

Planning Board Minutes- Excerpts regarding the Petruccelli Applications
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January 12, 2010

Rudolph Petruccelli, Oscaleta Road, South Salem – Wetland Activity Permit Application for deep test pits

Ken Murphy was present.

Mr. Murphy displayed the proposed plan to dig three test pits for the proposed septic system and noted that this area is within the NYSDEC Wetland regulated buffer area. He also noted a Town of Lewisboro regulated wetland in the center of the site. The test pits will determine the size of the septic system for a home being proposed on this site.

Mr. Praga noted that he was under the impression that this lot had not been legally subdivided and requested that the applicant present whatever evidence they had that this lot was created by a legal subdivision not by deed.

In response to Mr. Murphy's statement that this had been addressed, Mr. Barber advised that there is nothing in the Town records which verified that this lot had been created by subdivision. He advised that the Town Assessor reviewed the chain of title and deeds; there is no record of this lot being subdivided. The NYSDEC predicated their permit based on the fact that this lot had been created by subdivision. He further advised that this project is before the Planning Board as the Town's code would allow him to issue an administrative wetland permit for repairs to septic systems but does not state that he could issue a permit for the testing and construction of a septic system. He advised that this is within the NYC watershed so the NYCDEP would have co-jurisdiction with the Westchester County Department of Health.

In response to a question of Mr. Kerner, Mr. Murphy noted the residence is being proposed within the flagged Town of Lewisboro wetland regulated area. Mr. Murphy stated that it was their belief that this wetland had been created by a pipe coming off of the neighbor's property.

It was agreed that the applicant would need to provide proof that this lot had been created by legal subdivision prior to moving forward with this application.

Mr. Kerner expressed concern with the fact that although this application was simply for digging test holes, the test holes were being dug for a septic system being designed for the construction of a house being proposed within the Town of Lewisboro wetland.

In response to a question of Ms. Andersen, Mr. Murphy advised that the property is two thirds of an acre. Mr. Gusmano advised that there would be a lot of work to be done for a lot with so many constraints. Mr. Barber noted that if it came to be that this lot had to be legally subdivided that the Town Board recently adopted regulations with respect to contiguous buildable area requirements for lots being created by subdivision.

April 27, 2010

Petrucelli. Mr. Barber advised that after reviewing the request to dig test holes for the septic system, the Board authorized the issuance of a wetland activity permit with the proviso that if there were any changes that they were to be brought back to the Board. The property owner has now requested an amendment to the permit for the soil testing necessary for any stormwater management. Mr. Kerner recommended that the applicant, not his representative be asked to come before this Board with this request.

May 25, 2010

Rudolph Petrucelli, Oscaleta Road, South Salem – Wetland Activity Permit Approval – Cal. # 61-09 W.P.

Rudolph Petrucelli was present. Mr. Petrucelli advised that he has owned the property since 1982 prior to the NYSDEC establishing that there were DEC wetlands on the property. In order to develop the property he advised that he needed a wetland activity permit to dig the test pits and percolation tests prior to proceeding. He advised that he has the NYSDEC permits.

Mr. Kerner advised that he has been assured by counsel that he had the right to do the tests. From a planning perspective there were concerns and a belief that he would be putting the cart before the horse and the Board felt that it would be interesting to speak with him.

Mr. Praga advised that the Board wanted to ensure that the applicant is aware that no matter any approval that this Board may grant him, that the Building Inspector would not be in the position to grant a building permit because the lot was not legally subdivided. The Board did not want the applicant to go through the process and be surprised at the end that he would not be able to get a building permit. Mr. Praga advised that he believed the appropriate action would be for the applicant to file a subdivision application along with the wetland application.

Mr. Petrucelli advised that all of the lots in this area were sold off by metes and bounds by Dickens and the property owners have been paying taxes. He questioned how he could subdivide a single lot Mr. Praga advised that he would have to put in an application; the Board could not adjust the lot lines because he would be the only applicant. Based upon the information in the Town offices this lot was subdivided by deed even though there were subdivision statutes on the books. Mr. Praga suggested that the applicant speak with the Building Inspector to confirm that a building permit could not be issued given that the lot was subdivided by deed irrespective of whatever approvals are granted by this Board.

Mr. Petrucelli advised that he had been paying taxes for 28 years on a piece of property that this Town has recognized as a tax lot. Now he is being told that he cannot build on it because the Building Inspector will tell him that it is not a legal lot. He questioned how houses were built in front and side of his parcels if they were in the same situation.

Mr. Praga advised that when a lot was sold by deed and the deed was forwarded to the Tax Assessor's office, the Assessor had no choice but to make it into a separate tax lot.

Mr. Petruccelli questioned what would happen if the Board refused to subdivide the property because of the wetlands created illegally by his neighbor. He believed that because the Town accepted the creation of the tax lot and collected taxes on it that they are responsible to give him the right to build on the property.

Mr. Praga reiterated that Mr. Petruccelli was invited to attend this meeting solely to advise him that his lot was not legal lot and that the Building Inspector would not be granting a building permit. Therefore, the Board did believe that it would make a lot of sense for him to go through the process in obtaining a wetland activity permit and get through the end of the process and not get what he wanted. He further advised that he was entitled to a wetland activity permit.

Mr. Kerner advised that any action this Board took would be without prejudice.

Mr. Praga agreed and the wetland permit issued to be revised stated the granting of the wetland permit was not in any manner an indication that the applicant would be entitled to a building permit. In response to a question of Mr. Decaminada, Mr. Praga advised that water can be diverted onto neighboring property as long as it is not channeled. If it was channeled, the property owner may have a cause of action against the neighbor but would still have a wetland. Mr. Praga advised that there is a court case which would support that even if this is a manmade wetland as a result of channeling it is still a wetland. In response to a question of Mr. Kerner, Mr. Praga advised that the relevancy of the time period is with respect to the statute of limitations for any action taken against the neighboring property owner.

On a motion made by Mr. Ellrodt, seconded by Mr. Decaminada, the Planning Board extended their authorization to the Wetland Inspector to include within the administrative wetland activity permit approval the additional test pits for the stormwater facilities.

Vote: Yes: Decaminada, Gusmano, Kerner, Ellrodt, Maguire

At the request of Mr. Barber, Mr. Coyne was authorized to witness the tests.

July 10, 2012

Rudolph Petruccelli, Oscaleta Road, South Salem – Application for Wetland Activity Permit Approval to construct a single-family residence – Cal. #61-09 W.P.

Rudolph Petruccelli was present with his associate Ken Murphy.

Mr. Petruccelli displayed and reviewed the site plan to construct a residence on a .7 acre parcel of land located within the R1/2A Residential District. He noted the NYSDEC wetland along the western property line and the local wetland that runs through the center of the site. He stated that the local wetland was created 30 years ago as a result of a pipe his neighbor put in. He had asked the neighbor two years ago to remove the pipe, he has not responded. He reviewed pictures of the pipe noting that the neighbor had built a bridge over it so that it cannot be seen.

The property originally owned by Dickens was 1.9 acres. The property was sold in 1970 to Cuoco who subdivided it into two parcels. Mr. Petruccelli purchased this parcel in 1982 and advised that it was always his intention to develop it. The wetlands have to be filled in; once the pipe is removed, he believed that the wetlands would dry up. He reviewed the plan for the house, drainage and septic system. He noted that test pits were dug for the drainage areas and septic system; there was good percolation and there was no standing water. He advised that the permit for the septic system is on hold from the Health Department until the outcome is known for this process.

Mr. Johannessen reviewed the July 9, 2012 Kellard Sessions to the Board noting that there are a number of wetland and stormwater issues that need to be resolved. He advised that a site walk would be beneficial.

Mr. Kerner noted that the Board's main concern is to protect the wetlands and to see whether there are any other options or possibilities to stay out of the wetlands. Most of the applications before this Board are for protecting the wetland buffer.

Mr. Petruccelli maintained that this is not a natural wetland; it was created by someone who installed the pipe. He advised that he is trying to work with the neighbor and had sent him a certified letter two years ago. He has not pursued it further.

Mr. Tetelman believed that a four bedroom house was not in character with the other houses in the neighborhood. The bedroom count also affects the size of the septic system. He suggested that Mr. Petruccelli consider reducing the bedroom count.

Mr. Kerner questioned the advisability of having a basement and whether an alternative location had been looked at. Mr. Petruccelli advised that the house has been raised because they could only get down three feet and is why the garage is located where it is. He reviewed the alternative locations he considered.

Ms. Andersen reviewed the July 6, 2012 CAC memo to the Board noting that this is a difficult site. The CAC is concerned with essentially filling in a wetland that has some function protecting the water before it gets to Lake Waccabuc and eventually to the New York City watershed. She noted that some residents get their drinking water from the lake. The CAC finds this application hard to support because of the total loss of the wetland and the wetland functions. She noted that they had asked for information regarding the trees and asked some technical questions regarding the height of the infiltrator. The proposed swale and the filling of the wetlands are the fundamental problems of this site. The CAC would participate in the site walk to get a better sense of the project, but looking at it on paper, does not believe that this project is in keeping with the environmental code of the Town.

Mr. Johannessen reviewed the comments in his memo and advised that most of the comments were technical in nature and the seeking of additional documentation.

Mr. Petruccelli advised that he discussed the project with the ACOE who advised that he did not need approval from them. He will provide documentation. Mr. Johannessen recommended a site walk and a technical meeting.

Mr. Kerner questioned whether there were any alternatives with respect to the septic system to reduce the phosphorous.

Mr. Petruccelli advised that the NYCDEP requires some treatment; they will provide whatever they are requiring. He advised that the Health Department does not accept any alternative systems.

Mr. Tetelman advised that he lives three houses up from the site on Oscaleta and questioned whether he should recuse himself from this application.

A site walk was scheduled for Saturday, July 14 that 8 AM.

August 14, 2012

SITE WALK REPORT

Rudolph Petruccelli, Oscaleta Road, South Salem Mr. Kerner noted that the Board went to the site to see the drain pipe that reportedly caused the flooding on the property. The Board looked for alternatives on the property. Mr. O'Donnell stated that this is a site that presents many challenges from a wetland point of view. It appears that the area of wetlands had been there for a long period of time. There may be some potential with some sort of collaboration with the neighbors to the south for some sort of opportunity for an environmentally sensitive development.

October 23, 2012

Rudolph Petruccelli, Oscaleta Road, South Salem – Applications for Final Subdivision Plat Approval & Wetland Activity Permit Approval to construct a single-family residence – Cal. #'s 8-12 P.B. & 61-09 W.P.

Mr. Tetelman advised that he is a neighboring property owner and recused himself. Ms. Andersen advised that she is President of Three Lakes Council who owns the abutting parcel and recused herself in the capacity of CAC Chairwoman.

Rudolph Petruccelli was present.

Mr. Petruccelli displayed the subdivision plat. He advised that the larger parcel was divided by Anthony Cuoco in 1972 who sold one parcel off and kept the other. Mr. Petruccelli advised that he purchased his parcel in 1982. This subdivision is before the Board to theoretically legalize a subdivision that was done by metes and bounds. He believed that it was legal then and that it is still legal now but to clear up this matter he has submitted the application. In response to a question of Mr. Kerner, Mr. Petruccelli advised that the subdivision was done by deed.

Mr. Johannessen advised that his office raised the question as to whether the lot would need to comply with the current zoning regulations pertaining to the contiguous buildable area. The .69 acre lot is located within the R-1/2A Residential District and meets the gross area requirements but given the wetlands on the property, it does not meet the requirements with respect to contiguous buildable area of 20,000 s.f. He noted that he spoke with Planning Board counsel and asked the Building Inspector for an interpretation as to whether this lot would need to comply. In an e-mail, Mr. Barrett determined that "the lot does not need to comply with today's code

because it is not a new lot and the Planning Board is now legalizing the lot". Mr. Johannessen advised that it was the opinion of counsel that lot 1 did not need to be a co-applicant. He advised that the subdivision and wetland activity permit applications should run simultaneously; public hearings for both should be held at the same time.

Mr. Petruccelli displayed the proposed site plan for the wetland application submitted to construct a one family residence. He advised that he believed that he had responded to all previous comments; the house was moved back out of the wetlands as much as possible, the driveway was reversed and placed on the south side of the house, the infiltrators were eliminated and he is now proposing a bio-retention system. A row of trees has been proposed to provide privacy for the neighboring deck to the north. The septic system has been reduced by a third and the house has been reduced from a four to a three bedroom residence.

Mr. Johannessen reviewed the Kellard Sessions memo dated October 19, 2012. He noted that the applicant has advised that the Army Corps will be issuing a jurisdictional determination that an ACOE permit will not be required. He stressed that their main comment was with respect to mitigation and noted that the wetland regulations stresses a no-net-loss of wetlands and wetland buffer and strives for a 1:1 mitigation ratio for all disturbances to the wetland proper and wetland buffer. He believed that there is approximately 25,000 s.f. of disturbance proposed and according to the Town's regulations they are striving for 25,000 s.f. of mitigation. This property is somewhat constrained and is just over ½ acre with a large part proposed to be developed. He advised that he would like to see some proposed mitigation in the sloped area between the NYSDEC and Town regulated wetlands. Although stormwater improvements have been proposed as mitigation, it is also something that is typically seen on any application and is required whether there is a wetland or not. There is a need for additional mitigation. Recognizing that this lot is somewhat constrained, the applicant may wish to consider looking for off-site mitigation possibilities. He advised that the code contemplates off site mitigation only when onsite mitigation is not feasible and when the applicant controls the off site property. He does not know whether there is any flexibility and would like an interpretation from counsel to determine whether this is possible. His office has recommended a pervious driveway surface.

Mr. Kerner advised that the one larger overarching issue is the relationship of the water table and the lake elevation; they do not seem to tie together. It appeared that they are working with some abstract numbers rather than working with the USGS.

Mr. Petruccelli advised that the maps were prepared and certified by H. Stanley Johnson's office as being USGS.

Mr. Kerner asked that this be verified. He noted that there are some comments in the October 18, 2012 correspondence from the Three Lakes Council that were very relevant because of the fact that the water in Lake Waccabuc serves as a water source and the flooding of that septic system could cause contamination.

Mr. Petruccelli advised that the septic system is much higher than the lake.

Mr. Kerner advised that this is not known.

Mr. Sessions advised that the discrepancy might be that there are two different datasets.

Mr. Kerner advised that this should be coordinated. It appeared that the elevation of the fields appear to be below the groundwater table. The report he saw specified less than five feet.

Mr. Petruccelli advised that there was one hole where they found water at five feet. He noted the locations of the test pits where they dug eight feet and did not find water. He added that Kellard Sessions's office reviewed these test holes. The Health Department is not requiring fill over the systems. He advised that the septic area is all bank run and stated that the bank run trapped the water coming from the pipe on his neighbor's property and created the wetland.

Mr. Kerner referred to page 3 in the EAF and noted that item 8 asks what the depth of the water table is and the answer given is less than five feet.

Mr. Petruccelli advised that this was probably taken from the Westchester County Soils Maps.

Mr. Sessions advised that it has to be less than five feet in the wetland area. Clearly that wetland has hydric soil, hydrophytic vegetation, and there is evidence of wetland hydrology which means that that water table is within 20± inches of the surface within the wetland proper.

Mr. Kerner advised that there are a lot of concerns with contamination. He referred to the garage elevation and noted that any spills in that garage could flow out. They are placing a residence with all its housekeeping issues, automobiles, etc. in an area where if they were placing a mechanic's garage, they would look for all sorts of protective containment measures. As they get further into this they will have to be very specific about those issues. He believed that the fence line shown is too far to the west; it should be on the other side of the septic field.

Mr. Johannessen advised that the fence is the edge of the limits of disturbance required by the NYSDEC and a demarcation.

When asked by Mr. Kerner why it couldn't be moved further to the east, he was advised by Mr. Johannessen and Mr. Petruccelli that the septic system is to the east of the fence; this area would be disturbed.

Mr. Gusmano noted that the expansion area is further away from the lake and questioned why the septic was not placed there.

Mr. Petruccelli advised that the location chosen for the primary system is where the bank run had been placed. The NYSDEC has approved this location.

Mr. Kerner questioned why the fence could not be placed further east to prevent the area over the septic system from being mowed. This would protect the area from being lawn area; the Board does not want it maintained as lawn.

In response to a question of Mr. Gusmano, Mr. Petruccelli advised that the bank run goes down around eight feet. It was brought in and the area filled by a prior property owner.

Mr. Kerner questioned whether it was being represented that the berm of gravel created the local wetlands.

Mr. Petruccelli represented that it did.

Mr. Sessions stated that he was not on the site 30 years ago, but this is a historic low point. He can almost guarantee that it is now and was always a wetland, although a broader system. He advised that he could not imagine that this wetland was created as a result of bringing the berm in or as a result of any offsite residential stormwater discharge. Historically, it was a low lying area. It was probable that the wetland was squeezed and more channelized by the fill.

Mr. Kerner stated that this Board is being asked to approve the placement of fill and the construction of a house within the wetland, not the wetland buffer.

Mr. Petruccelli reviewed a survey prepared by H. Stanley Johnson when he purchased the property. He noted a wetland strip in 1982, which he stated was created by a pipe. He advised that since then it grew from a strip to what it is today over the course of 30 years. It is a wetland that is trapped because of the bank run that was brought in when Cuoco owned the property probably to build the septic system because it is a low area. He stated that the report prepared by Mary Jaehnig supports this.

Mr. Sessions questioned who delineated the wetland in 1982. He questioned whether the surveyor put the wetland on the map and whether it was legitimately delineated. He noted the valley and the slope coming down to a low point. He would imagine that the contours that wrap around the berm would just continue where you see a wetland. The entire area was probably a low lying wetland.

Mr. Petruccelli disagreed and stated that they also brought in fill to build up the slope and maintained that the wetland was created this when they put the berm in. He advised that they did the tests.

Mr. O'Donnell stated that there had been some suggestion that the area now described as wetland is due to a pipe to the north. In looking at the property, it would not surprise him that there is a flow across the street irrespective of this property.

Mr. Sessions did not disagree with this. It is his professional opinion that he did not see how this pipe and discharge could have created this wetland system and the hydric soils. Could it have exacerbated the moisture condition to a very limited degree, yes possibly, but he did not agree that it could have created it. He advised that this is not a marginal wetland. The soil is saturated and the root system is buttressed. This is a wetland, not a NYSDEC wetland; but it is a significant enough wetland. The soils are saturated enough that it is not due to a pipe but due to an existing low lying historic wetland.

Mr. O'Donnell questioned whether it could be determined whether it is a seasonal wetland.

Mr. Sessions advised that there is evidence of all three parameters of a wetland. If the soils were not saturated long enough during the growing season they would not exhibit hydric characteristics. There is dark soil color, evidence of wetland hydrology, buttress tree trunks, and water stained leaves. This wetland has all of the characteristics.

Mr. O'Donnell questioned whether there was anything on this property that Mr. Petruccelli could do that would constitute mitigation.

Mr. Sessions stated that even if every spare square footage of the property that is not being developed were go to mitigation, you could still not come close to 1:1. Is it possible that certain areas of the site could be expanded; maybe the bio-filter could be redesigned to incorporate a pocket wetland. Certain proposals could be enhanced, but it would not come close to adequate mitigation as far as the numbers are concerned.

Mr. O'Donnell questioned whether the parking area could be reduced. He noted that there are homes in the area that do not have driveways but have a small parking space.

Mr. Petruccelli stated that he did not want to do this. He was planning on utilizing pervious pavers.

Mr. Kerner advised that he cannot make it look like there is a flat green area as it is being shown on the map; it is a very constrained site. He suggested that maybe the house had to be reconfigured and pushed closer to the road to get it outside of the wetland area itself. He provided an overlay of an alternative house footprint. He stated that it could be considered a unique site with wetlands. He did not believe that the parcel could support a standard three bedroom house.

Mr. Gusmano expressed concern setting a precedent.

Mr. Kerner stated that there must be some way to minimize the impacts.

Mr. O'Donnell questioned whether the applicant had any contact with the neighbors to determine if there was any possibility of creating off-site mitigation.

Mr. Petruccelli advised that the only contact he had was sending a certified letter two years ago asking that the neighbor remove the pipe. The neighbor stated that whatever was needed, that he would help him out and that he wanted him to build a house.

Mr. O'Donnell questioned whether he had any conversations with the Three Lakes Council.

Mr. Petruccelli advised that they sent him a letter asking him to donate the property. He advised that he has owned the property for 30 years, there were no wetlands at that time, he has been paying taxes and he expected to reap the benefits. When advised by Mr. O' Donnell that the Town has wetland regulations, Mr. Petruccelli stated that he understood that, but his rights were more important than the rights of the wetlands because they were created by a pipe that should have never gone on his property and stated that his soil scientist agreed.

Mr. Kerner advised that the consensus is that the applicant must go the extra mile to look at some other options. The bio-filtration appears to be the only mitigation proposed; more is needed.

Mr. Gusmano advised that he would like to see a rough house design that would pull the house back a little. This is an unusual property.

Mr. O'Donnell questioned whether the septic system could be located elsewhere on the property and noted that the datum still needed to be worked out.

Mr. Sessions advised that the septic location could not be moved. The area to the west is a very steep slope created by the fill, so that is out of the question. Anything to the east is in the wetland proper. The fill was brought in and the disturbance was created 30 – 40 years ago, it is there. Relocating the septic system would create more disturbance.

Mr. Kerner asked for suggestions to reconfigure the house and to enhance the wetland area.

Mr. Sessions advised that it would be up to Mr. Petruccelli if he wanted to go back to the drawing board to relocate the house, because if the house has been pushed further to north there would be more opportunities to mitigate. The only thing is that you are mitigating in the wetland already. Can the wetland be enhanced, be planted and be more robust provides better filtration, possibly. He noted that there might be mitigation possibilities on the adjacent properties. Often times they look for invasive species removal. He advised that he had not walked the other property to determine whether there are any invasives on it. He advised that as the industry evolves the thought is that less creation and disturbance of wetlands and more management and improvement of existing systems is better. There might be an opportunity to do some mitigation off site if Mr. Petruccelli is willing.

It was noted that the property to the west of this parcel may present an opportunity as well given that it is owned by the Town of Lewisboro and lies between the subject property and the lake.

Mr. Kerner noted that there are other ways to design the house without a garage. If it could be moved outside of the wetland, it should be. He provided the applicant with a copy of the Three Lakes Council correspondence noting that it had many considerations. The data regarding the lake elevations must be updated as well.

Mr. Petruccelli maintained that the data was correct.

It was noted that the benchmark at 200 at one corner of the property looked as though it was taken from an older survey.

February 19, 2013

Rudolph Petruccelli, Oscaleta Road, South Salem – Applications for Final Subdivision Plat Approval & Wetland Activity Permit Approval to construct a single-family residence – Cal. #'s 8-12 P.B. & 61-09 W.P.

Mr. Tetelman stepped down from the podium as he had previously recused himself from this application. Ms. Andersen reminded the Board that she too had recused herself as Chairwoman of the CAC.

Rudolph Petruccelli was present.

Mr. Petruccelli displayed a site plan with three alternate locations for the proposed home and noted that the third plan was least desirable because of its close proximity to the neighbor but takes the house outside of the wetland. He advised that he had spent a lot of time and money and questioned what the Board would consider approving.

Mr. Kerner advised that although the house location is a concern, it is not the ultimate concern; mitigation is the primary concern. He noted that there are other approvals which are out of the control of the Board. In addition,

Mr. Kerner advised that the Board is waiting for a response to the last set of comments from the Town's consultants.

Mr. O'Donnell questioned whether there had been any quantification with respect to the amount of fill that would be necessary.

Mr. Petruccelli advised that this would depend on the proposal.

In response to a question of Mr. O'Donnell, Mr. Petruccelli advised that the NYSDEC Wetland Permit was for the construction of a septic system in the NYSDEC wetland buffer.

In response to a question of Mr. O'Donnell, Mr. Johannessen advised that the data regarding the varying measures of height above sea level had been satisfactorily addressed.

Mr. Kerner noted that the invert for the septic was being placed fairly close.

Mr. Petruccelli advised that it met the Health Department's rules and regulations. It is above ground water.

Mr. Johannessen reviewed the Kellard Session February 15, 2013 memo to the Board.

Mr. Cermele advised that his office believed that a pond or pocket type wetland would be beneficial but design details are needed. He noted that he is okay with the concept and preliminary design.

Mr. Kerner advised that correspondence from 1971 regarding this property between the Chairman of the Conservation Advisory Council and the Health Department had been found in another file. He provided copies of these documents to Mr. Petruccelli. This correspondence addressed the issue as to whether or not these were considered wetlands in 1971 regardless of the current wetland ordinance. He noted that the Town's consultants have contended that the 6 ½ inch pipe had not created the wetland. At this point, the Planning Board is not prepared to give a definitive answer.

Mr. Petruccelli acknowledged receipt of the February 15, 2013 Kellard Session memo, February 12, 2013 memo to the Board from the CAC, February 12, 2013 correspondence addressed to the Board from Frederick O. Cowles, correspondence addressed to the Planning Board received February 6, 2013 from Harold Rosenbaum and the February 9, 2013 correspondence addressed to the Board from Three Lakes Council. He further noted that he could not go further with mitigation until he knows where they are going with the structure.

Mr. Johannessen advised that regardless of the alternative selected that it was critical to develop a mitigation plan.

Mr. Kerner agreed stating that the stormwater treatment and protection of the wetland area is the larger picture. Mr. Petruccelli advised that he would respond to the latest memo and resubmit. _

April 9, 2013

Rudolph Petruccelli, Oscaleta Road, South Salem – Applications for Final Subdivision Plat Approval & Wetland Activity Permit Approval to construct a single-family residence – Cal. #'s 8-12 P.B. & 61-09 W.P.

Mr. O'Donnell advised that this matter has been adjourned to a later date, the earliest possible date being May 7, 2013. The request has been made by a representative of Mr. Petruccelli who has advised that Mr. Petruccelli is ill and therefore is not able to attend the meeting this evening. Mr. O'Donnell advised that the Planning Board would be taking no action on this matter this evening.

May 7, 2013

Rudolph Petruccelli, Oscaleta Road, South Salem – Applications for Final Subdivision Plat Approval & Wetland Activity Permit Approval to construct a single-family residence – Cal. #'s 8-12 P.B. & 61-09 W.P.

Rudolph Petruccelli, PE was present.

Mr. Tetelman had previously recused himself from this application and stepped down from the podium.

Mr. Petruccelli displayed and reviewed three alternative mitigation plans. He advised that he would need input from the Board as to which plan they preferred because the consultants have requested that he provide fully developed detailed plans.

Mr. Johannessen reviewed the April 5, 2013 Kellard Sessions memo to the Board. He reviewed the revised mitigation and advised that the Board may wish to discuss whether the use of permeable pavers should be considered as mitigation or as a design feature.

Mr. Kerner advised that the Board would like to set a hearing date and determine whether Mr. Petruccelli had a preference as to which alternative he would like to move forward with or whether he preferred to present all three.

Mr. Praga noted that once Mr. Petruccelli had determined which alternative he preferred, a public hearing could be scheduled.

Mr. O'Donnell suggested that another site visit be scheduled given the public interest and noted that only two members of the Board had attended the previous visit. Once Mr. Petruccelli selected his preferred alternative, the Board would want the site staked so that it could be clearly understood what is being proposed.

Mr. Kerner suggested that it might be wise to look at off-site mitigation to achieve the required 1:1 mitigation. He expressed concern with the pavers being utilized as mitigation.

Mr. Petruccelli advised that he could achieve the required 1:1 mitigation for alternatives 2 and 3 without the permeable pavers.

Mr. Sessions advised that the code points out some general and some specific forms of mitigation. Pervious pavers can mitigate stormwater flows and some stormwater quality. Traditional wetland mitigation is conservation easements, improving the quality of the wetland but not necessarily permeable pavers. He advised that he did not disagree with the suggestion that off-site mitigation be explored and considered.

Mr. O'Donnell noted that he had read about some monitoring being done between the sources of pollution near an airport and a lake. He suggested that the applicant consider some sort of monitoring between his site and

Lake Waccabuc because of the tremendous concern for the families who get their drinking water from the lake. Mr. O'Donnell advised that he would be interested in seeing the correspondence with the Westchester County Department of Health and the NYSDEC as there are indications that they are in accord with the possibility that something could be built on this property.

Mr. O'Donnell noted that in some instances that the Health Department permitted White Knight Systems.

Mr. Kerner noted that when approving an activity within the wetland buffer, this Board has been concerned with what activity would occur in that area because of the concerns with housekeeping and potential contamination once people move in.

Mr. Praga advised that the Board needs input from the applicant with respect to which plan he wished to proceed with, a site visit and eventually more developed plans.

Mr. Petruccelli advised that he would send a letter advising which alternative that he would like to proceed with.

July 16, 2013

Rudolph Petruccelli, Oscaleta Road, South Salem Application for Wetland Activity Permit Approval to construct a single-family residence - Cal #8-12PB and Cal #61-09 WP - Review of site visit access requirements

Mr. Tetelman recused himself.

Mr. Petruccelli stated that the site walk would be open to the Planning Board, CAC, and consultants. Mr. Petruccelli acknowledged receipt of letters from neighbors regarding the project and requested that the public not be present on the site walk.

After discussion, it was the consensus of the Board that the site walk be open to the Board, CAC, and consultants.

Deborah Baker, 28 Cove Road, asked if the public would be aware of the date and time of the site walk in the event that an individual would want to stand on the road during the site walk.

The site walk was scheduled for August 6, 2013 at 6:30. Ms. Baker and other individuals were present in the audience when the date was announced.

Mr. Petruccelli confirmed that the property would be staked.

Mr. O'Donnell requested that Mr. Petruccelli send to the Planning Board secretary correspondence between Mr. Petruccelli and the New York State Department of Environmental Conservation (NYS DEC), Army Corps of Engineers (ACOE), New York City Department of Environmental Protection (NYC DEP), and the Westchester County Department of Health (WCDH). Mr. O'Donnell requested that this information be sent via email. Mr. Petruccelli agreed to Mr. O'Donnell's request.

August 13, 2013

SITE WALK REPORT

Rudolph Petruccelli, Oscaleta Road, South Salem Application for Wetland Activity Permit Approval to construct a single-family residence Cal #8-12PB and Cal #61-09 WP

Mr. Kerner stated that the site walk took place on August 6, 2013.

Mr. Kerner stated that he believes it would be beneficial to have a cross section through the property from Oscaleta to the westerly boundary which would indicate distance to the lake, existing grade and proposed fill. It is preferable to eliminate the fill all together, ideally by removing the walk out patio.

Mr. Goett noted that the property stake in one corner is right up to wetland. Some future activity will be four feet into the wetland. Mr. Petruccelli stated that this was the reason for the wetland application. Mr. Kerner stated that the cross section will show these concerns.

Mr. O'Donnell reviewed the site walk. All Board members, with the exception of Mr. Tetelman were present on the site walk. Mr. Tetelman had previously recused himself. Mr. Petruccelli attended the site walk, but remained on the street. Mr. Petruccelli's associate (unidentified) accompanied the Planning Board. Dave Sessions, Kellard Sessions was present. When the property was entered, the Board inspected the area of the property line of the northerly neighbor, including the PVC pipe belonging to the neighbor situated on the bridge. The Board questioned what the PVC pipe drained. Mr. Petruccelli stated that he had sent a letter to the neighbor but had never received a response. The Board then walked the southerly end of the property. The property was not staked, however, there were flags on tree branches. The Board stood on top of the berm, in an effort to determine where the Town of Lewisboro property line was, as well as the distances from the top of the berm to Mr. Petruccelli's property line, Mr. Petruccelli's septic field and septic expansion area, to the Town of Lewisboro line and also to the Lake. The greenery made it difficult to view. Mr. Petruccelli was requested to submit at a later date, a response. Mr. Kerner stated that the cross-section should provide this information. There was reference made to the boat house on the property to the north and west, and whether a schematic was available to show its location. An aerial shot was suggested. There was substantial discussion as to the height of the fill and the volume of the fill. There was discussion as to the amount of water during different seasons. Mr. Petruccelli was asked to submit photographs to show the water during different seasons of the year.

A Public Hearing was scheduled for September 17, 2013 for both the Subdivision and Site Plan applications.

September 17, 2013

Rudolph Petruccelli, Oscaleta Road, South Salem -Application for Wetland Activity Permit Approval to construct a single-family residence -Cal #8-12PB and Cal #61-09 WP

The new Public Hearing date for Rudolph Petruccelli was set for November 19, 2013.

November 19, 2013

PUBLIC HEARING

Rudolph C. Petruccelli, Oscaleta Road, South Salem, New York -Application for Subdivision Plat Approval and Wetland Activity Permit Approval to permit the construction of a three bedroom, single-family residence and associated deck, porch, driveway, walkway, landscaping, septic system, potable well, fencing and stormwater facilities. Cal # 8-12PB and Cal# 61-09 WP

The Public Hearing was called to order at 8:22 p.m.

Mr. Tetelman recused himself and stepped down from the podium.

Ms. Andersen recused herself from her CAC role. Ms. Andersen stated that she will be speaking on behalf of the Three Lakes Council.

Mr. Kerner asked that individuals wishing to speak sign in.

Mr. Kerner stated that there will be no comments by the Board. The Public Hearing would not be closed this evening.

Michael Sirignano, Esq., represented the applicant. Steve Marino, Tim Miller Associates, Inc. was present on behalf of the applicant.

Mr. Sirignano provided proof of the mailing of the public hearing notice to the Planning Board Secretary. Mr. Sirignano also provided a photo as proof of posting of the public hearing sign.

Mr. Sirignano stated that Mr. Petruccelli purchased the 0.69 acre lot on the west side of Oscaleta Road on April 1, 1982 from Irene Skolnik. According to the Tax Assessor's office this parcel has been a separate tax lot since 1972 (Tax Lot 46).

Mr. Sirignano presented the first water resources map adopted on January 9, 1973. (At one point Mr. Sirignano stated that map was adopted by the Lewisboro Planning Board, at another point he stated it was adopted by the Town Board). The map showed that the wetlands mapped at that time are now designated as state wetlands. The locally regulated wetland straddles the boundary line between proposed Lot 1 and proposed Lot 2, and is not shown on the water resources map.

The NYS DEC first mapped the state wetland boundary on January 13, 1987. The NYS DEC tiled the first freshwater wetland map for this state regulated wetland, designated as LI3, effective October 7, 1987.

Two earthen berms were created between 1960 and 1976 on the southerly and westerly borders of the local wetland.

Mr. Sirignano stated that the abutting residents to the north, Mr. and Mrs. Harold Rosenbaum, have an eight inch PVC pipe, covered by a decorative bridge, which extends onto Mr. Petruccelli's property. The pipe channels and discharges groundwater and storm water onto Mr. Petruccelli's property. Mr. Petruccelli has twice written to the Rosenbaums asking them to remove the pipe and to contain the water to the Rosenbaum property by method of a dry well or other system. Mr. Petruccelli has received no response to his requests.

Mr. Sirignano stated that there are two applications before the Board: application for subdivision plat approval; and application for wetland activity permit approval. The lot is 85 feet south of Cove Road. Mr. Petruccelli first appeared before the Board in May, 2010. At that time, Mr. Praga advised that Mr. Petruccelli's wetland permit application must be accompanied by a subdivision application because Mr. Petruccelli's lot (designated as Lot 2 on the plat displayed), was created by deed conveyances at a time when Lewisboro subdivision regulations were in effect. Mr. Petruccelli agreed to make the joint application.

Mr. Sirignano reviewed the chain of title on the property. Mervin and Helen Dickens conveyed the entire 1.887 acre parcel to Anthony Cuocco by deed dated April 9, 1970. Mr. Cuocco commissioned Bunney Associates to create a subdivision plat. That plat is dated March 31, 1970, revised June 16, 1972. Mr. Sirignano displayed the plat. The plat was submitted to the WCHD. The WCHD commissioner at the time signed and certified that the WCHD had no jurisdiction over the subdivision because at that time there was no need for WCHD approval over a two lot subdivision in Lewisboro.

Mr. Cuocco carved out and sold his lots. Mr. Cuocco conveyed Lot 1, which is 1.189 acres, to Stanley M. Lewis, Inc. on December 7, 1972. On that same day, Stanley M. Lewis conveyed Lot 1 to Jane W. Lewis. On December 9, 1979, Jane W. Lewis conveyed Lot 1 back to Stanley M. Lewis, Inc. Lot 1 became Tax Lot 47 (formerly part of Tax Lot 46). That designation as a distinct tax lot on the Assessor's record took place on December 14, 1972.

Peter L. Sullivan and John P. Annicelli took title to Lot 1 on September 20, 1996. Mr. Sullivan and Mr. Annicelli conveyed Lot 1 to the Three Lakes Council by deed dated October 10, 1996, who remain the current owners.

On October 11, 1977, Mr. Cuocco conveyed Lot 2 to Marian Dussinger. Mariann Dussinger conveyed Lot 2 to Irene Skolnick on October 26, 1979. Irene Skolnick conveyed Lot 2 to Rudolph Petruccelli on March 31, 1982. Because a condition of Mr. Petruccelli's NYS DEC wetland permit requires a deed covenant, a deed dated October 29, 2012 was filed in order to comply with the NYS DEC permit.

Mr. Sirignano stated his opinion that if subdivision approval is required of Mr. Petruccelli, then subdivision approval is also required of Three Lakes Council.

Mr. Sirignano stated that Mr. Petruccelli's 0.669 acre lot conforms to current gross area requirements for this R 1/2 acre zoning district. Although Mr. Petruccelli can't meet the 20,000 square feet of contiguous buildable area, due to the small, triangular, locally regulated wetland in the center in the center of the lot, the Lewisboro Building Inspector has determined that, "the lot does not need to comply with today's code," with respect to the contiguous buildable area, because, "it is not a new lot and the Planning Board is now legalizing the lot." This is part of the prior proceedings.

Mr. O'Donnell stated that the deed history is reflected in the title report and is already part of the record. Mr. O'Donnell asked for confirmation that the purchase price of the property was \$4,000. Mr. O'Donnell suggested that Mr. Sirignano correspond with Mr. Praga regarding the legal status of the Three Lakes Council property, as Mr. Praga will advise the Board.

Mr. Sirignano discussed the wetland activity permit application. Mr. Sirignano stated that since the original application, many revisions to the site plan have occurred.

The house has been moved completely out of the wetlands. There will be some disturbance to put in the footings. The driveway and the garage have been relocated to the south side of the house. Permeable pavers will be used for the driveway. The septic has been reduced by one-third and the house has been downsized from four bedrooms to three. The height of the fill in the wetlands has been decreased to a maximum of three feet.

Mr. Sirignano stated for the record that on June 17, 2011, the NYS DEC issued freshwater wetlands permit to Mr. Petruccelli for "construction of a new single family residence and septic system on the adjacent area of New York State area of freshwater wetland, L 13, Class 2. Approximately 0.22 acres of adjacent area will be disturbed for the placement of fill and construction of a raised-bed septic." A condition of the NYS DEC permit is that Mr. Petruccelli must record a deed covenant confirming that a portion of his building lot is subject to NYS DEC regulations so that any future owner would be on notice that the NYS DEC has jurisdiction and approval authority over any additional proposed changes to the house or the site. Mr. Petruccelli has complied with that condition. As part of the NYS DEC permit approval, the NYS DEC determined that this project is a Type II action under SEQRA and not subject to further environmental review procedures. The NYS DEC wetland is what separates Lot 2 and the locally regulated wetland from Lake Waccabuc.

On January 31, 2011 the WCHD confirmed that they received the proposed septic system construction plans and reported to the NYS DEC that the WCHD "has determined that the construction plans are approvable." The WCHD will not give final approval and sign off on a septic plan until subdivision approval is received.

The Army Corps of Engineers (ACOE) certified in a letter dated January 30, 2013 that a Department of the Army permit is not required for this proposal.

The NYC DEP has co-review authority with the WCHD on the septic. By letter dated January 18, 2011, the NYC DEP reported to the NYS DEC that an application to the NYS DEC for a variance allowing construction of the septic system "within a NYS DEC wetland buffer is capable of being approved as is the proposed design of the (Sanitary Sewage Treatment System) SSTS."

The Planning Board wetland permit, 61-09WP, was issued to give Mr. Petruccelli permission to conduct soil testing for the septic system (deep hole, and perc tests). The WCHD witnessed the tests. One of the holes found ground water at five feet. The rest of the holes went down to eight feet without encountering any ground water. These test results were forwarded to the NYS DEC and WCHD and have been reviewed by both agencies. Deep hole tests were also done for storm water infiltrators which were witnessed by Kellard Sessions. No ground water or rock was found to a depth of eight feet.

The local wetland boundaries were originally flagged by Mary Jaehnig, wetland consultant for Mr. Petruccelli, on May 28, 2004, updated on July 29, 2012. For health reasons, Ms. Jaehnig could not attend the public hearing originally scheduled on September 17, 2013, rescheduled to November 19, 2013. Mr. Petruccelli has retained Steve Marino as his current wetland consultant. In 2013, Mr. Marino confirmed the same wetland boundaries as Ms. Jaehnig.

Mr. Sirignano stated that is the belief of himself and Mr. Marino that the locally regulated wetland is not a particularly important wetland. Under §217-181 of the Town Code, the ecological benefits of wetlands and

watercourses are enumerated. Of the 13 benefits listed, it is the belief of Mr. Sirignano that only three are served, all having to do with stormwater retention and dispersion: subdivisions A, B, and G.

There have been a number of manmade disturbances and impacts to the property, all occurring prior to Mr. Petruccelli purchasing the property, including the construction of the house to the immediate north, the placement of a large berm on the western edge and the southern edge which has created a closed retention area.

Mary Jaehnig reported to the Board in two letters dated August 2, 2012 and December 12, 2012 that the locally limited wetland and small watershed serves limited wetland functions, mostly stormwater retention to recharge to the underlying bedrock. Ms. Jaehnig also reported that the soils have developed wetland soil characteristics over time due to the off-site drainage and standing water condition. Ms. Jaehnig further found that the standing water area will diminish and may even disappear if surface water inflow from the neighbor's eight inch PVC drainage pipe were eliminated.

Mr. Sirignano stated that he has read all of the letters and emails from concerned neighbors.

Mr. Sirignano reviewed the concept of "standing". Parties must show that the impact upon them is different than the impact on the general public. Mr. Sirignano stated his opinion that other than two individuals, neighbors cannot show legal standing. In his opinion, those with standing are the Three Lakes Council and Mr. and Mrs. Rosenbaum.

Mr. Sirignano stated that in one of his letters, Mr. Rosenbaum indicated that he installed a second sump pump in his driveway; the first one pre-existing in his garage. Mr. Rosenbaum does not indicate where the two sump pumps are pumping ground water, and where the ground water is going. It was the belief of Ms. Jaehnig, and is the belief of Mr. Petruccelli and Mr. Marino that ground waters are coming off of the Rosenbaum property, flowing onto Mr. Petruccelli's property, and getting trapped because of the berms.

Steve Marino, Tim Miller Associates displayed the plan and aerial photos previously submitted to the Planning Board along with the November 5, 2013 Wetland Functional Assessment.

Mr. Marino stated the size of the wetland is approximately 7,000 square feet, with approximately 5,000 square feet of the wetland being on Mr. Petruccelli's property.

Mr. Marino reviewed the wetland application submitted by Mr. Petruccelli. In order to construct the small yard area, approximately 2,200 square feet of the existing town wetland would have to be filled to create a rear yard. The applicant is proposing a retaining wall which would separate the development part of the parcel from the remainder of the wetland. Additional mitigation measures are also being proposed.

Mr. Marino reviewed the historical context of the wetland. Mr. Marino addressed the aerial photos submitted which go back to 1947. The 1947 aerial shows no development on or near the property. Between 1960 and 1976, activities occurred on the property, as shown on the 1976 aerial. The 1976 aerial shows that a large earthen berm was constructed coming in off of Cove Road onto Lots 1 and 2, extending to the south. A second berm which comes in opposite Twin Lakes meets up with the berm coming in off of Cove Road. There are two sand and gravel berms on the property.

Based on the placement of the larger berm, storm water and runoff from the neighborhood, which had formerly come down through the neighborhood and drained off the slope into the wetland adjacent to Lake Waccabuc, as well as into Lake Waccabuc, was cut off, resulting in an impoundment of water in that area, which accumulated over time. The 1976 aerial shows the beginnings of a small pocket of wetland because of the constriction of flow through the neighborhood. The topography of the neighborhood is from north/northeast down through the site and into the lake. With the construction of the berm, the water is now trapped, resulting in ponding. As a result the upland vegetation that was previously in the area died back and red maple trees of varying health remain. There are is no herbaceous vegetation growing.

The 2004 and 2009 aerial photos show the pocket of wetland expanding. The photos show ponding water.

It is the belief of Mr. Marino that the habitat and function of the pocket of wetland cannot compare to the habitat and function of the extensive wooded swamp along the lake.

Mr. Marino reviewed the Wetland Functional Assessment dated November 5, 2013, specifically page 2.

Based on the assessment, Mr. Marino concluded that the prime function of the wetland pocket is stormwater control and flood reduction. Because of the berm, water is trapped so that adjacent properties are not flooded. However the adjacent properties are preventing the water from getting to the lake.

There is 2,200 square feet of wetland impacted.

Mr. Marino reviewed the plan submitted.

In the southeast corner of the site, the applicant is proposing to expand the existing wetland by excavating about two feet of material to get down to the base water level that the existing wetland is now holding. The applicant would remove invasive species, replant and establish wetland vegetation in the area. 1,300 square feet of wetland would be created in the corner.

Invasive would be removed from the septic area and replaced with seed mix to provide greater wildlife value. The area would be mowed once to twice per year.

A conservation easement would be established on the rear of the property, including part of the NYS DEC wetland.

There is about 18,000 square feet of total disturbance. With the inclusion of conservation easement, restored buffer, enhancement of the wetland and creation of the wetland, there is 17,000 square feet of mitigation, resulting in approximately a 1:1 mitigation ratio.

Since the primary function of the wetland is stormwater retention, replicating stormwater function on the site is important. The driveway is now impervious pavers so that stormwater would go into the ground rather than run into Oscaleta Road or the wetland. Stormwater from the house would be placed in infiltration galleries to be designed by Mr. Petruccelli's office.

Mr. Marino concluded his portion of the presentation.

Mr. Sirignano summarized his presentation stating his that the project proposed by the applicant is in accordance with the policies of Town Code, §217. There is no substantial evidence to support denial of Mr. Petruccelli's application for wetland activity permit. Mr. Sirignano stated that evidence supports approval with reasonable conditions to which Mr. Petruccelli would be agreeable to hearing. Mr. Sirignano stated that denial of this application would constitute an unconstitutional taking of Mr. Petruccelli's personal property rights and would render his lot valueless.

Mr. Sirignano stated that if Mr. Petruccelli's application were to be denied, a taking would be constituted because it would result in the economic destruction of Mr. Petruccelli's private property by Town government action.

Mr. Sirignano stated that off-site opportunities have been investigated, but there are no opportunities on properties that Mr. Petruccelli controls.

Mr. Petruccelli confirmed that Mr. Sirignano's presentation was complete.

Mr. Kerner invited comments from the public.

Janet Andersen, 5 Orchard Drive, South Salem, resident, President, Three Lakes Council, paraphrased the Three Lakes Council letters dated February 9, 2013, September 3, 2013, and November 13, 2013.

Mr. Paul Lewis, 44 Twin Lakes Road, summarized his letter dated September 16, 2013.

Mr. Fred Cowles, 111 Oscaleta Road, addressed the Board.

Mr. Cowles stated that he lives across the street from the property and believes that he does have standing to sue. Mr. Cowles stated that when he purchased his property in 1973, he had a view of Lake Waccabuc. Before buying his property, Mr. Cowles did his due diligence by speaking to Ed Blum, his attorney who lives on Cove Road. Mr. Blum assured Mr. Cowles that he had good title and also that a house could not be built across the street because it was wetlands. Mr. Blum provided history of the failed subdivision and the reason why Mr. Cuocco tried to subdivide by deed rather than going before the Planning Board, which at that time would have had to approve a subdivision.

Mr. Cowles referred to the aerial photos submitted by Mr. Marino. The 1976 photo shows the berms void of vegetation causing reason to believe that they were put in around 1970, which is consistent with statements provided by Mr. Marino. Mr. Cowles stated his opinion that the berms were put in by Mr. Cuocco because the placement of the berms is consistent with Mr. Cuocco's attempt to subdivide by deed.

Mr. Cowles stated that he had written a letter dated November 18, 2013 which he chose not to read, but asked that the applicant and his counsel and consultant read.

Mr. Cowles questioned that if the wetland did not exist when the berms went in, what was the purpose of the creation of the berms. Mr. Cowles stated his opinion that the berms were necessary because the land was already wet, and without the berms, it would not be possible to walk or drive on the land.

Mr. Cowles stated that if Mr. Petruccelli's application is approved, it would constitute an unconstitutional taking of Mr. Cowles' property because approval of Mr. Petruccelli's application would substantially reduce the value of his property, and he would have a right to sue.

Mr. Cowles asked that Mr. Sirignano or Mr. Petruccelli inform the public what approvals have been given by the Lewisboro Planning Board to build a house on a lot which is entirely wetlands or wetlands buffer. If there is no such case, why would Mr. Petruccelli be granted exceptional preferential treatment, especially when this town was a total victor in the Manbeck case, which should be used as a roadmap in enforcing wetlands law.

Mr. Cowles stated that he disagrees with Mr. Sirignano's statement that only the Three Lakes Council and the Rosenbaum's have standing. Mr. Cowle's stated his opinion that anyone who lives on, uses, or whose real estate values depend on the Town's preserves, has an interest in this case.

Dr. Peter Treyz, 81 Twin Lakes Road, South Salem, stated that Ms. Andersen adequately expressed his concerns.

Alan Gottlieb, 51 Twin Lakes Road, South Salem stated that although he is opposed to the approval, Mr. Petruccelli has a valid point in that the pipe of the neighbor to the north is dumping water onto Mr. Petruccelli's property.

Harold Rosenbaum, 2 Cove Road, South Salem addressed the Board. Mr. Rosenbaum is the neighbor to the north of Mr. Petruccelli's property. Mr. Rosenbaum read the letter sent to him by Mr. Petruccelli dated July L 2010, regarding the PVC pipe.

Mr. Rosenbaum stated that he moved to 2 Cove Road in 1989, clarifying that his wife and her former husband bought the property a few years prior to 1989. Mr. Rosenbaum stated that the pipe was on the 2 Cove Road property in 1989, and was in place when his wife originally moved into the property, further stating that the pipe is on the Rosenbaum property, not Mr. Petruccelli's property. Mr. Rosenbaum stated that workers employed by Mr. Petruccelli had come onto his property and attempted to remove the pipe. Mr. Rosenbaum contacted the police and it was determined that the pipe was on Mr. Rosenbaum's property. Mr. Rosenbaum indicated that anyone wishing to see the pipe is welcome to do so.

Mr. Rosenbaum stated that his basement has flooded 15 times. During one of the storms, Mr. Rosenbaum observed that water from the pipe remained on his property. Mr. Rosenbaum stated that he has taken photos of Mr. Petruccelli's property when there have been "lakes" and "frozen lakes".

Mr. Rosenbaum confirmed that he had not responded to Mr. Petruccelli's letters, stating that he did not see a reason to reply.

Mr. Rosenbaum addressed the second sump pump on his property. Two days after the (2013) storm, the Assistant Supervisor of the Highway Department observed the water level to be approximately 18 inches high on Mr. Rosenbaum's door. A higher lip on Oscaleta was created in order to ease the flooding. The basement flooding has caused physical harm to Mr. Rosenbaum due to mold. Mr. Rosenbaum has suffered from asthma and pneumonia. A sump pump with backup batteries was installed in the driveway, about 8 feet from the house. Pipes surrounding the house were also replaced. Between the sump pump in the driveway and the sump pump in the basement, Mr. Rosenbaum is hopeful that flooding of the basement will be alleviated.

Water now goes to the underground pipe, and under the bridge, staying on Mr. Rosenbaum's property.

Mr. Rosenbaum questioned how there can be flooding on his property, and yet no water eight feet down on Mr. Petruccelli's property, as previously stated.

Mr. Rosenbaum read the letter written to him by Mr. Petruccelli, dated August 21, 2013, requesting removal of the pipe. The August 21, 2013 letter also stated that the Planning Board had been to Mr. Petruccelli's property on August 6, 2013 and had observed the pipe. The letter further stated that at the August 13, 2013 Planning Board meeting, the Board requested information regarding the origin of the lines tied into the pipe. Mr. Rosenbaum stated that he had never received said request from the Planning Board. Mr. Rosenbaum indicated that had he received the request from the Board, he would have responded to them.

Mr. Rosenbaum claims that he had read somewhere that Mr. Petruccelli stated that Mr. Rosenbaum welcomed the house proposed by Mr. Petruccelli. Mr. Rosenbaum stated that he never said that he welcomed the house.

Ms. Andersen again addressed the Board, referencing Eastbrook Construction Company, as discussed in the Three Lakes Council letter dated November 13, 2013. Ms. Andersen showed on the plan where Eastbrook had attempted to build a house on the property currently owned by The Three Lakes Council (Lot 2). Ms. Andersen stated that Eastbrook had obtained a building permit, not knowing that there was a wetland on the property. The wetland inspector at the time went to the site, and determined that a wetland permit was needed. A stop order was issued. The wetland permit was not approved.

On a motion made by John O'Donnell, seconded by Robert Goett, the Public Hearing of Rudolph C. Petruccelli, Oscaleta Road, South Salem, New York -Application for Subdivision Plat Approval and Wetland Activity Permit Approval to permit the construction of a three bedroom, single-family residence and associated deck, porch, driveway, walkway, landscaping, septic system, potable well, fencing and stormwater facilities, Cal # 8-12PB and Cal# 61-09 WP was adjourned to December 17,2013 (subsequently rescheduled to January 28, 2014 at the request of the applicant).

In Favor: Mr. O'Donnell, Mr. Goett, Mr. Kerner, Mr. LaSorsa. Abstain: Mr. Tetelman

January 28, 2014

Rudolph C. Petruccelli, Oscaleta Road, South Salem, New York -Application for Subdivision Plat Approval and Wetland Activity Permit Approval to permit the construction of a three bedroom, single-family residence and associated deck, porch, driveway, walkway, landscaping, septic system, potable well, fencing and stormwater facilities. Cal # 8-12PB and Cal# 61-09 WP

There were no objections to the advertisement of the public hearing. The Chairman asked whether anyone wanted the notice to be read. No one present responded affirmatively.

The public hearing resumed at 8:22 p.m.

Ms. Andersen recused herself as CAC Co-Chairperson, asking to reserve the right to speak as an individual.

Mr. Tetelman recused himself and stepped down from the podium.

Michael Sirignano, Esq., represented the applicant. Steve Marino, Tim Miller Associates, Inc., was present on behalf of the applicant.

Mr. Sirignano stated that he had submitted a letter to the Planning Board, dated January 22, 2014, addressing the issues raised at the November 19, 2013 Planning Board meeting (Attachment A). Mr. Sirignano did not read the letter during the meeting.

Mr. Sirignano acknowledged receipt of letters and emails received from residents subsequent to the November 2013 meeting.

Mr. Sirignano stated that a market analysis prepared by a licensed real estate broker had been submitted (Attachment B).

At the November 2013 meeting, Mr. Sirignano was asked if there had been any Planning Board approvals similar to the application of Mr. Petruccelli. In response, Mr. Sirignano submitted the following Planning Board resolutions: Joe Riina Development Corporation, Cal# 61-07WP; Terry and Michael Bocklet, Cal# 9605WP; Anton Kola, Cal# 40-07WP; Robin and Jasmine Joseph, Cal# 1-04WP; Elide Building Corporation, Cal# 28-03WP; and 1st Taxing District of the City of Norwalk, Browns Reservoir Dam Rehabilitation, Cal# 710WP. Mr. Sirignano reviewed these resolutions. Copies of these resolutions are available upon request to the Planning Board Secretary.

In response to Mr. O'Donnell, Mr. Sirignano stated that of the resolutions submitted, those granted for construction of a new residence were the Riina, Joseph and Elide resolutions.

Mr. Sirignano reviewed Section 217-5 of the Code of the Town of Lewisboro, stating his opinion that under the code, Mr. Petruccelli's application is not a prohibited activity. Mr. Sirignano further stated that under Section 217-5D(1)(e), the application is listed as a permitted activity which can be approved by the Planning Board.

Mr. Marino summarized what was discussed at the November 19, 2013 meeting. A history of the wetland on the property was discussed. The 1966 aerial photo of the property shows that there was not a wetland on the property. The construction of berms created an impoundment and over time, a wetland developed on the site, which is shown on the 1976 aerial photo.

Mr. Marino stated that the entire parcel is located on a wetland or wetland buffer. In response, modifications to the plan have been made, and a comprehensive mitigation plan is being proposed to offset any impacts that will occur.

Mr. Marino stated that the entire house is outside of the wetland. There is some wetland disturbance related to grading and clearing in the back, in order to have a backyard behind the dwelling. However, it still functions as a drainage way. Grading will be done to allow water to continue to flow, however it will no longer be wetland.

The entire wetland on the site is approximately 7,700 square feet, and is not regulated by the NYS DEC or Army Core of Engineers (ACOE).

As part of the overall plan, approximately 2,200 square feet of the wetland will be filled. Proposed mitigation includes: wetland enhancement, restoration, and creation; a conservation easement on the western part of the

property; replanting of the area where the septic system will go; and drainage improvements on the site. This results in a 1: 1 mitigation ratio for the property.

Mr. Marino submitted an aerial photo, on which he had superimposed the location of the proposed dwelling, in order to compare the location of the proposed house to existing homes. The house being proposed is located 300-350 feet from the lake. There are currently a number of houses located on the lake, in the lake, or within 20-30 feet of the lake.

Mr. Marino stated that there is a NYS DEC wetland between the house and the lake. Any additional runoff will filter through the NYS DEC wetland. There is an NYS DEC permit in place for the septic system.

In response to Mr. O'Donnell, Mr. Sirignano stated that the significance of the berm being man-made is that it shows a pre-existing condition to Mr. Petruccelli's ownership of the property, and that Mr. Petruccelli did not create his own hardship. Mr. Marino stated that what is being proposed will not have a long-term impact on the function and benefits of a wetland.

In response to Mr. O'Donnell, Mr. Marino stated that with regard to the Three Lakes property to the south, the work being proposed by applicant will be approximately 300 -400 feet from where the stream crosses under the road, connecting the two lakes.

There were no further questions from the Board.

Mr. Kerner opened discussion to the public.

David Wright, Esq., represented the Three Lakes Council. Mr. Wright summarized his letter dated January 28, 2014, which he submitted to the Board (Attachment C). Topics addressed in this letter include: "Nature of this Application"; "Lack of Mitigation"; "Not every lot is buildable"; "There is no hardship"; "What is the quantity of wetland that is to be destroyed?"; "What is the importance of this wetland?"; "Standard to guide permit issuance"; "Some additional observations about water source(s)"; "Our Appeal to ZBA"; This Board's independent duty of review"; and The Board should consider precedent".

Mr. Wright stated that, in his opinion, the proposed site is unable to be developed.

Mr. Wright stated that the Lewisboro Town Code strives for a "no net loss policy". If a wetland or wetland buffer is destroyed, it must be replaced.

Mr. Wright disputed the mitigation proposed by the applicant (see Attachment C). With regard to "Wetlands Enhancement Area #2", Mr. Wright stated that the applicant has not identified the source of the water. It has been suggested that the water in the wetland is from the pipe from the neighboring Rosenbaum property. However, there is no science behind this claim, only opinion. No hydrology reports have been submitted. There is no way to know if a newly constructed/enhanced wetland will function properly if the source of the water is unknown.

With regard to hardship, Mr. Wright stated that the Three Lakes Council has offered, in writing, to purchase the land from Mr. Petruccelli for \$10,000 (Attachment D). This is an irrevocable offer which will remain open for 60 days (from January 28, 2014).

Mr. Wright submitted photographs as evidence that the delineated wetland has shifted over time. These photographs are included in Attachment C.

Mr. Wright stated that the Three Lakes Council has filed an appeal to the Zoning Board (Attachment E).

Mr. Wright cited *Walsh v. Spadaccia*, 73 Misc.2d 666, 343 N.Y.S.2d (S. Ct. Westch. Co. 1973) -Attachment F.

Lenny Meyerson, Consulting Engineer for Three Lakes Council, addressed the Board.

Mr. Meyerson reviewed his memo, Petruccelli Site Development Proposal, which includes the following topics: Eutrophication; Wetlands; Mitigation; Engineering Questions; and Credentials (Attachment G).

Mr. Meyerson stated his opinion that there are parcels near the lake that, under today's regulations, would not be approved.

Mr. Meyerson discussed eutrophication, stating that man is the greatest contributor of nutrients and phosphorous to the lake. When phosphorous is added beyond the threshold of what the plants can use, it becomes detrimental to the lake. This is what is occurring in Lake Waccabuc, causing the lake to be stressed.

Mr. Meyerson submitted the document, "Limnology Indicators on Lake Waccabuc" (Attachment H), which contains graphs created by using data from the Citizens Lake Statewide Assessment Program. These graphs show what is happening to phosphorous on Lake Waccabuc. There is an upward trend in phosphorous loading. The graphs also include data regarding the rising water temperatures in Lake Waccabuc. Eutrophication is affected by rising water temperatures. The graph shows water temperatures rising between 1985 and 2012. Eutrophication is biochemical. Biochemical reactions are more sustained and more severe as water temperatures rise.

Mr. Myerson stated that when he had gone to the lot, it was covered with snow. Mr. Myerson viewed photos that had been given to him by neighbors of Mr. Petruccelli. From these photos, he could see that the lot was wet at different times of the year. The photos also showed the pipe coming from the Rosenbaum property. It is the opinion of Mr. Meyerson that the pipe contributed to, but was not the cause of the water on Mr. Petruccelli's property.

Mr. Meyerson stated his opinion that the wetland on Mr. Petruccelli's property is not a segmented wetland area. From Mr. Meyerson's experience, wetlands are connected. With regard to this wetland; there is a wet area between the road and the lake; other neighbors experience wet basements; the site abuts a NYS DEC buffer.

It is Mr. Meyerson's opinion that mitigation on Mr. Petruccelli's lot would be difficult.

Mr. Meyerson stated that man cannot replicate what naturally occurs in nature. Man-made wetlands require a lot of surface area.

Mr. Meyerson reviewed the "Mitigation" and "Engineering Question" portion his memo.

Peter Gross, 54 Twin Lakes Road, South Salem, Vice President, Three Lakes Council, and board member of the Two Lake Club, addressed the Board. Mr. Gross paraphrased the memo which he submitted to the Board (Attachment I).

Janet Andersen, 5 Orchard Drive, South Salem, addressed the Board. Ms. Andersen read her memo dated January 28, 2014 (Attachment J). Ms. Andersen submitted the document, "Rudolph Petruccelli Tax Payment History -Oscaleta Road" (Attachment K). Ms. Andersen submitted, and reviewed, the maps. "Residential Vacant Lands in Lewisboro near Three Lakes" (Attachment L), and "Petruccelli Local Wetland Areas" (Attachment M).

Charles Mason, 26 South Shore Drive, South Salem, attorney for the South Shore Waccabuc Association, addressed the Board. Mr. Mason stated that he has a summer home on Lake Waccabuc. Mr. Mason stated his concerns regarding the quality of the water, and the septic system leaching into the lake. Mr. Mason stated that much of what he was going to discuss had been covered by Mr. Wright and Mr. Meyerson. Mr. Mason has served on the Town of Mamaroneck Planning Board, CAC and other committees. Mr. Mason stated that he is surprised that Mr. Petruccelli's application has gotten this far in the Planning Board process.

George Peterkin, 5 South Shore Drive, South Salem, President, South Shore Waccabuc Association, addressed the Board. Mr. Peterkin stated that he is representing 30 homeowners who oppose the project proposed by Mr. Petruccelli. These 30 homeowners have a "heritage" investment. Many of these homeowners are third and fourth generation owners of their properties, and have lived on the property for their entire lives. Approval of Mr. Petruccelli's application is viewed as "the starting point". These homeowners are concerned that what occurred on Peach Lake in North Salem will occur on Lake Waccabuc.

Elaine Vlachos read the email dated January 18, 2014 that she had sent to the Planning Board (Attachment N).

Mr. Kerner stated that he respects Ms. Vlachos, but objects to the implication of favoritism in the opening of her email. The application of Mr. Petruccelli is still an open issue in the process of a public hearing. Mr. Kerner stated that the Planning Board is a fair-minded Board, and that there is no favoritism or special treatment being given.

Ms. Vlachos stated that she is in agreement with Mr. Mason's opinion that the application should have been rejected out of hand.

Paul Lewis, 44 Twin Lakes Road, South Salem, member of the Three Lakes Council, addressed the Board. Mr. Lewis read his memo dated January 28, 2014 (Attachment O).

Jean Lewis read the letter submitted by Lee Blum, Cove Road, South Salem (Attachment P)

Peter Beardsley, 6 Waterview Court, South Salem, addressed the Board. Mr. Beardsley stated that he has lived on Lake Waccabuc since 1950. He has served as an officer of the Lake Waccabuc Association, President and Treasurer of the Three Lakes Council, Chairman and member of the CAC, and President of the Planning Board. Mr. Beardsley stated that his house is on Lake Waccabuc, and sits higher than his neighbors.

Mr. Beardsley stated that there are a number of houses on Lake Waccabuc that are much closer to the Lake than the proposed house of Mr. Petruccelli. When looking at an atlas, all of the houses on the lake have been there since approximately 1929 -1931. Owners of these homes know that they have a responsibility to maintain water quality.

Mr. Beardsley stated that he has submitted written comment in the past. Mr. Beardsley stated that the area has experienced extremes in weather and rainfall. When heavy rain occurs, the water level in Lake Waccabuc can rise by as much as two feet to 30 inches. When this happens, flooding occurs. Many of the homes that are low in relation to the lake level have sump pumps, knowing that their basements will be flooded. Septic systems that are approvable and functional have a likelihood of failing during heavy rains.

Mr. Beardsley stated that many of the houses on the lake that were built in the 1920's and 1930's, prior to zoning and wetlands ordinances would not be approved today. Mr. Beardsley acknowledged that many of the lakefront houses draw water from the lake and have filtration systems. Mr. Beardsley stated that any intrusion on the wetland and wetland buffer impacts all of the residents of the lake community.

Mr. Beardsley stated that based on the denial of the Eastbrook application thirty years ago, it is his opinion that there is no rational basis to approve the application of Mr. Petruccelli.

Mike Gordon, 37 Twin Lakes Road, South Salem, addressed the Board. Mr. Gordon stated that he also owns a home at 47 South Shore Drive, South Salem. Mr. Gordon stated that he shares the concerns of the individuals who spoke before him. Mr. Gordon stated that the applicant has clearly acknowledged that the burden of proof with respect to showing no net impact sits with the applicant. In the opinion of Mr. Gordon, that burden of proof has not been met.

Joe Tansey, 61 Knapp Road, South Salem, addressed the Board. Mr. Tansey's property is adjacent to the wetland from the Oscaleta side. Mr. Tansey stated his opinion that the wetland is actually swamp area. Mr. Tansey referenced his letter dated January 28, 2014 (Attachment Q). It is the opinion of Mr. Tansey that the wetland is under siege.

In response to Mr. O'Donnell, Mr. Tansey stated that the swamp includes part of the area owned by Twin Lakes. Mr. Tansey stated that the swamp area is the area between Oscaleta and Waccabuc, the widest area being about 1/4 mile.

Mr. O'Donnell asked how far north the area being referred to as swampland extends from the canal. Mr. Kerner asked Mr. Tansey to illustrate on the photo submitted by Mr. Marino the area in question. (The photo marked by Mr. Tansey is in the Planning Board file.)

In response to Mr. Kerner, Mr. Tansey stated that he did not know why there has been a significant reduction in aquatic insects, reptiles, as stated in his letter. It was the opinion of Mr. Tansey that disturbance of the wetland or wetland buffer would result in irreparable damage.

John Lemke, 5 Shady Glen Court, South Salem, Officer, Lake Waccabuc Association, addressed the Board. Mr. Lemke stated that he is in agreement with the comments made by Mr. Beardsley and Mr. Gross. Mr. Lemke

stated that most of the 15 to 20 homes that draw water from the lake are members of the Lake Waccabuc Association and are opposed to the approval of Mr. Petruccelli's application.

Allan Gottlieb paraphrased the letter submitted by Brittany Serra, President, Two Lakes Club (Attachment R). Fred Cowles, III Oscaleta Road, South Salem, submitted a letter for the record (Attachment S).

Mr. Sirignano stated that there was much reference to the adjacent lot to the south, and the prior application (Eastbrook) that was denied. There are NYS DEC wetlands on that lot. There are no NYS DEC regulated wetlands on Mr. Petruccelli's property.

Mr. Sirignano stated that, because the applicant is not proposing to build a house on or near the shoreline of Lake Waccabuc, many of the comments made are irrelevant. Mr. Sirignano stated that there was no testimony that the state-of-the-art septic system being proposed by the applicant will have any impact the waters of Lake Waccabuc. There has been no scientific testimony that there is any defect in the design of the septic system.

In response to Mr. Kerner's question regarding the validity of the science of the hydrology, Mr. Marino responded that it was never stated that the sole source of water on the property was coming from the pipe to the north. The applicant acknowledged that there is a watershed that drains down, and that the wetland was formed when the berm was created, stopping the natural flow of water entering the site. No science to dispute this fact was submitted. The site is full of invasive species and mosquitoes. It is not functioning as a wetland with any significant benefit. The applicant is not disputing the importance of the wetlands around Lake Waccabuc, however, the pocket of wetland to be impacted is not located around Lake Waccabuc. It is an isolated pocket trapped by two berms on the west and southern side. Mr. Marino asked that the two wetland systems be distinguished. Mr. Marino stated that the applicant would work with the Three Lakes Council to remove the berm and restore the flow of water, as part of the mitigation.

In response to Mr. O'Donnell, Mr. Sirignano stated that all additional mitigation agreeable to the applicant is stated in Mr. Sirignano's letter dated January 22, 2014.

In response to Mr. O'Donnell, Mr. Marino stated that he disagrees with opinions that the water coming from the Rosenbaum pipe is not a significant issue with regard to this application. Mr. Marino stated that water is being pumped from the pipe onto Mr. Petruccelli's property. Mr. Marino was unable to quantify the amount of water.

Mr. O'Donnell asked, in the absence of the pipe, if the water would still end up on Mr. Petruccelli's property. Mr. Marino responded that the water would go into Mr. Rosenbaum's basement. Should the basement overflow, the water would flow in the same direction that the pipe is now flowing.

Mr. O'Donnell asked if there is any official documentation as to the number of people who actually get their drinking water from Lake Waccabuc.

Ms. Andersen responded that a survey of 350 residents in the area was done in 2005. 187 people responded to the survey, approximately 51 %. Of those responses, 17 people indicated that they source their water from the lake. Care was taken to avoid duplicate responses.

In response to Mr. O'Donnell, Ms. Andersen stated that it was not asked if the individuals getting their drinking water from the lake used any type of treatment before drinking. Ms. Andersen stated that people with lake rights are considered part of the "community". All of the 17 responses were from individuals on Lake Waccabuc. Ms. Andersen stated that she is not aware of any more current data.

Mr. Beardsley stated that anyone who drinks water from the lake has a filtration system.

Mr. O'Donnell asked, when reviewing applications, if the State or Department of Health considers: whether a lake nearby is a source of drinking water; and if there is any evaluation done with regard to the drinking water capacity or quality in lakes such as Lake Waccabuc.

Mr. Meyerson responded that this is the case if there is a surface discharge. When there are septic systems and subsurface discharge, it is not relevant. A lake that has drinking water would be classified as a Class A water body and would have to meet more stringent standards under water quality regulations. In a lake community which has septic systems, the WCDH would use the standard evaluation as to whether the septic system meets WCDH standards.

Mr. Marino stated that the approval received by Mr. Petruccelli was based on a Class 1 wetland.

In response to Mr. O'Donnell, Mr. Meyerson stated that the WCDH does not consider the fact that there might be a drinking water supply nearby when going through the septic approval process.

Mr. Meyerson stated that nutrient removal is not a consideration when going through the septic approval process. The WCDH wants to be sure that there is proper soil distance from water so that there is attenuation in the soils.

Mr. Marino stated that phosphorous is the nutrient of concern with regard to fresh water. With regard to septic, nitrogen is the nutrient of concern.

Mr. Kerner stated that there is recreational motor boating on the lake, and questioned whether this has any adverse effect on the lake, drinking water and environment. Mr. Meyerson stated that it would be wise not to have motorboat traffic.

Ms. Andersen stated that the Town Lake Management Plan that was completed in 2009 indicated that septic systems were the source of phosphorous that was harming the lakes. Their major recommendations were twofold: look into the possibility of sewerage; do not put any new septic systems within 100 meters of a watercourse, wetland that communicates with the lake. There is a NYS DEC wetland on the edge of the property that communicates with Lake Waccabuc.

Mr. O'Donnell asked if the Town Lake Management Plan, the Three Lakes Management Plan, and/or the Town Lake Committee Plan were ever adopted by the Lewisboro government.

Ms. Andersen responded that the Town Lake Management Plan had not been adopted by the Town. The Town or municipality has no involvement with the Three Lakes Management Plan. Ms. Andersen was not familiar with the Town Lake Committee Plan.

Mr. Beardsley stated that he has no knowledge of adoption of these plans by the town.

Mr. Sirignano had no comment as to the relevance of the plans, or as to whether they had been adopted.

Mr. O'Donnell asked if anyone possessed documented proof as to when the wetland was first mapped or indexed. Mr. Lewis responded that this could have taken place around 1973. Mr. O'Donnell asked that Mr. Lewis provide to the Planning Board Secretary any information that he has for circulation to the Board.

Ms. Andersen stated her belief that one of the documents (a Topography map) submitted by the applicant had a 1945-1947 topography map that showed that there was a wetland on a portion of the property, at least covering what is currently the NYS DEC wetland.

Mr. Praga stated that there is no vehicle to leave a public hearing open solely to submissions.

Mr. Sirignano stated that the wetland delineations on the plans were confirmed by Mary Jaehnig, then by Steve Marino, and the Town Consultant, leaving no question as to the accuracy of the locally regulated small wetland.

Mr. Kerner stated that an inadvertent error may have occurred, as pointed out by Ms. Andersen with regard to the omission of the flags in 2012.

Mr. Praga suggested that Mr. Sirignano confirm with the applicant's surveyor the reason for the absence of the flags.

Mr. Petruccelli stated that when the surveyor went to the property, the flags were not there. The map currently before the Planning Board is certified not only by Mr. Petruccelli's consultant, but by the Town Consultant as well.

Mr. Sessions confirmed that the location of the flags accurately represented the location of the wetlands in the field. What has not been confirmed, and cannot be confirmed, is the accuracy of the surveyor. It is the responsibility of the surveyor to accurately transfer the information to the survey.

Mr. Sirignano stated that the surveyor signed and sealed the survey. This is prima facie evidence as to his accuracy.

On a motion by Mr. Goett, seconded by Mr. LaSorsa, the Public Hearing of Rudolph C. Petruccelli, Oscaleta Road, South Salem, New York -Application for Subdivision Plat Approval and Wetland Activity Permit Approval to permit the construction of a three bedroom, single-family residence and associated deck, porch, driveway, walkway, landscaping, septic system, potable well, fencing and stormwater facilities, Cal # 8-12PB and Cal# 61-09 WP was adjourned to February 25, 2014.

In Favor: Mr. Goett, Mr. Kerner, Mr. LaSorsa, Mr. O'Donnell. Abstain: Mr. Tetelman

February 25, 2014

Rudolph C. Petruccelli, Oscaleta Road, South Salem, New York -Application for Subdivision Plat Approval and Wetland Activity Permit Approval to permit the construction of a three bedroom, single family residence and

associated deck, porch, driveway, walkway, landscaping, septic system, potable well, fencing and stormwater facilities. Cal # 8-12PB and Cal# 61-09 WP

There were no objections to the advertisement of the public hearing. The Chairman asked whether anyone wanted the notice to be read. No one present responded affirmatively.

Mr. Tetelman recused himself and stepped down from the podium. Mr. Sirignano represented the applicant. Mr. Petrucelli was present.

Mr. Sirignano stated that, subsequent to the January 28, 2014 Planning Board meeting, he had received submissions made by the Three Lakes Council and various members of the public. Mr. Sirignano stated that he received the Kellard Sessions memo dated February 21, 2014 on that same date. Mr. Sirignano stated that additional time was needed to respond to the Kellard Sessions memo and comments by the public.

It was stated in the Kellard Sessions memo that the Wetland Functional Analysis had not been received. Mr. Sirignano stated that Mr. Marino, wetland consultant for the applicant, submitted the Wetland Functional Analysis directly to Kellard Sessions, although it had previously been submitted to the Planning Board Secretary, as is customary procedure.

Mr. Sirignano stated that the applicant is exploring opportunities for off-premise mitigation. Letters have been sent to the Town Board and the Three Lakes Council indicating the willingness of the applicant to do mitigation on either of the properties, at the applicant's expense.

Mr. Sirignano suggested a Town property to be considered may be the Old Field Preserve, and adjacent wetlands in the Town Park, stating that the Town Board has been making efforts to eliminate invasive species in that area. Should the Town Board and Kellard Sessions feel that the Old Field Preserve is a worthy site, the applicant would be willing to do mitigation on that property.

Mr. Sirignano stated that suggestions from the Board, and residents are welcome.

Mr. O'Donnell stated that there appears to be a piece of Town-owned property just beyond the NYS wetlands which abut Lake Waccabuc. Mr. O'Donnell stated that he had no particular knowledge of the property, but being that it is in close proximity to the site, it may be an option to be considered.

In response to Mr. Kerner, Mr. Sirignano stated that the applicant would be prepared to continue the public hearing at the March 18, 2014 meeting. Mr. Sirignano stated that responses to everything that had been submitted to this point would be submitted at least ten days prior to the March public hearing.

In response to Mr. O'Donnell, with regard to the six resolutions submitted by Mr. Sirignano, and the response from the Three Lakes Council, Mr. Sirignano stated that it is not his opinion that past approvals are precedential. He was challenged by a member of the public to submit any approvals involving extensive wetland or wetland buffer disturbance. Mr. Sirignano confirmed he had reviewed the submission by The Three Lakes Council concerning the six resolutions previously discussed.

David Wright, Esq., represented the Three Lakes Council. Mr. Wright submitted a letter dated February 25, 2014 (Attachment A). Mr. Wright reviewed the letter.

Mr. Wright stated that Mr. Meyerson would address Department of Health rules.

Mr. Wright submitted a copy of a letter dated March 5, 2013 from Mr. Petruccelli to the Planning Board (Attachment B). Mr. Wright pointed out a contradiction in the letter regarding the elevation of the absorption trench: the elevation was stated as 481.0 in paragraph 2, and as 487.0 in paragraph 3. Mr. Wright highlighted these sections in his submission. The six foot differential determines whether or not compliance with County Code is met.

Mr. Wright stated that in the Lewisboro Town Code, either §217-1 or §220-2, there is a specific definition of a "water table". The water table is defined as being the level of the ground water "in the wettest season". Mr. Wright stated that the pits that were dug to measure where the level of the ground water were taken on July 26, 2010. Mr. Wright stated his opinion that this date is not compliant with Town Code.

Mr. Wright discussed the zoning concerns as outlined in his letter.

With regard to letters from the NYS DEC, and WCHD stating that the septic system is approvable, Mr. Wright stated that he had attempted to FOIL the file from the WCHD. The WCHD would not provide any plans.

In response to Mr. O'Donnell, Mr. Wright stated that he would be appearing before the Zoning Board of Appeals (ZBA) on February 26, 2014. Mr. Wright agreed to provide copies of the opposition papers received to the Planning Board Secretary.

Lenny Meyerson, Professional Engineer, submitted the memo, Petruccelli Site Development Proposal Additional Observations (Attachment C).

Mr. Meyerson stated that the NYC DEP had requested a two chamber septic tank. A two chamber tank will allow more settling of particulates, and hold greater volume. The system is designed in a professional way. The problem is the site. Proper site, soils, and separation from saturated and wet areas are needed.

Mr. Meyerson reviewed the memo submitted.

In reference to item I (b) of the memo, Mr. Meyerson stated that by observation, the site is wet. There is ground water in the area which gets into the neighbors' basements. There is standing water on the lot. In deep test hole and percolation test reports, soil mottling is not mentioned. Soil mottling is important because it reflects whether water reaches higher levels in different seasons.

In reference to item J(d) of the memo, Mr. Meyerson stated his opinion that should the project be approved, perhaps residents should be notified to be cautious about drinking water from Lake Waccabuc.

Mr. Kerner stated that there are currently septic systems within close proximity to the lake. The lake is being used for potable water. Mr. Kerner asked Mr. Meyerson if it was his opinion that a caution sign be placed at the lake now. Mr. Kerner asked for clarification, that if Mr. Meyerson is recommending that the sign be placed should the Petruccelli project be approved, is he recommending that the sign be put up immediately.

Mr. Meyerson stated that a study would be required. Mr. Meyerson stated that one of the biggest fears of the NYC DEP is failing septic systems. One septic system is not going to cause an enormous problem. Mr. Meyerson is concerned that approval of the Petruccelli application will set a precedent.

Mr. Meyerson stated that Lake Waccabuc is currently designated as mesotrophic. The lake is on the cusp of being pushed too far. The septic systems that should not have been built are causing problems.

Mr. Meyerson reviewed page 3 of his memo.

In response to Mr. O'Donnell, Mr. Meyerson stated that he did not know the phosphate target for Lewisboro.

Mr. O'Donnell stated that Mr. Wright's document indicated that Mr. Meyerson would quantify the adverse impact on the lakes. Mr. O'Donnell asked Mr. Meyerson how he would quantify the adverse effects on Lake Waccabuc and the lakes to which it is connected.

Mr. Meyerson stated that he would have to review data in order to respond.

Mr. Kerner asked for clarification on the issue of posting a caution sign at the lake as the Planning Board is concerned about public safety.

In response, Ms. Andersen stated that there are septic systems around the lakes, but there may not be wetlands around those septic systems. Ms. Andersen stated that the Three Lakes Council talks to residents about the need to pump and monitor their septic systems.

Ms. Andersen stated that the NYS DEC does an evaluation of potable indicators. Lake Waccabuc has never had an arsenic reading that was elevated. It has had readings of iron and manganese which could cause taste and odor problems, of which the residents have been informed.

Ms. Andersen stated that in the past two years, harmful algal blooms monitoring has been done. The concern is that blue green algae is a type of bacteria that can be toxic. An elevated reading has only occurred once, at which time the community was notified by email.

Ms. Andersen stated that a conductivity meter is also used. In the case of the reading going up is thought to be a septic system, a friendly letter is sent to the homeowner suggesting that a dye test be done.

Ms. Andersen stated that the proximity of a wetland to the proposed septic is a concern. Ms. Andersen stated that although what is done cannot be undone, things can be improved going forward.

In response to Mr. LaSorsa, Mr. Meyerson stated that Lake Waccabuc is mesotrophic. It is not a natural ecosystem. It is stressed. Mr. Meyerson stated that the lake is very close to being eutrophic.

In response to Mr. LaSorsa, Mr. Meyerson stated that one house is not the tipping point.

Mr. O'Donnell asked if there was an engineering way to ensure that a septic system on this plot of land would not impact the lake.

Mr. Meyerson stated that he has seen a variety of things that have been used. Ultimately, a holding tank and pump would be the safest method. Mr. Meyerson confirmed that there are systems like this currently in Lewisboro.

Paul Lewis, 44 Twin Lakes Road, South Salem, addressed the Board.

Mr. Lewis stated his concern with the septic system on the property.

At the request of Mr. Kerner, Mr. Lewis summarized his background stating that he is a mechanical engineer. Mr. Lewis stated that when he was in college, he worked for Jim Wilson, a surveyor in Twin Lakes Village. Mr. Lewis became the transit man for Mr. Wilson.

Mr. Lewis reviewed his memo, Lake Elevation and Land Elevation and Septic System Issues, dated February 23, 2014, (which is included in the February Agenda Packet).

In response to Mr. O'Donnell's request at the January 28, 2014 Planning Board meeting, Mr. Lewis submitted a 1946 USGS Topo which clearly shows a wetland.

Mr. O'Donnell thanked Mr. Lewis for his efforts, and stated that the purchase date of the property is the most significant date with regard to the existence of a wetland.

Mr. O'Donnell asked Mr. Lewis if he knew whether there was a copy of the wetlands law that was in effect at the time of purchase. Mr. Lewis responded that this law should be in the Planning Board Department or in the Town Clerk's records. Mr. Lewis stated that he has the Town Development Plan from 1975 that came with the Master Plan.

Mr. Lewis stated that he and Ms. Andersen had found the Development Limitations Map in the Planning Board file room. Mr. Lewis had requested that this map be brought to the meeting. The Board reviewed the Development Limitations Map. The Development Limitations Map is a combination of the Soils Map and the Steep Slopes Map. Mr. Petruccelli's parcel shows as "moderate" on the map.

Mr. O'Donnell stated that the Water Resources Map may be the most relevant.

In response to Mr. Goett, Mr. Lewis stated that the matter of "when" a septic fails pertains to everyone. The concern with regard to Mr. Petruccelli's septic is the flow of the phosphorous into the wetland. Mr. Lewis referred to Mr. Myerson's comments regarding the horizontal transport of the water. The horizontal transport of water carries the phosphorous. The phosphorous combines with the soil. The soil reaches its limit as to how much it can absorb. Eventually it gets to a point where the phosphorous comes to the surface. Mr. Lewis stated that it is easy to know if a system fails, however it is difficult to predict when it will fail.

Mr. Lewis suggested that wells be put in to monitor for coliforms and phosphorous.

Ms. Andersen reviewed her memo, Responses to topics at January 18, 2014 Public Hearing, dated February 24, 2013 (should have been 2014) which is part of the February Agenda Packet.

Ms. Andersen stated that the Three Lakes Council is not interested in the offer presented by Mr. Marino to breach the berm on the Three Lakes Council property.

Ms. Andersen stated that the use of motorboats is permitted by town law.

With regard to Ms. Andersen's memo, Mr. Kerner asked how the horsepower of the boats on Lake Waccabuc affected pollution. Ms. Andersen responded that the higher the horsepower, the more fuel used.

Ms. Andersen stated, that at the January 28, 2014 Planning Board meeting, she was asked to find a government report indicating how many use lake water as a source of household water. Ms. Andersen could find no such report. Ms. Andersen found governmental reports that recognize Lake Waccabuc as a drinking water lake. The reports include potable indicators. Ms. Andersen included the map, "Lake Waccabuc is used for Household Water", with the memo dated February 24, (2014). The map shows household water supply sources for homes on Lake Waccabuc: lake; well; and Twin Lakes Water Works.

Ms. Andersen discussed her memo, Comparisons to Prior Wetland Approvals, dated February 24, 2014, which is included in the February Agenda Packet.

Ms. Andersen stated her opinion that the six examples provided by the applicant do not support approving the application.

The Board acknowledged that they had read the memo submitted.

Ms. Andersen provided additional information regarding the Bocklet and Kola approvals. The Bocklet boathouse had a septic tank that was close to the lake. The Bocklets put in a sealed pump station, and put a septic tank with a White Knight system close to the road. Over 90% of the Kola parcel became restricted from any future disturbance.

Ms. Andersen stated that the Elide Building, Joseph and Riina approvals have septic systems that are removed from the wetland.

Ms. Andersen discussed the Eastbrook application.

In response to Mr. O'Donnell, Ms. Andersen stated that when preparing the comparisons to prior wetland approvals, she reviewed the Brown's Reservoir resolution. For all other responses, Ms. Andersen stated that she reviewed the entire contents of the Planning Board files.

Mr. O'Donnell stated that the Eastbrook denial took place in approximately 1995. Ms. Andersen agreed. Mr. O'Donnell asked whether Ms. Andersen was aware of any cases in the last 20 years where a property owner was denied the right to build something on their property. Ms. Andersen stated that she remembered an application that was withdrawn without prejudice. Mr. O'Donnell suggested that the consultants would look into this matter, should it need to be pursued.

In response to Mr. Goett, Ms. Andersen stated that she could not confirm that all individuals using Lake Waccabuc for drinking water have a filtration system. At the January 28, 2014 Planning Board meeting, Peter Beardsley stated that all of the individuals in his neighborhood had a filtration system. Mr. Beardsley had also

stated that the Waccabuc Country Club may not have a filtration system. Mr. O'Donnell stated that on a site visit to the Waccabuc Beach Club, the filtration system was seen. Ms. Andersen stated that some Lake Waccabuc residents have Poland Spring water delivered, but may be using the lake water to shower.

In response to Mr. Sirignano, Ms. Andersen stated that she recused herself from her role as CAC Co-chair, and was addressing the Board as a resident, and President of the Three Lakes Council.

There were no further from the public.

The Public Hearing of Rudolph C. Petruccelli, Oscaleta Road, South Salem, New York -Application for Subdivision Plat Approval and Wetland Activity Permit Approval to permit the construction of a three bedroom, single-family residence and associated deck, porch, driveway, walkway, landscaping, septic system, potable well, fencing and stormwater facilities. Cal # 8-12PB and Cal# 61-09 WP was adjourned to March 18, 2014.

Mr. O'Donnell stated that paperwork suggests that Mr. Petruccelli has been before the Planning Board since approximately 2010. Mr. O'Donnell stated that he was a member of the audience at a time when Mr. Petruccelli appeared before the Board to do test holes. To Mr. O'Donnell's recollection (as a member of the audience), during conversation with Mr. Petruccelli, it was mentioned that the site was very challenging. An administrative permit was granted for the test holes, but caution was given that building on the site would be difficult. Mr. O'Donnell asked that Mr. Sirignano confirm this with his client. Mr. Sirignano acknowledged that he had seen the minutes pertaining to this meeting, noting that the Chairman had made a comment about the development restrictions on the site. Mr. O'Donnell stated that subsequent to this meeting, an application was made.

Mr. Tetelman resumed his position at the podium.

March 18, 2014

I. PUBLIC HEARING -ADJOURNED

Rudolph C. Petruccelli, Oscaleta Road, South Salem, New York -Application for Subdivision Plat Approval and Wetland Activity Permit Approval to permit the construction of a three bedroom, single-family residence and associated deck, porch, driveway, walkway, landscaping, septic system, potable well, fencing and stormwater facilities. Cal # 8-12PB and Cal# 61-09 WP

Mr. Kerner announced that the continuation of the public hearing would be held over until the April 22, 2014 Planning Board meeting.

April 22, 2014 The minutes do not include any Petruccelli discussion.

May 20, 2014

On a motion made by Mr. O'Donnell, seconded by Mr. LaSorsa, the Board entered into Executive Session with counsel for attorney/client privilege discussions at 9:45 p.m.

The Board obtained advice of counsel regarding the Petruccelli escrow.

On a motion made by Mr. LaSorsa, seconded by Mr. Goett, the Board exited Executive Session at 10:34 p.m.

In favor: Mr. Goett, Mr. Kerner, Mr. LaSorsa, Mr. O'Donnell.

Recused: Mr. Tetelman.

The Board resumed the public portion of the meeting at 10:35 p.m.

On a motion by Mr. O'Donnell, seconded by Mr. Goett, the Board resolved that the Planning Board Chairman is authorized to advise Rudolph Petruccelli in writing that review of the Petruccelli application will be immediately suspended in the event the escrow account is not replenished in the amount of \$7,000, as previously requested, within twenty days as provided under Sections 195-12 and 217-10 of the Town Code.

All in favor: Mr. Goett, Mr. Kerner, Mr. LaSorsa, Mr. O'Donnell

Recused: Mr. Tetelman.

June 17, 2014

At the request of the applicant, the [Petruccelli] public hearing was postponed until July 15, 2014.

July 15, 2014

Public Hearing: Rudolph C. Petruccelli, Oscaleta Road, South Salem, New York- Application for Subdivision Plat Approval and Wetland Activity Permit Approval to permit the construction of a three bedroom, single-family residence and associated deck, porch, driveway, walkway, landscaping, septic system, potable well, fencing and stormwater facilities. Cal# 8-12PB and Cal# 61 -09 WP

Mr. Tetelman recused himself and stepped down from the podium.

Ms. Andersen recused herself from her role as CAC Co-Chairperson for this application. Ms. Andersen represented the Three Lakes Council.

Michael Sirignano represented the applicant. Rudolph Petruccelli, applicant was also present.

Mr. Kerner stated that the application has been before the Planning Board for an extended period of time, has elicited materials from the applicant and public, and the hearing has been held over the course of several monthly meetings.

Mr. Kerner stated that in order to assist in bringing this application to conclusion, the Board is requesting both the applicant, and members of the public, including their attorney or representatives, to submit written summations; in particular, the Board is asking for statements that identify the facts established through this hearing, and how these facts measure up against the legal standards by which this application should be decided.

Mr. Kerner stated that the Board is entertaining a motion to leave the public hearing open until August 8, 2014 for written comments only. Discussion this evening would be for any new information.

Mr. Kerner asked that written summations be funneled through a point person. Mr. Praga clarified that there can be no preclusion of submission by individuals. It is being suggested that, if possible, everything should be funneled through representatives because it provides for a clear and concise summary and argument to be made.

Mr. Kerner asked that Kellard Sessions review the last submission made by Mr. Petruccelli.

Mr. Sirignano stated that he was in agreement to the procedure proposed. Mr. Sirignano stated that Mr. Petruccelli's most recent submission contained an outdated Environmental Assessment Form (EAF), Parts 1 and 2; Mr. Sirignano stated that the applicant would submit Parts 1 and 2 of the EAF on the correct form, and asked that the applicant be allowed to supplement Part 3 of the EAF.

Mr. Johannessen reviewed the Kellard Sessions memo dated July 14, 2014.

There were no comments from the CAC.

Mr. O'Donnell asked that Mr. Sirignano confirm the purchase price of the property; Mr. Sirignano stated that the purchase price was \$4,000.

Mr. O'Donnell stated that at an earlier meeting, a discussion of the Citizen Statewide Lake Assessment Program (CSLAP) had taken place. The Board had later received an article describing the program. Mr. O' Donnell suggested that some of Mr. Wright's presentation may have referenced phosphorous levels reported by the State's program. Mr. O'Donnell asked Mr. Wright to inform the Board who had supplied the information to the State, as it appeared that the information was supplied by a citizen group.

Ms. Andersen stated that there is a variety of volunteers who collect water samples that are sent to a state lab. These volunteers submit samples (not data), which goes into a state certified lab.

The public hearing was open to the public for comment.

Mr. Fred Cowles, 111 Oscaleta Road, read his memo dated July 15, 2014, and submitted photos for the file (Attachment A).

Ms. Andersen read her memo dated July 15, 2014 (Attachment B).

David Wright, Esq., attorney for the Three Lakes Council, addressed the Board. Mr. Wright stated that the appeal filed with the Zoning Board by the Three Lakes Council was denied based on untimeliness. Mr. Wright stated that the Three Lakes Council had succeeded in FOILING the Westchester County Department of Health (WCDH). As a result, a hold harmless agreement was discovered. This agreement was addressed in Ms. Andersen's memo.

Mr. LaSorsa asked if there was a provision allowing the Zoning Board of Appeals (ZBA) to overlook the timeliness of an appeal if they believe that the appeal should be granted in the interest of justice. Mr. Praga responded that there is no such provision.

A discussion of deadlines took place.

On a motion made by Mr. LaSorsa, seconded by Mr. Goett, the applicant shall have until July 25, 2014 to resubmit Parts 1 and 2 of the Environmental Assessment Form (EAF) and modifications to Part 3 of the EAF; all responses to the factual submissions of the applicant shall be filed by August 4, 2014; and summations shall be filed by August 11, 2014; whereupon the public hearing on the Petruccelli applications for subdivision approval and a wetland activity permit shall be closed at the close of business on August 11, 2014.

In Favor: Mr. Goett, Mr. Kerner, Mr. LaSorsa, Mr. O'Donnell.

Recused: Mr. Tetelman.

Mr. Tetelman resumed his position at the podium

August 19, 2014 No mention of the Petruccelli application in the minutes.

September 16, 2014

Mr. Kerner announced that a Planning Board meeting will be held on October 7, 2014 for discussion of the Petruccelli matter, in addition to other matters. This meeting is not a public hearing.

October 7, 2014

DISCUSSION

Rudolph C. Petruccelli, Os caleta Road, South Salem, New York -Application for Subdivision Plat Approval and Wetland Activity Permit Approval to permit the construction of a three bedroom, single-family residence and associated deck, porch, driveway, walkway, landscaping, septic system, potable well, fencing and stormwater facilities -Cal# 8-12PB and Cal# 61-09 WP

Mr. Tetelman recused himself and stepped down from the podium.

Mr. Kerner provided a brief history. The application that first appeared before the Planning Board in January 2010 was an application for Wetland Activity Permit Approval for test holes. In July 2012, an application was submitted for the construction of a four-bedroom, single-family residence. The applicant appeared before the Board numerous times. The applicant also had numerous plan reviews with the Planning Board Consultants, Kellard Sessions. There were extended public hearings with written summations, as well as over 1,200 pages of documents, including minutes and correspondence. During the review process, the Planning Board has been

guided by their consultants, who have applied the latest wetland practices and engineering in their review of the project.

Mr. Kerner stated that there are two parts to this application: subdivision of the tax lot from the abutting lot owned by the Three Lakes Council; and the application for a Wetland Activity Permit to construct a single-family residence.

With regard to the subdivision, the parcel became a separate lot in 1972 and has been under the present ownership since 1982. The Town has recognized the parcel as a separate lot, and it has been taxed accordingly.

Mr. Kerner opened discussion of the subdivision application to the Board.

Mr. LaSorsa stated that he is satisfied with the subdivision application.

Mr. Goett was in favor of approving the subdivision application.

Mr. O'Donnell addressed Mr. Siebert. Mr. O'Donnell questioned the significance of the Town Board's waiver of fees, and the significance of the payment of taxes. Mr. Siebert responded that applications to the Planning Board require the payment of fees. Subdivision applications require the payment of a recreation fee. The Town Code contains a provision in the subdivision regulations allowing an applicant to go to the Town Board to request that this fee be waived. The Town Board decision to waive the fee does not have a bearing on the Planning Board's determination to grant or deny the subdivision application; it is recognition by the Town Board, that under the circumstances presented, payment of the fee would be inequitable, and the imposition of the fee on the applicant would be a hardship. Mr. Siebert stated the payment of taxes is not a dispositive factor. It is an equitable consideration and not in and of itself determinative of whether the application should be granted or denied.

Mr. O'Donnell questioned whether the Town Code provides flexibility to view an application from an equitable standpoint rather than a legal standpoint. Mr. Siebert responded that § 195-7 allows for adjustment to the subdivision regulations under special circumstances.

Mr. O'Donnell asked, that in Mr. Siebert's legal opinion, does § 195-7 apply to the circumstances presented by Mr. Petruccelli. Mr. Siebert responded that this application presents a number of special circumstances, in the sense that the parcel is a lot that was created over 40 years ago, and has been treated by the Town as an extant tax lot for 40 years. Mr. Siebert stated that the Building Inspector has determined the lot is deemed not to be subject to current code, and is to be treated as a buildable lot. Mr. Siebert stated that this determination was the subject of an unsuccessful appeal to the Zoning Board of Appeals (ZBA). Mr. Siebert stated that with regard to the subdivision application, an approval by the Planning Board would permit the lot line to exist on a plat as it exists on its metes and bounds description. Any other action on the lot would require Wetland Activity Permit Approval from the Planning Board.

It was the consensus of the Board that the subdivision application be approved. A resolution to be voted on by the Board will be prepared by Keane & Beane for the October 21, 2014 Board meeting.

Mr. Sessions pointed out that the latest subdivision plat does not contain a Zoning Tabulation Chart or the local wetland boundary. A previously submitted plat did include these items. Mr. Sessions confirmed that a prior iteration did contain the Zoning Tabulation Chart and local wetland boundary. Mr. Siebert stated that the proper steps would be taken to ensure that the drawing to be acted on would be the correct drawing.

The Board discussed the application for Wetland Activity Permit Approval to construct a single-family residence. Mr. Kerner stated that in its deliberation the Planning Board was guided by §217-1 and §2178 which layout the decision-making process. Mr. Kerner summarized these sections of the code.

Mr. LaSorsa stated that he has not seen any evidence to support that there are major negative effects on any area surrounding the premises that would have an impact on the wetland.

Mr. LaSorsa addressed Mr. Siebert, asking whether stormwater and septic approvals were obtained for the originally proposed four-bedroom residence. Mr. Siebert responded that the initial application for a four-bedroom house came before the Board in 2012. As a result of memos from Kellard Sessions and comments from the Board, the immediate reaction was that the application was aggressive in terms of site constraints, wetland and wetland buffer disturbance, and the proposal of a four-bedroom house. No permits were pulled at that time. Field testing for stormwater management and infiltration measures on the property was done as per the plan originally submitted. As the application changed, the location of those measures changed. The last few comment memos submitted by Kellard Sessions raised the issue of the absence of any test pit work done based on the CUI tent proposed location of the stormwater infiltration practice, for which the applicant is seeking approval. Kellard Sessions has not witnessed any test pits in the currently proposed location. Test pits were done in the originally proposed location.

Mr. LaSorsa expressed concern of holding Mr. Petrucci to a standard of not obtaining testing approval for septic and stormwater drainage under the circumstances of having already done so. Mr. LaSorsa stated that he may be more comfortable conditioning an approval upon results of approvals from the Westchester County Health Department (WCHD) and New York City Department of Environmental Protection (DEP)

Mr. LaSorsa questioned what, if any, difference there would be in the requirements of the Planning Board versus the WCHD or DEP with regard to evaluation/approval of the application. In response to Mr. LaSorsa, Mr. Sessions stated that there would be no difference. Mr. Sessions stated that all applicants are required to test for stormwater. Testing was done in the original location; however, the applicant has refused to do testing in the new location. The reason that testing cannot be a condition of approval is because if the field testing is done and there is ground water, the infiltrators must be placed somewhere else on the site, causing a domino effect in terms of the location of the septic and well. Mr. Siebert stated that, from a legal perspective, the code provision being acted upon requires that two functions be undertaken: 1) evaluation of impacts and; 2) determination as to whether the impacts are necessary, unavoidable, minimized, and mitigated. The issue is that the Board cannot fulfill the evaluation phase to its full extent when the stormwater issue remains open due to the lack of storm water soil testing.

Mr. Kerner stated that the application can only be evaluated on the information submitted. The Board has asked for additional information which the applicant did not provide. There have been changes to the site which have not been reviewed by the WCHD or DEP to determine if the site plan complies with current regulations. Mr.

Kerner stated that there have been numerous memos, dating back to February 2013, pointing out certain deficiencies in the plan to which the applicant has not adequately responded.

Mr. LaSorsa stated his belief that that the applicant is willing to do a number of stipulations and conditions in order to take away any concerns of the Board.

Mr. LaSorsa stated that the proposed mitigation plan is approximately nine square feet short of the required 1: 1 mitigation ratio. Mr. LaSorsa stated that he is agreeable to the mitigation ratio proposed.

Mr. Goett stated that the lack of soil testing is a critical point in the evaluation of this application. Mr. Goett stated that accurate data that is current and applicable to plan proposed is required in order to make an informed decision. With regard to mitigation, Mr. Goett stated that the law and policy of the Town is to strive for 1: 1 mitigation. Given this particular case, Mr. Goett is compelled to hold to the 1: 1 mitigation.

Mr. Kerner stated that the applicant has not responded to repeated requests for certain information. The request for resubmission of the plan to the WCDH and DEP went unheeded. Mr. Kerner stated his opinion that there has not been maximum effort on behalf of the applicant to minimize impact on the wetland. With regard to mitigation, there have been a number of memos stating that the type of mitigation offered is not appropriate. Satisfying what is required by the New York State Department of Conservation (DEC) does not qualify as mitigation on the lot. The decision to pursue a three bedroom, rather than a four bedroom residence is not a mitigation measure. This step was one taken to minimize impacts, as opposed to forming part of a proposed mitigation once impacts have been minimized as required. There are inconsistencies that still exist in the EAF. Mr. Kerner stated that he is inclined to deny the application.

Mr. O'Donnell stated his belief that the applicant has the burden of proof with regard to the application. Mr. O'Donnell stated that from his point of view, there are certain threshold issues with this application, the existence of a wetland being one issue. Mr. O'Donnell stated that there is agreement that a wetland exists on the property. Mr. Petruccelli and Mr. Marino, his wetland inspector, agree that a wetland exists. The level of function of the wetland has been questioned, but because the wetland exists, it is entitled to protection under the Town Code. Mr. O'Donnell stated he is not persuaded that one house will have a substantial impact on Lake Waccabuc. Mr. O'Donnell stated his belief that there will be impacts to the wetland on the property from what is being proposed. Filling a wetland or a portion of a wetland and developing almost the entire property which is entirely wetland or wetland buffer indicates that there will be substantial impact as a result of the proposed development.

Mr. O'Donnell echoed Mr. Kerner's opinion that satisfying what is required by the New York State Department of Conservation (DEC) does not qualify as mitigation on the lot. Mr. O'Donnell stated his belief that it would be difficult to successfully mitigate on the site considering the scale of the project proposed. Proposals for offsite mitigation were not diligently pursued by the applicant. The material supplied to the Board suggested a pro forma attempt to comply with the mitigation requirement.

Mr. O'Donnell stated his agreement with fellow Board members that the application is difficult to evaluate due to the refusal to provide certain information requested.

Mr. O'Donnell noted that the applicant first appeared before the Board in January 2010 (prior to Mr. O'Donnell's appointment). At that time, Mr. Kerner, and former Board member, Mr. Gusmano, observed that the site would be difficult to develop. The applicant's next appearance before the Board was in July of 2012; although the applicant has stated that he has been before the Board for four years, there have been periods of time when he has requested adjournments.

Mr. O'Donnell pointed out that as early as July 2012, it was acknowledged that wetlands run through the site, and that wetlands would be filled. It was asserted by the applicant that a "hidden" pipe was the cause of the wetland; however, on site walks by the Planning Board, the pipe was clearly seen.

Mr. O'Donnell stated that offsite mitigation was first discussed with the applicant in August 2012, and mentioned again on several occasions, however, the first offering by the applicant of offsite mitigation was in 2014. In 2012 and 2013, discussions took place regarding whether stormwater improvements could be considered as mitigation, and how these would be computed. Specific mitigation proposals that were suggested to the applicant, which were not acted on, included: no driveway, a small parking space, monitoring to protect an adjacent property and the lake, and use of a White Knight septic system. As recently as January, 2014, the applicant and his attorney both stated that no further mitigation would be proposed.

In response to a question from Mr. O'Donnell, Mr. Sessions stated the applicant ultimately submitted an offsite drainage analysis in 2014 that was considered adequate.

Based on the lack of a spirit of being forthcoming with the Board, and an incomplete application, Mr. O'Donnell stated that he is inclined to deny the application. The applicant has not met the burden of proof that is required of an applicant appearing before the Planning Board.

A show of hands indicated three Board members to deny the application, one Board member to approve the application.

Mr. Siebert stated that resolutions would be prepared for the October 21, 2014 meeting.

Mr. Tetelman returned to the podium.

October 21, 2014

DECISION

Rudolph C. Petruccelli, Oscaleta Road, South Salem, New York -Application for Subdivision Plat Approval and Wetland Activity Permit Approval to permit the construction of a three bedroom, single-family residence and associated deck, porch, driveway, walkway, landscaping, septic system, potable well, fencing and stormwater facilities -Cal # 8-12PB and Cal# 61-09 WP

Mr. Tetelman recused himself and stepped down from the podium.

Mr. Siebert reviewed the resolution, Preliminary/Final Subdivision Plat Approval, Negative Declaration Under SEQRA, Rudolph Petruccelli Subdivision Acknowledging Subdivided Status of Existing Tax Parcel, dated October 21, 2014.

There was no discussion by the Board members. On a motion made by Mr. Goett, seconded by Mr. LaSorsa, the resolution dated October 21,2014 granting Preliminary/Final Subdivision Plat Approval, Negative Declaration Under SEQRA to Rudolph C. Petrucelli was adopted.

In favor: Mr. Goett, Mr. Kerner, Mr. LaSorsa, Mr. O'Donnell.

Recused: Mr. Tetelman

Mr. Siebert reviewed the resolution, Wetland Activity Permit, Rudolph C. Petrucelli, dated October 21,2014.

There was no discussion by the Board members.

On a motion made by Mr. O'Donnell, seconded by Mr. Goett, the resolution dated October 21,2014 denying Wetland Activity Permit Approval to Rudolph C. Petrucelli was adopted.

A roll call was taken.

In favor: Mr. Goett, Mr. Kerner, Mr. O'Donnell.

Opposed: Mr. LaSorsa.

Recused: Mr. Tetelman.

Mr. Tetelman resumed his position at the podium.