

Town of Highland Planning Board
Minutes February 23, 2023.

Chairman Norm Sutherland calls the meeting to order at 7:00PM.

Pledge to the Flag

Chairman states the minutes are being recorded.
Secretary takes attendance.

Attendance: Norm Sutherland
JT Vogt
Jeffrey Spitz
Steve Bott
Tim McKenna
Board Secretary: Monica McGill
Town Attorney: Michael Davidoff
Code Enforcement: BJ Gettel

Motion to approve the January 26, 2022 :

Motion: Jeff Spitz Second: Tim McKenna
All in favor

Also in attendance: Hayden Carnell (Keystone Associates) town engineer sitting in for Ken Ellsworth

Correspondence: Letters of public concern Camp Fimfo Catskill
Letter from Sussman Associates (Camp Fimfo Catskill)
Preliminary Environmental Assessment Form Part (2) Camp Fimfo Catskill

Norm Sutherland state that all members of the Planning Board and ZBA are volunteers. They are not paid for the services that they supply for the public. Their job is to uphold the zoning codes for the town. They are always appreciative for the public concern and inquiries and only ask that they are respected when performing their duties. The code was last updated in April 2022. The propoganda going around that the planning board is steamrolling through the application regarding Camp Fimfo is simply untrue. All documents regarding Camp Fimfo have been made public through the town website, and the meetings have had Zoom for any of the public that cannot make the meeting with thanks to Laura Burrell for setting that up.

Application #3-2023 Cezary & Anna Borodzuik – Short Term Rental

The Borodzuik's own a home near Washington Lake and use the house occasionally on the weekends, and rent the house as a Short-Term Rental to help with the mortgage.

Motion to schedule a public hearing on application #3-2023 to be held March 22, 2023 at 7PM:

Motion: JT Vogt Second: Tim McKenna
All in favor

A fire inspection will need to be scheduled with the code office and completed before the public hearing.

Application #6-2023 Caroline McGrath-Parrilla – Short Term Rental

Ms. Parrilla owns a home in Highland Lake and uses it as a short-term rental property.

Motion to schedule a public hearing on application #6-2023 to be held March 22, 2023 at 7PM:

Motion: Jeff Spitz Second: Steve Bott
All in favor

A fire inspection will need to be scheduled with the code office and completed before the public hearing.

Application #5-2023 Ron Robinovich Short Term Rental

Mr. Robinovich owns a home on Route 97 in Barryville that is used as a short-term rental.

Motion to schedule a public hearing on application #5-2023 to be held March 22, 2023 at 7PM:

Motion: JT Vogt

Second: Tim McKenna

All in favor

A fire inspection will need to be scheduled with the code office and completed before the public hearing.

Chairman Norm Sutherland reads the response from the UDC (Upper Delaware Council) concerning the short-term rental applications, and the report will be posted online as correspondence.

Application #5-2022 Camp Fimfo Catskill Site Plan Approval

The United States Department of Interior (National Park Service Report) is read by chairman Sutherland and the secretary will post on the website under correspondence.

Hayden Carnell Keystone Associates presents the SEQRA Process Summary report in regards to Camp Fimfo Catskill, and the secretary will post the document on the website under correspondence.

Daniel Rubin of Brown & Weinraub (Attorney for Camp Fimfo) presents questions and concerns in regards to the remaining process of the application. (please see attached)

Chairman Sutherland states that the board will await a response from the National Park Service.

Motion to recess the meeting until March 8, 2023 when the board will go into executive session:

Motion: Jeff Spitz

Second: Tim McKenna

All in favor

March 8, 2023

Meeting was called to order at 6pm

Present was:

Norm Sutherland

JT Vogt

Jeff Spitz

Laura Burrell

Steve Bott

Tim McKenna

Mike Davidoff

Ken Ellsworth via phone

Meeting was adjourned at 7.15pm



BROWN | WEINRAUB

March 8, 2023
Chair Norman Sutherland
Town of Highland Planning Board
4 Proctor Road
Eldred, NY 12732

*RE: Northgate / Sun Communities
Camp FIMO Catskills
Job # 2220488*

Dear Chair Sutherland:

Brown & Weinraub, PLLC provides the following supplemental information to respond to the comments raised by the Planning Board at its February 23, 2023 Meeting. We have also summarized the comments presented on behalf of the Applicant at that meeting as requested by the Planning Board.

Summary of the Applicant's Comments

At a meeting of the Planning Board on February 23, 2023, Daniel Rubin, Esq., on behalf of Brown & Weinraub, PLLC, made the following comments in sum and substance:

On July 24, 2022, the Town of Highland ("Town") Board submitted the application to the Upper Delaware Council ("UDC") for its review. On August 23, 2022, the UDC's Project Review Committee found that the Proposed Class II special project substantially adhered to the principles and objective of the Land and Water Use Guidelines ("Guidelines") and voted to recommend a finding of substantial conformance to the full UDC. On September 1, 2022, at a full meeting of the UDC, the Council approved the substantial conformance recommendation to the National Park Service ("NPS"). Pursuant to Section 704(e)(3) of the National Parks and Recreation Act of 1978 (P.L. 95-625) (the "Authorizing Legislation"), the Final River Management Plan (the "Plan"), the Guidelines and the Project Review Handbook ("Handbook"), the NPS then had 45 days to make a final determination on substantial conformance.

On October 18, 2022, the Town met with officials from NPS to review the application and discuss any additional information that would be required to complete the review of the project. On November 9, 2022, the NPS informed the UDC that it was unable to presently make a final determination on substantial conformance without additional information regarding:

hydrologic and hydraulic modeling to determine any changes in base flood elevations for development and fill in the one percent annual chance floodplain, final locations of structures in relation to water utilities, septic system design to prevent backflow into waterways when flooded, lighting plans, as well as approvals from state agencies.

The Kenmore Building
76 North Pearl Street, Suite 3
Albany, NY 12207

ph: 518.427.7350
fx: 518.427.7792
www.brownweinraub.com

The NPS stated that once that information was provided, it would continue its review of the application. The requested information was provided to the NPS on or about January 11, 2023. On February 17, 2023 – 149 days after it received the UDC’s substantial conformance recommendation – the NPS informed the UDC that it continued to have concerns and unanswered questions about the proposal and requested that the UDC engage with NPS, the Town of Highland and the applicant to obtain additional information about the project, noting that it could not make a determination of substantial conformance without this information.

The information requested by NPS in its February 17, 2023 letter was not previously requested. Nonetheless, the applicant has already begun working on obtaining the additional information and studies requested by the UDC in its February 17, 2023 letter. The Applicant will engage directly with the NPS on these issues.

At this time, however, and based on our review of the Authorizing Legislation, the Plan, the Guidelines and the Handbook, the Town does not need to await a final decision from the NPS in order to issue a final decision on the application. According to the Final River Management Plan, it is clear that the UDC has 45 days to make an initial recommendation, and that, the Town “will not have to await the input of the Council before making its decision”. See Plan at p. 45. The Authorizing Legislation also states that the NPS (as the contractual designee of the Secretary of the Department of the Interior) “shall” make its decision within 45 days thereafter. This is also consistent with the timeline set forth in the Handbook, which states that the initial review by the UDC will take 45 days and the final review by the NPS will take “up to” an additional 45 days. See Handbook at p. 1-15.

It logically follows, then, that if the Town is not obligated to await the UDC’s initial recommendation in order to issue a decision on the application, the Town is also not required to await a final determination on the UDC’s recommendation from the NPS.

Mr. Rubin recommended that the Town approve the application without awaiting input from the NPS and that the Town could condition the approval on subsequent NPS input and approval.

Response to Comments from the Planning Board.

Comment 1: Board Member Spitz recommended that in order to aid the Town’s Volunteer Ambulance Core, that we have clearly numbered sites and site maps with site numbers posted, and a protocol to have a single individual meet the ambulance at the camp entrance.

Response: The Applicant will ensure that campsites are readily identifiable for emergency services by clearly posting site numbers and posting site maps. The Applicant will ensure that a member of the staff is ready and available to coordinate with emergency services to ensure quick response times.

Comment 2: · Board Member Spitz recommended that the Applicant employ an EMT Thursday through Sunday.

Response: The Applicant respectfully submits that the Planning Board lacks the authority to condition the issuance of the permit requested on specific staffing requirements. A requirement that the Applicant employ an EMT on site would be invalid because it would “impose a condition that seeks to regulate the details of the operation of an enterprise, rather than the use of the land on which the enterprise is located.” Matter of St. Onge v Donovan, 71 NY2d 507, 516-17 [1988]; see also Matter of Schlosser v. Michaelis, 18 A.D.2d 940, 940-941[2d Dept. 1963] (same); De Ville Homes, Inc. v Michaelis, 201 NYS2d 129, 129 [Sup Ct 1960] (rejecting conditional approval requiring that coin laundromat have an attendant supervising the operations at all times).

Notably, neither the Town’s Zoning Code, nor any other law or regulation under New York State Law requires that the Applicant have an EMT on site. In fact, the provision of such services are heavily regulated under Article 30 of the Public Health Law. In order to provide EMT services, a private entity must first obtain a Certificate of Need. The Applicant is not a medical or health service provider and is not qualified to operate an EMS service.

Further there is no evidence in the record that the existing campground, which has been in operation for more than 80 years, and operates without an on-staff EMT, has encountered any issues ensuring adequate emergency medical care. Given that the Applicant intends to reduce the camp’s occupancy, we would expect that any such issues would be concomitantly reduced rather than exacerbated. Additionally, no other business – including other similarly situated campgrounds – are required to have an EMT on staff.

Given the absence of any law, rule or regulation that requires the Applicant to have an EMT on staff, the absence of any data to suggest that the absence of an EMT on staff has resulted in the loss of life or impacted life saving care for campers in the last 80 years, and the fact that no other business in the Town is required to have an EMT on staff, including other campgrounds, the Applicant does not intend to have EMTs on staff.

The Applicant has, however, developed a resource website which documents various safety protocols for the Camp. These safety protocols are currently being utilized at the Camp and will be provided at Camp FIMO. Select leadership staff are trained to provide immediate response to emergency situations, including, but not limited to, confined space environment awareness, hazardous material incidents, fall from heights, and other workplace safety and risk initiatives. Select staff is also trained and prepared to assist guests and employees in need of medical attention, while awaiting the arrival of emergency medical personnel. They are trained to perform basic life support within the scope of their training such as cardiopulmonary resuscitation (CPR), administering AED procedures and preparing an incident scene for proper authorities.

Comment 3: · Board Member Spitz requested the Applicant’s plan for removing temporary RVs from the campground every 6 months as required under the Town’s Regulations.

Response: Section 190.25 of the Town Zoning Code specifically permits the use of recreational vehicles on campsites. Pursuant to Section 190.25(J)(1), the only restriction on the length of

occupancy for such campsites is that they shall not "be occupied for more than eight consecutive months, and no campsite shall be the primary and principal residence of the owner or any other occupant; each campsite is to be used and occupied (except for occasional guests) for camping and recreational purposes."

The RVs at the campsites will not be consecutively occupied for more than 8 months or serve as a primary or principal residence. The RVs are for camping and recreational purposes.

Similarly, even those campsites within the Floodplain may remain for more than 180 consecutive days as long as they are ready for highway use. Section 70-17, A. (1) of the Town's Zoning Code indicates that RV's may be located in the floodplain if they meet one of the criteria:

- a. Be on site fewer than 180 consecutive days.*
- b. Be fully licensed and ready for highway use.*
- c. Meet the requirements for the manufactured homes in Subsections B, C and D of this section.*

Section 170-17, A. (2) states 'A recreation vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions.

Based on the foregoing, even the RV's located in the floodplain may be on site more than 180 consecutive days because they are ready for highway use and will be moved out of the floodplain in the event of a flood.

The Applicant will comply with the foregoing requirements.

Comment 4: Board Member Spitz requested additional information about the view of the Pool and the Structure from the road, including specific distances.

Response: The Applicant has already provided this information. The view of the Pool and the Pool structure is as depicted in the drive by animation video and still shots provided. The specific distances of these structures from the road are readily ascertainable from the existing plan set.

Comment 5: Board Member Spitz asked whether the Applicant has coordinated with the local Fire Department.

Response: The Applicant has coordinated with the local Fire Department and made specific changes to the site plan at the Fire Department's request. The Fire Department visited the campsite with a firetruck. After touring the property in the firetruck, the Fire Department asked for additional pullouts to be added to the main access road. Those pullouts have been incorporated into the current plan.

Comment 6: Board Member Spitz also requested information about the Applicant's staffing patterns, specifically the titles for each role, whether and how many of our staff would be CPR and/or NARCAN certified.

Response: The Applicant is an experienced camp operator with almost 30 other camps of varying sizes under its management. The Applicant will ensure that sufficient staff is available to meet all of its needs including security, as it does at each of its facilities. As noted above, the Applicant does ensure that key staff is CPR certified and AED trained. The Applicant will not be seeking NARCAN certification for its employees.

The Applicant respectfully submits that the Planning Board lacks the authority to condition the issuance of the permit requested on specific staffing requirements because it would "impose a condition that seeks to regulate the details of the operation of an enterprise, rather than the use of the land on which the enterprise is located." Matter of St. Onge v Donovan, 71 NY2d 507, 516-17 [1988]; see also Matter of Schlosser v. Michaelis, 18 A.D.2d 940, 940-941 (2d Dept. 1963) (same); De Ville Homes, Inc. v Michaelis, 201 NYS2d 129, 129 [Sup Ct 1960] (rejecting conditional approval requiring that coin laundromat have an attendant supervising the operations at all times).

Comment 7: Board Member Spitz also recommended conditions placed on the project requiring the Applicant to making timely repairs to the property and that any special use permit issued as part of this application should terminate if we sell the property.

Response: The Applicant is an experienced camp operator with almost 30 other camps of varying sizes under its management. The Applicant will ensure that repairs are made to its property as it does with all of the camps under its management. Under Section 140 et. Seq. of the Town Code, entitled "Property Maintenance," the Applicant is already required to maintain the property and grounds. Accordingly, there is no need for additional conditions.

The Applicant respectfully submits that the Board lacks the authority to issue a special permit conditioned upon the Applicant's continued ownership of the camp. Conditions of approval that terminate upon transfer of title are invalid as a matter of law because they seek to regulate the owner of real property rather than the property at issue. See Dexter v Town Bd. of Town of Gates, 36 NY2d 102, 105 [1975] ("We believe that the resolution of the town board which provides that the rezoning of the land in question 'shall inure to the benefit of Wegman Enterprises, Inc., only', is plainly personal to Wegmans itself and does not relate to the use of the property and the zoning thereof").

Comment 8: Board Member Spitz asked whether the camp's amenities would be open to local residents.

Response: Local residents will have the opportunity to utilize the camp's amenities through the purchase of day passes, provided there is adequate capacity.

Comment 9: Board Member Burell asked whether the landscaping features shown in the drive by animation were to scale as they will be installed or whether they will need to mature in order to reach the size depicted.

Response: The landscaping features depicted in the animation are to scale. The animation depicts landscaping features that are already in place at their current size. Those elements depicted in

the animation which are not yet on site will be approximately the same size as depicted in the animation at the time they are installed.

Thank you for your kind attention to this matter.

Very truly yours,

Alexander Betke

Alexander Betke, Esq.