like Everwilde and came in and looked at the

zoning map and talked to the people in the zoning office, he would be told that there were not any vacant sites zoned for that purpose. He said, therefore, in order for him to develop that use in town he would have to find a site and apply for rezoning. Mark then said that in his mind as a planner it was a little bit different than the more conventional rezoning request when a person comes in and claims that there is really an error in the way a piece of property has been zoned as opposed to coming in due to the fact that the only alternative to develop that kind of use is to find a site and get it rezoned for that particular type of purpose. He said that virtually every community has one version or another of this with some subtle differences. Mark said it was very common for communities to have one of these tools that planners generally call floating zones because they are identified and described in the zoning ordinance or the local law that creates the zoning but they are not actually mapped anywhere. He said they just kind of float until an applicant comes in and makes an application stating that he/she feels that a certain site would be a good location for a Planned Development District.

Mark went on to say that a change to a PD involves a change to the zoning map. He said the section of town code that deals with the process was Section 170-20. Mark then recommended that the board go through that section. He told the board that the Planning Board actually had two roles with regard to a PD application. Mark then described the process in general. He said that an application is made to the town board for rezoning; the Town Board refers the application to the Planning Board; and then the Planning Board responds back with some sort of report or recommendation. He said that was the first time the Planning Board would get involved. Mark then went on to say that the application would then go back to the town board and if the town board sees fit they would rezone the property. He said it was a little different from your traditional rezoning because a PD rezoning is going to be paired with the plan for development. Mark said it was not the traditional type of rezoning where you are rezoning it for a particular purpose as there was going to be a plan to describe how that property is going to be developed and that gets bundled up with the rezoning of the property. He continued by saying that the next time the Planning Board would get involved, assuming that the town board does rezone the property bundled with a preliminary or concept plan, would be when there is

actually a bona fide or full blown site plan stage of approval. Mark said at that point the Planning Board would not be making a recommendation but making a decision of its own as to whether to grant an approval just the way the board would with any other site plan or subdivision approval except that it is part of the floating zone Planned Development District.

Mark told the board that, at this stage, the Planning Board was not really an approving agency but a recommending or a referral agency. He said if it goes through and the Town Board rezones it then the Planning Board would become an approving agency down the line when the board will be called upon to review the actual site plan and decide whether to approve it or not.

Mark said it was his understanding that the Town Board had referred it to the Planning Board. He said he did not know whether the board had received hard copies of the application or not. Mark told the board that there was a link on the town website that links back to a page that they had set up at LaBella for the town and that all of the application materials were on there. He said that, as far as he knew, the five elements that were on there that the town board had received were: the original application, an application update, a revised SEQR EAF form, a revised preliminary economic analysis and a document that provides evidence of the applicant's ability to complete the project.

Mark then spoke to the board about SEQR. He told the board that because they would eventually be an approving agency, if the application goes forward, that they would have to comply with SEQR. He also said that the Town Board had to comply with SEQR to grant the rezoning. Mark said with large projects, instead of each board complying with and conducting their own SEQR process independently, it was very common for there to be one SEQR process administered by a single approving agency and that agency was called the lead agency. He said in this instance the town board sent a request to the Planning Board asking for the Planning Board's agreement or consent for the Town Board to act as the lead agency. He added that there will be other involved agencies that will be giving approvals not just the town such as the DEC, Department of Health, etc. who must also give their consent for the Town Board to be the lead agency. Mark went on to say that, in this instance, the Town Board would be

running the State Environmental Review process (SEQR) and that the Planning Board should keep in mind that as an involved agency who will eventually inherit and depend upon the documents that the Town Board develops in the SEQR process they might want to offer the Town Board some input on SEQR. Mark explained that the first step that the Town Board would have to tackle and accomplish in connection with SEQR would be to make a determination of significance. He said that the SEQR process involves reviewing an environmental assessment form and based on their review of the environmental assessment form the lead agency will make a determination as to whether there are any potential environmental impacts that are significant enough to warrant the preparation of an Environmental Impact Statement. He said that the form was longer than it was in the past and was a multi-page form with lots of boxes to check and forms to fill out. Mark said if the lead agency, after reviewing the environmental assessment form, feels that there are some significant impacts they will make a determination that they need more than that which calls for an Environmental Impact Statement which are frequently large documents. Mark then said that ultimately it will be the Town Board's decision but that the Planning Board may want to think about whether they want to have some input or provide some thoughts as to whether or not there is a risk or potential for significant adverse impacts and whether the board thinks one of those large documents is necessary or whether it is sufficient for the SEQR process to end without one.

Mark said he felt that, for now, site plan review was down the road and that the thing for the Planning Board to focus on now was the referral from the Town Board regarding the rezoning and getting a recommendation report back to them with a secondary awareness of the fact that at some point the board may want to offer the Town Board their thoughts on what they think is appropriate in the SEQR review process.

Mark told the board that LaBella had prepared a flow chart when they first came on board and that he had brought copies for the board to the meeting to hand out. He said that the flow chart had been updated as of September 10, 2014. It was also noted that the flow chart was on the town website as well. Mark said that they had made an attempt to color code it to show the different roles for the boards. He said the steps that the Planning Board was involved in was shown in

the beige-orange color and that the steps that the Town Board was involved in was in the blue color and that the green ones were peculiar to SEQR. Mark pointed out that the first three steps had been completed: the Town Board received an application and they found it to be complete; they have gone through the process to establish lead agency; and they have referred the application to the Planning Board. He then explained the steps that they had outlined for the Planning Board at this point in time based on Section 170-20 of the town code which were: conduct a preliminary review and study of the application and, in the first instance, make sure it conforms to the zoning code and other requirements. Mark said that to the extent that the board finds that it does not conform to the code it anticipates the board having preliminary conferences with the applicant to discuss how the application might be made conforming. He said that there were references in the code to the Planning Board providing the applicant with written notification and also references to the applicant responding back to the board in writing should the board suggest some kind of revision as to whether the applicant is in agreement with that suggested revision or whether they would prefer not to revise their application in the manner that the board had suggested and their reasons for that. Mark said that there was not much guidance in the code as to how long that would take or how many meetings would be needed but that it seemed plain to him that the code provides for the Planning Board first determining whether they feel that the application is in conformance with the code and, if not, have some sort of dialogue with the applicant to see if the board can arrive at a revised application that would be in conformance.

Chairman Ely then asked a question in connection with Mark stating that the Planning Board was to determine if the application was in conformance with the zoning. He said that Mark had said earlier that a PD application is a request to amend the zoning. Mark said it was to amend the zoning district (the zoning map).

Mark then proceeded to say that in Section 170-20 that there were several places where it references some of the zoning requirements. He said so that the board could get a sense of it that he would read a couple of the requirements. Mark then read portions of Section 170-20(C)(3): "PD Districts shall be appropriately located with respect to intended functions as they relate to existing and proposed

public and private facilities as well as the following specific requirements: (a) relation to major transportation facilities. PD Districts shall be located near arterial and collector streets and shall be so designed ... (b) relation to public utilities, facilities and services. PD Districts shall be located in relation to sanitary sewers, waterlines, storm and surface drainage systems and other utility systems and installations in such a way that neither extension nor enlargement of such systems will be required resulting in higher net public cost..." Mark then went on to Section 170-20(D) "Physical character of the site: relation to surrounding property. (1) Property. The site shall be suitable for development in the manner proposed, without creating hazards to person or other property from probability of flooding, erosion or other dangers, annoyances or inconveniences...." Mark said he believed those to be the primary criteria or the primary zoning requirements that are being referenced in the section when it states that the Planning Board is to determine whether it is in conformance with those and, if not, seek some sort of revision or accommodation that would make them in compliance.

Mike Staub then said, the way he understood it, Mark was saying that the board must decide whether they feel that, if the new zoning were to be approved, the proposed use of the land fits or complies with the zoning requirements. Mark then said to put it in non-technical language you have this floating zone process and an applicant is picking a site and saying that the town does not have any vacant property in your community zoned for this type of use and I want to develop this kind of use and you have told me that to do that in your community that I have to find a site and then come back in and ask you to rezone it. He said then the applicant comes back to the town and says that he has found his site and that he feels he has a great project and that he wants the town to rezone it. Mark said then the Town Board refers it to the Planning Board and the Town Board's primary question is whether the Planning Board agrees with the applicant that the site is a great site for the proposed project; whether it a terrible site for the project or whether it is a great project for the town but not at that site or maybe not at that site without some changes. Rodney Terminello then said that he assumed that the applicant would then have to show on the plans that they are going to make the proposed changes to be compliant with the zoning. Mark said that was correct. He also said that the board would need to first ask themselves if

the way the applicant proposes the project fits with the criteria and, if not, are there changes that could be made to make it comply and are they willing to do that.

Ralph Endres then said that with respect to Section 170-20(C)(3)(b) "Relation to public utilities, facilities and services. PD Districts shall be located in relation to sanitary sewers, waterlines, storm and surface drainage systems and other utility systems and installations in such a way that neither extension or enlargement of such systems will be required..." that at this point the town had no idea as to whether they have reached an agreement with Bristol Harbour Resorts to use the sewer and water. Ralph said, if not, it was a moot question. Ralph noted that one of the principal owners of Bristol Harbour had submitted a letter to the town stating that he was very much opposed to the project. Ralph said, if that was the case, he did not see how they were going to come to agreement to use the sewer and water. It was then noted that the person who submitted the letter was one of three partners. Ralph then said he felt it was imperative that the town be provided with a copy of an agreement between Bristol Harbour and the applicant with regard to the sewer and water before the process should progress any further. Chairman Ely said that this was a point that the Planning Board was going to want to pursue very carefully at the November 5 meeting because if they do not have sewer and water lined up, he was not sure how much of the board's time he would want to take up with regard to their application. Ralph then said that he was not saying that they couldn't put their own sewer and water in. Mr. Ely then pointed out that would be a different proposal than what has been presented to the town to date. Mark said that was a difficult point and one they he encounters from time to time in his career and that the board may want to consult with the town attorney on it because he thinks it would end up being more of a legal matter. Mark said he was not recommending that the board take one course of action or the other. He said that he had seen instances where a proposal comes in and not everything is locked right down and a board reviews and perhaps approves a proposal assuming that the applicant is going to be able to follow through and deliver what they have described in their proposal. He said how far a board goes and how much effort the board invests if some of those issues are still a contingency is always a difficult question to answer. Mark said it does happen sometimes that projects are approved with conditions that the

commitments an applicant has made and the aspects that were described in the proposal that are particularly critical have to be followed through on or the approval becomes void. Mark said at one end of the spectrum the Planning Board is reviewing and potentially approving a project where just a few details have to be worked out. He then said at the complete opposite end of the spectrum the board is reviewing a project that is practically nothing more than a hypothetical. Chairman Ely then said that he could understand approving with conditions but it seemed to him that sewer and water were critical considerations. Ralph Endres then repeated that they could put in their own sewer and water but that it could take years to obtain all of the necessary approvals for that. It was also noted that it could be cost prohibitive so that project then might not make sense to pursue. Mark then said if that was the case and should it remain the case, he could envision a scenario in which the Planning Board's recommendation report back to the Town Board states just that. He said the board was trying to judge the criteria and either you report back that you have determined that the criteria are satisfied only in these particular circumstances and state that you have some reservations as to whether those circumstances are ever going to come about. Mark said that the board also could report back to the Town Board that they feel that there is too little information to actually come to a conclusion. Chairman Ely then said that he understood Mark to be saying that the Planning Board could relay to the Town Board that there was not enough information provided for the board to recommend that the rezoning request be approved. Mark said that he thought that was part of what the process anticipates the Planning Board would do which is to determine if the applicant has provided the board with enough information for the board to be able to make a recommendation back to the Town Board. Chairman Ely then said he felt that the meeting on November 5 would be the board's chance to ask the applicant questions and, hopefully, get some answers to those questions.

Mark then told the board that he felt that the homework for the board between the current meeting and the meeting on November 5 would be for the board to go through the application materials and take a close look at the criteria in Section 170-20 that they had just discussed, make some notes, decide where they feel the issues are, and jot down any questions they might have so they could begin a dialogue with the applicant. Mark said it was possible that someone on

the board might feel that the applicant is in compliance and not have any questions and that others could have many questions. Ralph Endres said that he had looked through the application twice and that he felt that if the land was going to be developed as an R-3 neighborhood and not a PD that there would be substantially more disturbance to the land than what this project would do. Ralph said the project entails only about 15 acres of the total 45 or 46 acres so it was not all bad. Ralph continued by saying, however, that there were some big questions that needed to be answered and if the board did not get those answers then he did not see how the board could recommend to the Town Board that their rezoning application be approved. Rodney Terminello then pointed out that road usage would be a major issue for the board to consider as they would be putting in a commercial operation when those roads were primarily used for very rural purposes and minor residential use. It was also noted that Bristol Harbour was in that vicinity also so they could end up doubling or tripling the traffic use there. Ralph Endres said that the town would have to do something with Seneca Point Road like they had done in other locations on Seneca Point Road by putting rip rap in the drainage ditches to slow down the water coming down because there would probably be more water coming down and that they might have to resurface the road. Rod said that they were also putting trails and that they were also going all the way down to the lakefront which could also create some issues. Ralph then said with regard to the lakefront development, if things got that far there could be some negotiations with the applicant to lessen the impact to some degree and bring the plan more into compliance. Ralph then said that right now he felt that sewer and water was the main issue as without that the project would languish for years before the applicant could obtain regulatory approvals and that it could even get to a point where the cost of building their own sewer and water treatment is so excessive that the project would not be feasible so that issue must be cleared up first before things can move forward.

Mark then told the board that another thing that the board should be thinking about over the next month would be how they see things playing out process-wise in terms of producing a document to send to the Town Board. He said at some point at the tail end of the first step the board was going to have to produce that document. He said he did not know if the board would feel comfortable writing that as a group in a meeting. Mark said he has seen it done many

different ways. He said sometimes it is done where a consultant like himself sits and listens very carefully to the board talk and then goes back to his or her office and tries to produce a document that reflects the board's views and that document is brought back to the board as a straw document for the board to review and edit. Mark said the document is sometimes written at a board workshop.

Chairman Ely then said he would be interested in hearing what Mark's sense of a time table was based on his experience. Mr. Ely said he did not know how the November 5 meeting was going to go and what questions may or may not be fully answered at that time. He said it seemed to him that it was going to be a careful process and that the board was not going to rush through it. Chairman Ely said that he did not envision making any decision on November 5 as the board would want to digest the material and any answers they might receive to their questions. Mark said he would not expect the board to make any decision on November 5 and that this type of process varies all over the place as to how long it will take. He also said that it would not surprise him if the applicant comes in on November 5 hopeful that the board would produce and vote on and return at the next meeting a report back to the Town Board. Anne Caprini then asked if the board had to wait until the November 5 meeting to get the sewer and water question answered. Mary Ann Bachman then said they would be able to read the minutes of the meeting which would indicate that a big part of the board's discussion was about the sewer and water. Ralph Endres then said that they should come to the meeting prepared to give some answers. Chairman Ely then told the board that when he set up the arrangements for someone (or more than one) to come from Everwilde to the November 5 meeting he had specifically mentioned sewer, water and traffic as issues that he hoped they would address. The board then said that they felt that the applicant should be prepared to address those issues on November 5. Ann Marie Rotter then said she liked that Mary Ann said that it would be in the meeting minutes and that she felt it was not the Planning Board's obligation to make their case for them but to allow them to access the information and let them answer the question.

Mark then told the board that in terms of the November meeting with the applicant that the board should keep in mind when they go back and read

Section 170-20 that the criteria was found in 170-20(C) and (D) primarily and that the process itself was found in (G), (H) and (I). He said (G), (H) and (I) talks about what the Planning Board does. He said it was important to recognize that: it talks about it being referred to the Planning Board; the Planning Board making an initial assessment as to whether it was in compliance with zoning; it anticipates conferences where the board tries to work something out with the applicant; and it also talks about written communication. Mark said he thought there was a reference in there somewhere that talks about the Planning Board notifying the applicant in writing where the board thinks the non-conformities are, if the board finds any. He said it also talks about notifying the applicant in writing about any sort of revisions or changes the board might recommend that would resolve those issues. Chairman Ely said that document would have to be prepared after the November 5 meeting and after the board had enough time to consult amongst themselves. Mark then said that based on his experience that a general conversation with the applicant the way the board had described after the board had a chance to sink their teeth into the application and look at the criteria sounded perfectly reasonable to him. Mark said he did not see the board having to produce anything in writing at the first (November 5) meeting. He said he would see the board producing something in writing relatively soon thereafter.

The board thanked Mark for his time and confirmed with him that he would be in attendance at the November 5, 2014 meeting.

Public Comment Time-Chairman Ely asked if there was anyone in attendance who would like to make a comment and, if so, would they please introduce themselves and say a few words. No one wished to comment.

#### Other Business To Come Before The Board

November 5 Meeting Reminder-The board secretary reminded the board members that there would be no meeting in October and to mark their calendars for the November 5, 2014 meeting which was to represent a combination of the board's October and November meetings.

Everwilde Materials-The board secretary told the board that she had been asked by Jim Bachman to request that the board members keep checking the town

website for any new application materials inclusive of any letters received by the town, both pro and con, that may come in with respect to the Everwilde project. She said Jim would like to see the board have access to any new Everwilde items that may become available from now on via the website rather than her making hard copies of everything for distribution to the board. Rodney Terminello then told the board that both he and Mary Ann Bachman had attended the recent workshop on special permits and site plan review and that one of the things that came up was that the board's role was to look at land use only and that even though the public could submit comments to the board it was not part of the board's purview to allow public opinion to influence what the board does and that it was all about the plan, not the person. Rodney said that they were told that it did not matter who the owner is, who the developer is or whether the board knows them or not, the board was not to make any judgment about the operation or whatever their business was going to be. Chairman Ely said that was a bit perplexing because if their operation was to going to destroy the town's steep slopes, for example, it would be something that the board would want to address. Rodney said that would come under land use and that what he was referring to was, for example, that the board could not dictate certain hours of operation or how to run their business. He said the reason it had come up was, before they spoke about public opinion, he had asked whether since they were planning to put in trails if it would behoove the developer if the board were to propose that they allow general use by the public of those trails as it might result in more support for the project. Rodney said he was told that it was a private development and that they own it and operate it so it was up to them to decide who can be on the property and make use of its amenities and who cannot. Ralph Endres then said if they were to open it up to the public it might end up alienating some of the neighbors as it would generate more people and traffic. Ann Marie Rotter then said that the board could not take into account the success of the establishment. Chairman Ely then noted that the board was not equipped to discuss the economics. The board secretary then said with regard to the pro and con letters that she was not asking that the board look at them to influence the board one way or the other but because some of the letters might raise some issues that the board had not already given thought to and that they may want to discuss with the applicant. It was then noted during discussion that it was the Town Board that would be voting on the rezoning request and that the public

would have their opportunity to speak at the public hearing whenever one is held on the rezoning.

Training Workshop-The board secretary then distributed copies of some material regarding a one-day workshop to be held on Friday, November 14, 2014 in Batavia, NY. She said that she had received the information via email from Maria Rudzinski at County Planning awhile back and had already forwarded that information to the board members, however, she wanted to give the board hard copies of the information and registration form in case they wished to attend. She said the workshop would probably be the last one for the year and that many of her Planning and Zoning Board members had attended the workshop in the past. She also said it was a way for someone to obtain their four hours of required training hours for the year, as well as some hours that could be carried over into 2015, all in one day.

There being no other business to come before the board, Chairman Ely called for a motion to adjourn. Mike Staub made said motion which was seconded by Ralph Endres. The motion was unanimously accepted and the meeting adjourned at 8:30 P.M.

Respectfully submitted,

Debra Minute  
Recording Secretary