

VILLAGE OF COLD SPRING PLANNING BOARD  
85 MAIN STREET, COLD SPRING, NEW YORK  
Monthly Meeting

September 17, 2014

Members present: Chairman, B. M. Molloy; Members: Karn Dunn, Anne Impellizzeri , James Pergamo and Arne Saari also present Anna Georgiou from Wormser, Kiely, Gale and Jacobs LLP and Craig Marti, Senior Engineer, from Barton & Loguidice

Present for the applicant: Paul Guillaro, Property owner; Matt Moran, project manager, Unicorn Contracting; and Joe Riina site design consultant engineer

The meeting opened at 7:03 PM

**1. Minutes:**

The minutes of September 3, 2014 were reviewed. K. Dunn moved to approve the minutes as amended and J. Pergamo seconded the motion. The minutes were approved 4-0. A. Impellizzeri abstained since she was not present at that meeting.

**2. Correspondence:**

Bill from Wormser, Kiely, Galef & Jacobs LLP – dated 7/11/14 for work done on the Butterfield Hospital redevelopment proposal for the amount of \$1,044.00.

Bill from Wormser, Kiely, Galef & Jacobs LLP – dated 8/11/14 for work done on the Butterfield Hospital redevelopment proposal for the amount of \$1,160.00.

Barton & Loguidice, P.C. – no date for work done on the Butterfield Hospital redevelopment proposal for the amount of \$5,452.98.

All the above bills had been previously sent to the applicant for approval before being presented to the board for approval of payment. Ms. Georgiou noted that the last bill for \$1,160.00 included/carried over the balance from the prior month that is unpaid.

**3. ZBA referral:**

The Planning Board reviewed a file for the Planning Boards opinion on the application of Gary D'urso, 15 Parrott St. for sections of a six foot fence that would be connected to existing six foot sections. The Planning Board reviewed the Zoning referral. A. Saari noted he did not see any Planning Board issues. The planning board noted they are passing on the referral with no comment.

**4. Old Business:**

***Butterfield Realty LLC.***

Craig Marti from Barton & Loguidice reviewed the following revised plans that were made by and reviewed by the applicant at the last meeting: Increased parking spaces, shifts in buildings and reduction in the size of buildings 4,5 &6. The Board members reviewed the tabular format site plan as suggested by the Board at the last meeting. The tabular format was the only change made to the plans since the last submission.

The following changes to the site plan were requested:

- The 18 parking spaces shown on the Route 9D will be removed from the site plan since they were not a part or approved on the concept plan.
- The sidewalk on the west side of Paulding Avenue will be extended along all three residential lots.

- Deed restriction for the drip line for the beach tree on the residential lots.
- Right of way and setback at Building 1 should be shown on the plans.

Concerns of the Board members:

The Board reminded the applicant that maximum pervious surfaces should be employed throughout the site. The latest site plan includes parking beyond that required. The Board is concerned that additional parking is at the expense of green space. The Planning Board reserves the right to address the issue later. Mass of building and size of the overall project.

The site plan reviewed at this meeting, the original memo with original site plan and subsidiary questions are all posted to the Butterfield tab on the Planning Board web site.

The Board members discussed the mass and scale of the proposal. See attached article by Kevin Foley in the September 19, 2014 addition of the Philipstown Info paper that describes the Board's frustration. Anna Georgiou responded by reviewing the advisory memo the Planning Board sent to the Village Board of Trustees regarding their concerns over the B4A Zoning Amendments prior to the Board of Trustees' adoption of the law. Ms. Georgiou noted that the number one item on the memo was the Board's concern regarding the concept plan's massive scale and reminded the Board that there was also a joint meeting between the Planning Board and the Board of Trustees regarding the memo and to discuss the Planning Board's recommendations. Ms. Georgiou then discussed provisions of the adopted law with the Board that B-4A requires approval of a site plan that substantially conforms to the annexed Concept Plan and her view that under B-4A, the applicant could decrease the size of buildings shown on the concept plan, but the Planning Board could not require him to do so. A. Saari noted that in his opinion the Village Board of Trustees gave the Planning Board the right to reduce the mass of the buildings.

The Conversation ensued between the board members and Ms. Georgiou regarding mass and scale of the proposal.

Mr. Guillaro noted he reduced the size of the mass. And noted he was taken aback by the conversation over the mass.

A. Saari asked for a letter to be written to the Village Board of Trustees regarding their intention under the mass and scale section of the B4A Zoning Code.

Chairman B.M. Molloy took a vote among members who voted to hold an Advice of Counsel session to discuss this matter with counsel.

Ms. Georgiou suggested to the Board, that at this time, since a formal site plan was submitted and the tabular form was inserted on the site plan the project should go to the HDRB.

Paul Guillaro stated that he reserves the right to not pay for any costs incurred for the diversion regarding the law.

The applicant asked about the plat. He was told by Chairman B. M. Molloy to write a letter and he will get the plat.

Public comments:

Mr. Alexander Saunders from Garrison – noted the following:

There are more parking spaces than at the train station. Concerned about the run off.

A lot more analysis is needed.

There should be a joint meeting with the town of Philipstown. Does not believe in spot zoning to satisfy a project.

The public portion of the meeting was adjourned for Advice of Counsel at 8:20P.M.

The public portion of the meeting resumed at 8:55 P.M. Based on conversation with counsel the Board will proceed along the lines of the question of the advisability of sending a memo to Village Board of Trustees asking what their intent was when they adopted the B4A Zoning Amendments.

Chair B.M. Molloy polled the Board as to whether or not the planning board should proceed to send a memo to the Village Board asking what their intention was when they adopted the B4A Zoning Amendments. The results were as follows:

J.Pergamo	no
A.Saari	yes
K.Dunn	no
A. Impellizzeri	no
B.M. Molloy	no

**A. Impellizzeri** moved to accept the site plan application for Butterfield Realty LLC and that we thereby make the referral to the HDRB as is required under chapter 64 of the Village Code. **J. Pergamo** seconded the motion. The vote was 4-1. **A. Saari** voted against the proposal.

The planning Board accepted the site plan as formal application for review. Counsel advised that as required by the Village Code, the Applicant needs to apply for a Certificate of Appropriateness. While the applicant will be applying to the Historic District Review Board for a Certificate of Appropriateness the planning board will continue with the site plan review and the technical review through Chuck Voss and Craig Marti. The Village planning board will exercise its full authority under the B4A Zoning Amendments in terms of its site plan review for this project on an ongoing basis.

**Chair B. M. Molloy** noted that the next meeting of the Planning Board would be October 15. In any case he will send a notice.

**K. Dunn** moved to adjourn the meeting and **J. Pergamo** seconded the motion. The meeting adjourned at 9:02 P.M.

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B.M. Molloy, Village of Cold Spring Planning Board Chairman

# Lawyers Command Influence on Planning Process

October 5, 2014

*Counsel on complex local issues drives outcomes* By Kevin E. Foley

When the idea of locating a Dunkin' Donuts franchise at a Chestnut Avenue service station was first introduced to the Cold Spring Planning Board in spring 2012 it is fair to say a majority of members were highly skeptical it was the right fit for the village. At the outset members referred to the newly minted Comprehensive Plan and wondered aloud whether a fast food national chain operation was consistent with the spirit if not the letter of the plan.

The new Dunkin' Donuts will include a drive-thru, convenience store and gas station. Franchise stores and drive-thrus are now banned by a local law passed after the Dunkin' Donuts plan was approved.

Not everyone agreed. At least one member questioned how far the board could go in deciding the appropriateness of allowing a Dunkin' Donuts given the property owner's rights, the existence of other stores that could arguably be called chain operations and the absence of definitive language in the Comprehensive Plan as to the issue of franchise stores. The board decided to seek legal counsel from then Village Attorney Stephen Gaba.

After Gaba, a partner at the Orange County firm of Drake, Loeb, Heller, Kennedy, Gogerty, Gaba and Rodd, opined it was evident the board's wings had been clipped. No more further remarks were made about possible damage to the village's character or interpretations of the Comprehensive Plan's meaning as applied to the situation. Traffic flow and other site-specific impact issues moved center stage. Eventually the board unanimously approved the plan.

At the time of Gaba's opinion *The Paper* made a Freedom of Information Law (FOIL) request to see the letter. As village attorney, Gaba ruled his letter was protected by attorney-client privilege. More than two years later, with the Dunkin' Donuts under construction, the current Village Attorney informally ruled the letter stays private after *The Paper* inquired.

As much as anyone lawyers have great influence on the complex process of handling large-scale building projects that are proposed within a governmental jurisdiction. The process involves adherence to state, federal and county laws governing developments and the review process. When the jurisdiction is small, with limited resources, the lawyers' influence can grow even larger.

On Sept. 17, a majority of the Cold Spring Planning board challenged their lawyer on whether they could still examine the mass and scale of the proposed Butterfield development as they begin a site plan review.

The lawyer, Anna L. Georgiou, an associate with the Westchester- and New York City-based firm of Wormser, Kiely, Galef and Jacobs, explained to them several times that the Village Board's trustees had limited their scope when they passed a special new zoning law for the site of the buildings. (See Sept. 19 story.)

To varying degrees members argued or questioned what exactly the trustees intended. A consensus was clearly forming around formally asking the trustees to explain their original intent.

As the discussion continued, Planning Board Chairman Barney Molloy pointed out to his colleagues that the best person to ask what the trustees intended in drafting the zoning law "is sitting here before us." Georgiou was also retained by the trustees to advise and craft the new legislation. In effect she served as counsel to the Planning Board in asking for broader authority to examine the Butterfield project, then served as counsel for the trustees in denying the request.

### ***Best practice***

The Planning Board is an appointed body ultimately subject to the authority of the elected trustees so Georgiou was not in a conflicted situation and her dual appointment was known by all. But given the Planning Board member's befuddlement over what had transpired between the two bodies and the stakes involved, it leaves open the question of whether having the same counsel on both ends was best practice. Georgiou is said to be under consideration as counsel for the newly appointed village zoning commission.

Before the Planning Board members in favor of making an inquiry could act, Molloy suggested they might want to meet privately with Georgiou and seek her counsel on the best way to proceed. Although no formal motion was made to do so no member objected and no one offered an explanation as to why it was necessary to discuss the matter out of earshot of media, audience and the official record.

Underscoring the weight of the issue and an insight into the legal considerations, an exasperated developer Paul Guillaro stood and declared that he would not bear the expense of any legal review of what he understood to be a settled legal matter. The developer is generally responsible for costs associated with the review of the project.

After a 45-minute presumably lively discussion, the Planning Board returned to the public meeting and said no more about the mass and scale of the project. Instead they voted to proceed with the site plan review without further ado. No reference was made to the substance of their private deliberation.

In both the case of Gaba's advisory letter and Georgiou's private meeting with the Planning Board, the shield of attorney-client privilege prevails, according to conversations with two lawyers with experience in government deliberations and also confirmed with Robert Freeman, chairman of the [New York State Committee on Open Government](#). But all the lawyers acknowledged that the issue of who is the ultimate client, namely the citizens of the jurisdiction, compels those providing counsel to act and provide advice that is in the public interest.

Freeman also affirmed that in the case of Gaba's letter or other written legal advice that effects decision making the Cold Spring Board of Trustees could waive the privilege and make the Gaba letter public to better inform citizens.

# Mass and Scale Cause Concern for Planning Board Members

September 19, 2014

*After closed-door discussion, board sends Butterfield plan to Historic District Review Board*

By Kevin E. Foley

The proposed Butterfield commercial and residential development project ran into some surprising upset Wednesday night (Sept. 17) as a majority of the Cold Spring Planning Board raised objections to the board counsel's interpretation limiting their authority to review the mass and scale of the project.

To varying degrees four of the five members, Anne Impellizzeri, Arne Saari, Karn Dunn and James Pergamo, expressed concern over the size of the buildings and the impact the project would have on the 5.7-acre parcel of land as well as the overall impact on the village. They said they were under the impression that the site plan review process, now underway, afforded them the opportunity to address the broad impact of the development's plans as well as the many specific details involved in a site plan review.

For approximately 45 minutes the members, led by Saari, sallied with appointed counsel Anna Georgiou, inquiring about and at times insisting that the Board of Trustees did not intend to limit the Planning Board's role in assessing overall impact from building size and number of residential units and other factors.

"I have been trying to have a conversation about this for six months and every time I was put off," said Saari, a long-time Planning Board member. "I believe the Village Board listened to the Planning Board and left it to the Planning Board to make appropriate changes."

Dunn echoed concerns. "There were at least three of us who were concerned about mass and scale during the EAP (environmental assessment) process and we were told that we could address this during site review," Dunn said.

Strongly disagreeing, although she maintained her opinion was only advisory to the board, Georgiou said that when the Cold Spring Board of Trustees approved new zoning for the old hospital site (known as B4A) they essentially also approved the concept plan developer Paul Guillaro had submitted at that time. She said the trustee's approval meant that the size of the buildings and the number of residential units were then made "as of right." She said the size and scope of the project could be reduced only if the developer agreed or proposed it.

Planning Board Chair Barney Molloy reminded the board that there had been multiple discussions regarding the change of zoning and its connection to the developer's concept plan. He recalled there had been two joint meetings with the Village Board and then the Planning Board wrote a detailed memo expressing its concerns and desire for greater flexibility than the draft B4A zoning proposal suggested. "By and large the Village Board rejected most of what we asked for," he said.

Impellizzeri, the main author of the board's letter to the trustees, seemed to accept Molloy's recollection of events. But she observed ruefully: "I have grave doubts the community understands particularly the mass of this project or even that the Village Board understands what they have led us to."

When Saari suggested the Planning Board formally ask the Village Board what its intent was when it approved the B4A change, Molloy replied: "The attorney who drafted it (Georgiou also served as

counsel to the Village Board for this issue) at the behest of the Village Board is sitting before us. She is telling us this was the board's intent and legally that is the state of things."

A visibly disconcerted Guillaro, the developer, rose to remind the board that since the approval of the concept plan he had reduced the size and scope of the buildings and other elements to varying degrees as indicated in the presentation of the site plan. "We have listened to these concerns," he said. Molloy acknowledged this and reminded the board other accommodations were still possible as the site plan review continued.

Nevertheless, when Molloy attempted to move on with making a formal referral of the site plan to the Historic District Review Board, which must also review the project's design plans, Saari balked. Pergamo and Dunn agreed with him that the board should move to ask the Village Board about its intent. The discussion then continued with counsel about how best to draft such a letter. After a while Molloy suggested that perhaps the board would go into a private attorney/client discussion.

Board members more or less nodded agreement but without any further discussion of the reasons why they could consult with counsel for over an hour in public session but now needed to be out of ear shot of public and media.

After a 45-minute closed-door meeting the members returned and without further substantive public discussion they voted to accept the site plan application for Butterfield Realty Limited and make a referral to the Historic District Review Board, apparently accepting their chairman and lawyer's perspective on where things stood legally. Saari voted no.