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February 24, 2014

Lewisboro Planning Board
Cross River Shopping Center
Cross River NY 10518

Re: Petruccelli, 2/25/14

Chairman Kerner and Board Members:

May I submit some brief additional points relative to this application.

***1. This Board is being asked to waive a host of rules and regulations,
and to ignore many open issues***

The Applicant is asking the Planning Board not to apply – or to ignore – a host of laws, and not to resolve a number of open issues.

A. Subdivision issues unresolved

1. Parcel does not meet current subdivision standards – Claim of exemption from many current land use regulations (that is before the ZBA on 2/26/14)
2. No variance for subdivision standard deficiencies.
3. Subdivision plan lacks wetland delineations.¹
4. Lacks agreement from owner of second parcel.

B. Soils information inadequate

1. No mottling or color notations provided.
2. Soils test reports missing.
3. Soils in and beneath berm unknown.
4. Soil tests for septic not performed in target March 15 to June 30 time frame; the only reported percolation soil testing was conducted 7/26/10. This failure to follow NYSDOH

¹ This is confirmed in Kellard Session memo dated 2/21/14.

guidelines to conduct test in the springtime makes results questionable.

5. Soils tests not done in infiltration area.

C. Hydrologic analysis inadequate

1. Does not reflect current plan
2. Conflicting information provided about sources of water on lot – amount from pipe vs elsewhere.
3. Source of water for wetland expansion area unclear.
4. No before / after analysis of how much water will flow to adjacent parcel
5. Observations of standing water conflict with soils reports – Questions as to the depth to water table.² How is it consistent to observe standing water over a large portion of the lot, for much of the year, yet see reports of test pits identifying a 7 to 8-foot water table?

D. Stormwater information inadequate

1. Infiltrator is within the 100' setback from the septic absorption area
2. No soil testing at infiltrator area
3. No maintenance procedures for infiltrator specified
4. Stormwater assessment does not include EPA climate assessment update
4. Stormwater flows onto adjacent property

E. Wetland delineation questions

1. Missing flags lead to uncertainty in wetland area
2. 2012 wetland delineation termed “essentially same,” yet is 24% smaller than 2004
3. Wetland sizing inconsistent in reports and plans, including mitigation plans
4. Wetland provides better habitat than reflected in analysis

F. Wetland protections inadequate in plan

1. Fill placed in wetland
2. Septic tank may be in wetland area
3. Wetland area has three foot high wall on three sides, creating unfriendly and inadequate habitat area
4. No treatment of water flowing across lawn swale occurs before entering wetland
5. Building and septic activity is immediately adjacent to wetlands
6. Wetlands will be affected if application is approved

² I did discover that under your Code, the Water Table is defined as “The zone of saturation at the shallowest average depth from the surface *during the wettest season.*” As we have observed, the applicant has taken all measurements in the driest season.

G. Wetland buffer protections deficient

1. Essentially no protection of buffer from activity – all occurs within buffer
2. Removal of at least 34 trees - more as determined on site
3. Deforestation of 0.5 acre
4. Construction materials will be placed within buffer
5. All construction staging will occur within buffer
6. Buffer cannot be remediated to equivalent function if building proceeds

H. Mitigation inadequate

1. Does not meet 1:1 guideline
2. DEC wetland and buffer protection should not count towards mitigation since it is required by DEC
3. Seed mix on top of septic system is minimal mitigation
4. Wetland enhancement – benefits to wetland functions unclear, lacks maintenance plan
5. Created wetland lacks maintenance plan and benefits are unclear
6. All mitigation occurs inside wetlands or inside wetland buffer
7. Fails to achieve mitigation goals of replacing wetlands benefits of habitat, flood control, and pollution control
8. The mitigation plan is silent on guarantees. There must be a minimum of five years monitoring and goals set and evaluated.

I. Septic systems non-compliant and inadequate

1. Distance from wetlands insufficient per NYS DOH guidelines - 50 feet where 100 required
2. Distance from drinking water supply (lake) insufficient per Westchester County Health Department plan approval requirement (?)
3. Test hole information not provided
4. Elevation relative to lake high water not supported by field tests
5. Does not take into consideration proximity to lake and anticipated phosphorus pollution
6. No specific mitigation, treatment, or monitoring proposed

J. DOH/DEP conditional approval is based on outdated plans, not current³

K. Unresolved questions on elevation relative to lake level and implications

³ We attempted to FOIL the plans from the Westchester County Department of Health, but were told this was not public information - what's the secret? We have no assurance that what they consider "approvable" is the same plan that's before the Planning Board. So too with DEC approvals.

1. Plans show separation in excess of that shown by ground measurements
2. No consideration of seasonal or storm-related lake elevation changes shown

L. Engineering report of June 2012 is deficient, contains summary data without details. It is stated in the report that OWTS will be within 100 feet of DEC wetland, but it is silent on compensation for this deficiency. There is no section on soil analysis or groundwater. There are no design calculations for the septic system. There is no hydrology data.

M. Submitted plans are deficient

1. Do not show limits of disturbance, staging areas, erosion and sediment control locations, sequence of construction, etc.
2. Septic tank located in wetland area

N. Driveway plans deficient

1. Not included in disturbance calculation
2. Stormwater information lacking
3. Maintenance procedures lacking
4. Paved apron lacking
5. Town Highway approval lacking

O. Development would create risks of further future damage to the wetlands and contamination of surface and ground water

P. Burden of proof not satisfied because of all of these deficiencies

Q. Approval of a permit would not be consistent with the purposes of the Town of Lewisboro's wetland protection law.

2. Responses to Statements / Questions at January Meeting

May we also submit responses to statements made and questions posed, at the last meeting:

A. Counsel distinguished 3LC lot – where a wetland permit had been denied – from Petruccelli lot, because 3LC lot had DEC wetlands, and this lot does not. That's not accurate; both lots have DEC-mapped wetlands.

B. Mr. O'Donnell asked when this lot was mapped as having wetlands. See Paul Lewis memo

submitted herewith.

C. 3LC respectfully declines the offer to remove their berm.

D. Mr. O'Donnell asked if there was any information about how many people draw drinking water from the lake.

E. Mr. Marino stated that Nitrogen is the nutrient of interest in septic effluent. Although that is one contaminant, phosphorus is the more serious pollutant, as Mr. Myerson explains. See memo submitted herewith.

F. Mr. Sirignano referred to this septic system as "state of the art," and suggested there was no evidence it would have any impact on the lake. As Mr. Myerson explains, the septic system is hardly "state of the art," and in fact is proposed to be installed in clear violation of state guidelines; even if it were properly installed and properly functioning, it would contribute pollutants – especially phosphorus – to the lake.

G. Distinguishing the 'Precedents' Cited by Counsel. See attached memo, which shows that none of these cases are precedent in this matter.

Additional Materials Being Submitted

A. Mr. Myerson quantifies the adverse impacts on the lakes.

B. Paul Lewis - wildlife memo

C. Paul Lewis - lake level versus this lot and berm

D. Paul Lewis - early wetland mapping

E. Jan Andersen – memo re prior "precedents"

F. Three Lakes Council Additional Submission

Additional Zoning Concerns

I wish to alert the Board to an additional zoning complication. The proposed installations in front and side yard violate setback requirements.

Lewisboro Code 220-2 defines “Structure: as:

Anything which is constructed or erected which requires a location on or under the ground or attachment to something having such location,

Lewisboro Code Section 220-12 provides that no “structure” may be placed within a required yard:

No buildings or structures or any projection from buildings or structures shall be permitted in a required yard, except as follows:

- (1) Architectural features such as windowsills, door frames, chimneys, eaves or cantilevered roofs may project up to three feet into any required yard, provided that such architectural features shall not occupy more than 25% of the area of the wall from which they project.
- (2) Paved open terraces shall be considered in the determination of lot coverage for all permitted residential and nonresidential land uses and shall not be permitted to project to a point closer than the minimum required setback distance from any property line for all permitted residential and nonresidential land uses.
- (3) No porches or balconies may project into any required yard area.

Here, the required yards are: front 55 feet from road center line / 30 feet from lot line; side yard 15 feet. These required setbacks appear to be violated by the following:

1. SE corner of proposed wall of new wetland area, adjacent to Oscaleta Road – violates front yard setback and possibly side yard.
2. Proposed infiltrators – violate front yard setback
3. South wall of enhanced wetland – violates side yard setback
4. Well – violates front and possibly side yard setback.

These zoning violations require either a modification of the plans, or variances

from the ZBA.

Conclusion

We request the application be denied.

Sincerely,

David O. Wright