

**APPROVED**  
**JOINT TOWN / VILLAGE OF CLAYTON**  
**PLANNING BOARD MINUTES**  
**JUNE 3, 2010**

At 7:00 P.M., Chairman Bud Baril opened the regular meeting of the Joint Town / Village of Clayton Planning Board with the following members present:

Bud Baril, Paul Heckmann, Ron Duford, Preston Lowe, John Kehoe, Twyla Webb and Alternate Duane Hazelton.

**Others present:** Zoning Enforcement Officer Henry LaClair, Recording Clerk Janet Sullins

**Townsppeople present:** Cindy Grant, Mary Lou Tabolt, Nancy Madson, Marcia J. O'Neill, Bill Haller, Jim Terlit, Steve Witham, Jon Burrows, Janet Burrows, Chuck Burlingame

Chairman Baril asked Alternate Board Member Duane Hazelton to sit in for Vice Chairman Aubertine.

At 7:05, Chairman Baril read into the record a resignation letter from Gail Richardson. He asked the Board for recommendations he could present to the Village and Town Boards for her replacement.

Chairman Baril asked for a motion to approve the minutes from the May 6 meeting. Board Member Duford requested a line be omitted. It was a comment he made relating to the wind process, but it was confusing. **MOTION** made by Board Member John Kehoe, 2<sup>nd</sup> by Alternate Board Member Hazelton to accept the minutes as amended. Motion carried. (Board Member Lowe abstained, as he was absent from last month's meeting.)

**7:10-- Town --- Raymond J. Smith, Kehoe Tract Rd., Tax Map Nos. 12.20-2-40.118. Application for a Simple Minor Subdivision**

**7:10 --- Town --- Robert Reddick, Breezy Pines Rd., Tax Map Nos. 12.20-2- 49.42. Application for a Simple Minor Subdivision.**

Chairman Baril indicated to those in attendance regarding this subdivision that when Town Attorney Russell arrives we will change course to discuss another issue, and then return to this subdivision when that topic is completed.

Neither Mr. Smith nor Mr. Reddick is present for these applications, which each show one parcel divided into two. However, a new drawing was submitted with both original parcels combined, and the desire to have a three-parcel subdivision. At last month's

meeting, the Board was told that both original parcels had been joined and Mssrs. Smith and Reddick were in a partnership intending to subdivide the new parcel into seven lots. This action was deemed to be a major subdivision.

Chairman Baril read the gist of several letters concerning the problems that are being created as Mssrs. Smith and Reddick have started clearing the lots in preparation for building.

Mrs. Church is concerned that there are piles of brush and construction debris that get piled and burned, and also that there be appropriate drainage from the upper lots. There is fear that they will want to build a road connecting breezy Pines and Kehoe Tract Rd. Mr. Boyd's letter concerns a nature area that extends from one lot into his, and is listed on his deed as a buffer area. The lots to be created may be too small for such a wet area, creating septic and drainage problems affecting the river. He is recommending each lot have a perc test performed. Also, that no new roads be built.

Larry and Judy Brown write that they feel the change in application is a means to circumvent regulations needed for a major subdivision. Much groundcover/trees have already been removed making the drainage problem worse than it had been in the past. Christine Messenger is also concerned about a through-road being built.

Chairman Baril described his personal experience with the area in question having vacationed there in the past. He also has gone back to the site and said that one lot is being filled which could change the drainage patterns. Of concern is whether a DEC permit would be needed for change of such magnitude. To approach this as a major subdivision, the Board will be able to formulate questions for Mssrs. Smith and Reddick. One question would be if any of the land is already designated wetlands.

Mrs. Janet Burrows, a neighbor whose property is below the proposed subdivision, said that three years ago when some clearing was done, there was suddenly very noticeable brown runoff into the river. She said that at the time she did not know she could file a formal complaint under the Clean Water Act. But, since investigating, according to the DEC she does not have enough land to warrant their concern. She feels that since she has a well, she is concerned that pollutants could enter her water supply, especially since there is leftover asphalt being used as fill. Despite a berm and culvert, the runoff is excessive.

At 7:30 the Town's attorney, Joe Russell, arrived to speak about the Iberdrola contract extension. Chairman Baril read into the record a letter received June 2 from Iberdrola. At the May 6 meeting it was brought up that the extension was about to expire. In anticipation of this, Chairman Baril called Attorney Russell and asked to him to come and speak to the ramifications of either accepting or declining a new extension request. According to Mr. Russell, the application hasn't been reviewed under the wind law. It only got as far as SEQR when the Indiana bat problem was found and the DEC intervened. The Town could ask for a new application, but then the SEQR process would have to start again. And, there may be new requirements for requesting lead agency. Alternate Board Member Hazelton said he spoke with the permitting agent at the DEC

and was told that, after the Galloo Island windfarm process, the DEC thought it best to leave it in the hands of the local government.

If we accept the new extension, there will probably be new attachments to it. Chairman Baril said that he told Jenny Burke (of Iberdrola) that the Board is much more informed and can ask more informed questions. He also feels the sound study they did was insufficient. The Planning Board would most likely not consider a setback that was not from the property line for a non- participant, Iberdrola would have to consider that requirement.

Although Attorney Russell doesn't feel that the DEC would be lead agency under any circumstances, should the application be accepted and the process started anew, other involved entities would have to agree to allow the Planning Board remain as lead agency. As the year's extension was over on May 15, 2010, Iberdrola is late requesting another extension. Attorney Russell said that in the meantime, the Planning Board has done its required job of taking a hard look at the application. Chairman Baril said that we could always ask the DEC for input even if they don't take over as lead agency. One advantage to the applicant for getting an extension is cost savings. But, it would still need to be amended, as the initial was a DGEIS. It would come back as a Supplemental DGEIS according to Attorney Russell. A final GEIS would not be done until all issues were addressed.

Iberdrola apparently has approached the DEC about being lead agency, but they couldn't take it over without our protest. Local issues wouldn't be vetted if the DEC were lead agency. We would be able to give input, but could not vote on it. Supervisor Taylor thinks if we agree to extend the application, we need to consider in the extension that Iberdrola reimburse the town some legal fees as had been done in the past.

Chairman Baril read what he thinks should be a consideration for accepting an extension.

At 8:00, **MOTION** made by Board Member Kehoe, 2<sup>nd</sup> by Board Member Twyla Webb to accept a one-year extension contingent upon reinstating the escrow agreement.

A roll call vote was taken with the following results and comments:

John Kehoe: **Aye:** He doesn't trust the state (DEC). After seeing/reading coverage of the Galloo Island wind project, it shows how important it is to maintain local control.

Paul Heckmann: **Nay:** They are out of time.

Ron Duford: **Nay:** If we accept, it slants the perception to the public. It needs to be started over.

Duane Hazelton: **Nay:** He doesn't believe the State (DEC) wants it (lead agency)

Twyla Webb: **Nay:** She doesn't trust the State (DEC); she wants it to be this board. She agrees with Paul; time's up and enough has transpired to come back with a completely new application.

Preston Lowe: **Nay:** They didn't file in time.

Bud Baril: **Aye:** Only because he is leery of losing lead agency to the State (DEC)

At 8:05, **MOTION** declined. A letter to Iberdrola will be drafted saying their previous extension has expired and the Board declined the request to renew the application.

At 8:10, the Board revisited the applications by Mssrs. Smith and Reddick. Mr. Smith is now present to discuss the applications. The decision is maintained that this is still a major subdivision considering its complexity. Mr. Smith says he plans to have only three or four lots, not seven. He has parties interested in particular lots. There was considerable discussion regarding drainage and the scope of the project. Mr. Smith needs to come back to the Board with a complete application, including engineered topographical maps. A public hearing can then be set.

Mr. Bill Haller came up from Florida to address the Board with his concerns. He respectfully requests that this Board consider this application a major subdivision so that all concerns regarding drainage would be properly mitigated to avoid future problems.

At 8:35, **MOTION** made by Board Member Webb, 2<sup>nd</sup> by Board Member Lowe to deny the applications as presented.

**Aye:** Bud Baril, Preston Lowe, Twyla Webb, Paul Heckmann, Ron Duford, Duane Hazelton

**Nay:** None

**Abstain:** John Kehoe

**Absent:** Larry Aubertine

**MOTION** declined. Applicant must now submit proper application for major subdivision.

At 8:40, **MOTION** made by Board Member Hazelton 2<sup>nd</sup> by Board Member Kehoe to adjourn this regular meeting of the Planning Board.

Respectfully submitted,

Janet Sullins  
Recording Clerk

