



**PLANNING BOARD**  
**Town of Carmel - Town Hall**  
**Mahopac, NY 10541**  
**(845) 628-1500**

**PLANNING BOARD MINUTES**

**OCTOBER 12, 2011**

PRESENT: CHAIRMAN, HAROLD GARY, VICE-CHAIR, EMMA KOUNINE, JOHN MOLLOY  
ANTHONY GIANNICO, CARL GREENWOOD

ABSENT: RAYMOND COTÈ, JAMES MEYER

<b><u>APPLICANT</u></b>	<b><u>TAX MAP #</u></b>	<b><u>PAGE</u></b>	<b><u>TYPE</u></b>	<b><u>ACTION OF THE BOARD</u></b>
Lansky Properties	75.12-2-6	1	Public Hearing	Public Hearing Closed & Bond Return Recommended To Town Board.
ASA Petroleum Co., Inc.	44.17-1-45	1-3	Public Hearing	Public Hearing Left Opened.
Mahopac Wastewater Treatment Plant	65.17-1-41	3	Resolution	Resolution Accepted.
Dewn Holding	53.-2-28	3	Extension	6 Month Extension of Preliminary Approval Granted.
Albrecht, George	53.12-1-27	3	Extension	(2) 180 Days of Final Subdivision Approval Granted.
Pulte Homes	55.14-1-11.2	4-6	Discussion	No Board Action.
Minutes - 3/9/2011, 3/23/2011, 4/13/2011 & 4/27/2011		6		Approved.

The meeting was adjourned at 8:20 p.m.

Respectfully submitted,

Rose Trombetta

**LANKSY PROPERTIES – SOUTH LAKE BLVD – TM – 75.12-2-6 – PUBLIC HEARING**

Hearing no comments from the audience, Mr. Greenwood moved to close the public hearing. The motion was seconded by Mr. Giannico with all in favor.

Ms. Kounine moved to recommend full return of the bond to the Town Board. The motion was seconded by Mr. Greenwood with all in favor.

**ASA PETROLEUM CO, INC. – 1 FOWLER AVE – TM – 44.17-1-45 – PUBLIC HEARING**

Mr. Carnazza had no comments.

Mr. Gainer read his memo which stated because the applicant proposes 24-hour operations; we continue to recommend a noise barrier along the northern and a portion of the western property lines. In lieu of this, in the Applicant's latest submission they suggest that the land slope, existing stockade fence and landscaping are sufficient to create an appropriate noise barrier. We still believe that because this site is now proposed for 24 hour operations, more positive steps could be warranted. The Applicant should consider installing more formal, engineered sound attenuation in the locations discussed. The Applicant indicates that relocation of the handicap spot # 6 to spot # 1 will result in a loss of parking. Because the handicap spot will require an off-load area, we agree with this. The Applicant may consider relocation of spot # 6 to the south side of the building, with an off load area just to the south of the spot. Proposed piping invert elevations must be shown for all drainage structures. Further, pipe slopes must be provided. Notes contained on the drawing merely indicating that invert and rim elevations will be determined at the time of construction, usurps engineering review of these elements and is therefore unacceptable.

Mr. Cleary had no comments.

Mr. Scott Freeman a resident of Carmel expressed his and concerns to the board. One of his concerns is that the gas station is located within feet of Lake Gleneida, which is a source of water for Carmel Sewer 2. He also is very concerned about contamination from the gas station which will cause tremendous harm to the community. There have been two documented histories of oil spills. (copies were handed to the board)

Mr. Molloy asked is there a statute that you could cite that this project would be in violation of?

Mr. Freeman answered there are several statutes. One of the statutes is the New York Code Rules & Regulations (NYCRR) - §18-34 (Petroleum Products). It states no new above ground petroleum storage facilities or tanks are prohibited within a distance of 500 feet of a reservoir. It is a safety concern.

Mr. Peter Intrieri a resident of Carmel addressed the board and stated he did not receive notice for the public hearing. He has lived in the community for 25 years. He said I don't see the need for a 24 hour gas station when you already have one on the other end of the street. He said when the old tanks were removed the odor of gasoline was horrendous. He asked the board to please take a closer look at this at application.

Mr. Lori Kemp a resident of Carmel expressed her concern about the quality of drinking water. How many gas stations do we need in a one mile radius?

Mr. Gary's issue of concern is if all authorized authorities have been to the site, such as DEC and DEP.

Mr. Steven Basini of Petruccelli Engineering, representing the applicant said yes.

Mr. Gary asked if it the station was being remodeled of an existing station.

Mr. Carnazza replied that's correct. However, they are upping the amount of fuel being stored on the site. I don't think that having the tanks there violates any law because he is remodeling.

Mr. Charbonneau agreed, but needs to look at the definition of the statute and how they define a new tank. I am not sure.

Ms. Kounine stated the original tanks were many years old. Today, you would not be able to replace it with the same tank. There are other rules and regulations by other agencies, such as DEC. The double wall tank automatically makes it larger. They are obligated to do it in that manner.

Mr. Carnazza stated they were mandated to remove the tanks.

Mr. Gary commented that whoever mandated it, it is not the Planning Board, Zoning Board of Appeals or another town. It's someone else, and I'm sure they are involved in it. We need to look at it legally.

Mr. Charbonneau replied I would be happy to do that.

Mr. Greenwood stated Lake Gleneida is the prime drinking source for the water district in the Hamlet of Carmel. We have to take whatever steps as a board to ensure the drinking water is protected.

Mr. Gary stated we are not here to deny the applicant his rights, but we here to make sure it is done in a proper and safe manner.

Mr. Basini stated the applicant's objective and goal is to clean up the site and make it a useful business. The double wall tanks will be regulated by DEC and inspected on a regular basis. There have been spills on the site years past, but there are also clean-up documents which were submitted to the ZBA. The soil was evaluated by a soil engineer and everything was clean. The applicant has put up a chain link fence, silt fencing and erosion control around the site. Replacement of tanks is legal by Town and State code. There were six pumps in the past, there will be three now.

Mr. Gary asked who is monitoring the tanks.

Mr. Basini answered DEC.

Mr. Charbonneau asked Mr. Basini to provide the information that was given to the ZBA relative to the clean-up and to provide it to the planning board.

Mr. Gary asked the consultants to review the Zoning Board minutes and stated the public hearing will be left open.

**MAHOPAC WASTEWATER TREATMENT PLANT – 35 MUD POND ROAD – TM – 65.17-1-41 – RESOLUTION**

Mr. Carnazza had no comments.

Mr. Gainer stated the performance bond is set for \$28,000.00 and the engineering inspection fee is \$1,400.00.

Mr. Cleary stated you have a resolution before you. There is error. The title of the resolution should be site plan only and to take out SEQR negative declaration. Neg Dec is not required.

Mr. Gainer also stated on page 2 (5) of the resolution should read Zoning Regulations not Subdivision. The code should be §156-61(J) not §131-15E(1).

Mr. Greenwood moved to accept Resolution #11-28, dated October 12, 2011, Tax Map # 65.17-1-41 entitled Mahopac Wastewater Treatment Plant Site Plan Approval as amended by the Planner and Town Engineer. The motion was seconded by Mr. Giannico.

**A Roll Call vote was taken on the motion as follows:**

Mr. Molloy	For the motion
Ms. Kounine	Against the motion
Mr. Greenwood	For the motion
Mr. Giannico	For the motion
Mr. Gary	For the motion

Motion carries.

**DEWN HOLDING – MEXICO LANE – TM – 53.-2-28 – EXTENSION OF PRELIMINARY SUBDIVISION APPROVAL**

The consultants had no objections.

Mr. Greenwood moved to grant a six month extension of preliminary subdivision approval. The motion was seconded by Mr. Molloy with all in favor.

**ALBRECHT, GEORGE – 50 ALAN DRIVE – TM - 53.12-1-27 – 1<sup>ST</sup> EXTENSION OF FINAL SUBDIVISION APPROVAL**

The consultants had no objections.

Mr. Giannico moved to grant two 180 days (6 months) extension of final subdivision approval. The motion was seconded by Mr. Molloy with all in favor.

**PULTE HOMES – TERRACE DRIVE – TM – 55.14-1-11.2 – DISCUSSION REGARDING RECREATION FEES**

Mr. Joseph Charbonneau, ESQ. the Planning Board attorney addressed the board and stated this is a continuation of our review of the appropriateness of the recreation fees imposed by this board in light of the Article 78 proceeding in the Appellate Division. At the last meeting we reviewed the court's decision, which was remanded back to the planning board for review.

The board has had an opportunity to review the Senior 2006 Recreation Fee study and the Pulte site in general. At this point, I am requesting that the board set a public hearing to provide the public and applicant an opportunity to discuss the appropriateness of the imposed recreation fees. At the close of the public hearing, I would request that the board engage in a dialog relative to the appropriateness or lack of appropriateness of the recreation fees in order to direct or assist Mr. Cleary in the preparation of the amended site plan approval.

Ms. Kounine asked why is there an amended site plan? And why are we having a public hearing?

Mr. Charbonneau stated that was my suggestion. You do not have to do that if the board does not wish to hold a public hearing.

Ms. Kounine asked what would be discussed at the public hearing?

Mr. Charbonneau said it affords the public and the applicant an opportunity to discuss the appropriateness of the recreation fees.

Ms. Kounine said this board does not have the authority or purview to establish recreation fees.

Mr. Charbonneau stated the board has the authority to establish recreation fees. The decision itself does not refute the board's authority to impose recreation fees. What the decision does is it requests the board further amplify or justify the imposition of those fees based on the amenities that are offered within the development as well as the general area.

Ms. Kounine asked does this board set recreation fees?

Mr. Charbonneau replied no, it is set by the Town Board. The fees are imposed by this board. They are part of the site plan resolution.

Mr. Molloy said the Appellate Division in their decision said we could amend the statutory fee.

Mr. Gary asked Mr. Cleary where in the application process were the fees proposed?

Mr. Cleary answered they were not proposed during the process. They were imposed at the end of the process. That's what the court found fault with.

Mr. Gary said that is not us, the Town Board sets the fee.

Mr. Cleary said what the town has set is the mathematical formula. The board's burden was to apply the formula given the specifics of the Pulte site plan.

Mr. Greenwood stated the Town Board amended the senior housing law, knowing these senior housing site plans had recreation on them. They were required previous to the amendments. It went through a SEQR review, an entire study was done, made it a town law and imposed a fee. We are not a regulatory board. The town amended a law; an amended site plan came in front of this board after an approval which is now subject to that new law.

Mr. Carnazza stated that's correct.

Mr. Gary said we imposed a fee. In my opinion we didn't make a mistake and that is what we should tell the court. Why should we go back now and go through the whole process. The neglect was not here it was on Pulte. They didn't do what they were supposed to do.

Mr. Cleary said that is a separate issue.

Mr. Gary stated if the court is looking at something, they should look at the whole thing. Why are we trying to justify why we made that decision. We should stick to our original decision.

Mr. Cleary addressed the board and stated I will give you my planner's understanding of this issue. It is not about your imposition of the Town Board fees. Because of a substantial amount of case law involving how those numbers are applied, the judge in this case couldn't see in the record how the board went through this required analysis. So basically, what we are saying is you have to back and do that, the exercise of evaluating this and apply the standard, whatever it is in our code.

Mr. Charbonneau added if the board feels that the fee that was imposed on the original site plan is justified and there is no need for any further input from the applicant or the public; I would then suggest that we amplify that based on an amended site plan, setting forth the reasons why we believe the fee is justified.

Ms. Kounine stated I disagree with everything you are saying.

Mr. Gary said if that is the case, you should justify the fee not this board. I think the Pulte homeowners will confuse the issue more if they make comments on it, because they don't understand how you get those fees.

Ms. Kounine stated we did not formulate these fees, another jurisdiction did.

Mr. Molloy said when I read the decision; I was offended as a planning board member. How can the court look at what we did, when we were under an obligation to apply the fee that was set by the Town Board? The court is not looking at it from our perspective; they are looking at it from the applicant's perspective. The Appellate Division wants to make sure the applicant is being afforded his due process rights.

Mr. Charbonneau stated the law in which the recreation fees are imposed is the site plan. The site plan resolution is issued by the planning board. Therefore, the planning board is the named defendant in the action.

A discussion ensued around board on whether or not there should be a public hearing.

Mr. Cleary said if you don't think it's going to help you than there is no need to have a public hearing. It was a recommendation.

Mr. Charbonneau said the next question is does the board wish to get input from the applicant with respect to their position.

Mr. Gary said I think we should have our attorney work with the applicant and anyone else.

Ms. Kounine said the court wants a written document as to how we arrived at that figure. From now on that should be something we incorporate into our site plan approvals.

Mr. Charbonneau stated it sounds like the board is comfortable with the imposition of the fees. If the board is comfortable with the imposition of the original fees, what I would suggest is we put together a memorandum demonstrating the information upon which relied in creating that comfort, going back to the recreation amenities proposed by the applicant and recreation amenities within a certain distance of the site. In order for us to demonstrate to the court that there is a body of evidence we relied on, although we may not have spelled it out verbatim in the original site plan approval. What Mr. Cleary and I could do is go back through the original record and bring to the boards' attention those issues that pertain to recreation and put together a resolution stating this is the information upon which the board relied when imposing those recreation fees. We will then put it on a future agenda.

#### **MINUTES – 3/9/2011, 3/23/2011, 4/13/2011 & 4/27/2011**

Mr. Molloy moved to adopt the March 9, 2011 and March 23, 2011 minutes without amendment. The motion was seconded by Mr. Molloy with all in favor.

Mr. Molloy moved to adopt the April 13, 2011 and April 27, 2011 minutes without amendment.

The motion was seconded by Mr. Giannico with all in favor.

Mr. Greenwood moved to adjourn the meeting. The motion was seconded by Ms. Kounine with all in favor.

The meeting was adjourned at 8:20 p.m.

Respectfully submitted,

Rose Trombetta