

**Village of Wesley Hills
Planning Board – September 23, 2009**

The meeting was called to order by Marshall Katz, Chairman, at 7:35 p.m.

Present: Marshall Katz-Chairman, Don Isenberg, Marvin Finker, Uri Kirschner, Ester Ben-Dov-Shucht-First Alternate, William Fried-Second Alternate

Also Present: Ben Selig-Village Attorney, Liz Mello-Village Engineer, Jeff Osterman-Village Planner, Barbara Cartaya-Village Clerk, Michael Bontje-Village Consultant

Absent: Frank Brown-Deputy Village Attorney, Vera Brown-Deputy Chairman

REMEDICATION FOLLOWUP ON THE APPROVED WETLANDS PERMIT FOR ROEI GAMIL. Affecting property located on the north side of Willow Tree Road approximately 1000' west from the intersection of Route 306. Known as Tax Parcel ID#41.7-2-35 on the Ramapo Tax Map.

Jeff Osterman, Village Planner, visited the site on September 23, 2009 to review progress on the remediation of the wetlands buffer and stated that upon inspection it was completed to satisfaction. Mr. Osterman stated that he would submit a written letter for the file. Marshall Katz responded that Mr. Gamil's Wetlands remediation work is approved and the permit process complete.

SPECIAL PERMIT AND SITE PLAN APPLICATION AND PUBLIC HEARING CONTINUATION OF ROCKLAND TREE EXPERTS CO. INC., D/B/A IRA WICKES FOR AN EXISTING ARBORIST SERVICE. Affecting property located on the south side of McNamara Road, -0- feet west from the intersection of Union Road. Known as Tax Parcel ID# 42.13-1-22 on the Ramapo Tax Map.

Marshall Katz explained to Mr. Marcus that because he submitted documentation late on September 22, 2009 to the Village Office, there was not adequate time for the Board to review same prior to this meeting. Mr. Katz also explained to Mr. Marcus that going forward all questions and/or comments relating to this application should be addressed directly to the Board and then the Board will request input from applicant, consultants, etc. as appropriate.

Neil Marcus, 32 McNamara Road Road, explained that 2 of his 3 presenters could not attend the meeting and then introduced Town Supervisor Christopher St. Lawrence, a resident of Wesley Hills, to speak on environmental concerns, including but not limited to, truck traffic and material transport and storage in relationship to wetlands, tributaries and streams. Mr. St. Lawrence asked the Board to focus on effects of runoff of materials into waterways and drainage areas which should be remediated, quantified, protected and monitored on an

ongoing basis. Mr. St. Lawrence asked the Board to look at the history of the material migrating off this property and to review what is being done to remediate any migration.

Marshall Katz responded to Mr. St. Lawrence's concerns and briefly explained that studies done both by the applicant and the Village on the streams indicated that the quality of the water exiting the stream is actually better than the quality of the water entering the stream. Mr. Katz also explained that most of the chemicals and materials are stored and transferred inside the building located on the property, and the Village Fire Inspector has a list of all the chemicals stored in case of a fire; that water drippings from trucks are collected in a catch basin that does not drain into nearby waterways and streams. Mr. Katz explained that based on the multiple studies conducted on truck idling and vibration, that the impact from the applicant's trucks on surrounding neighborhood properties was minimal in comparison to the impact from the local traffic on McNamara Road.

Neil Marcus expressed concern regarding options that would be used to extinguish a fire on the property. Mr. Marcus also commented on the proximity of this property to neighboring municipal water supply and wetlands. Mr. Marcus referenced materials published in the NY Times regarding pesticide migration and the effect of same on the environment.

Marshall Katz re-clarified that the Board is charged with examining this application under the law and all stipulations that were created by this Village. Mr. Marcus stated that his comments are related to the SEQR part of this application. Jeff Osterman clarified that the Board is presently reviewing the proposed impacts under the current law and past impacts are not relative to this special use permit application. Mr. Marcus disagreed. Ben Selig, Village Attorney, explained that the Village passed an ordinance that permits the applicant to come before the Planning Board to seek a special permit. It is up to this Board to determine whether the permit should be granted under this Village law.

Mr. Marcus stated that he believes the conclusions drawn by the recent studies are flawed, specifically the testing procedures for air quality. He then proceeded to explain the reasons for his opinion. Mr. Bontje, Village Consultant, responded that since the materials from Mr. Marcus were received late, he would reply in detail at a later date and that the material presented by Mr. Marcus is technically misapplied.

Mr. Marcus stated that he believes the consultants' conclusions are based on tests that are invalid. Ben Selig responded that the Village Consultant, Mr. Bontje, was hired by the Village for two purposes, 1) to ascertain the proper technical criteria under which the environmental impacts of the Wickes' use of this site be evaluated and, 2) evaluate the testing measurements conducted under these standards. Mr. Selig suggested to Mr. Marcus that in order to support his position, he present supporting documentation that the criteria used in the testing was inapplicable, improper and irrelevant and/or the results were not consistent. Mr. Selig suggested to Mr. Marcus that he bring forth his experts and/or witnesses to support his position that the Village's expert was wrong either in establishing what the criteria were to be used and/or in evaluating the site pursuant to the criteria.

Mr. Marcus stated that he does not believe the Board has the factual information needed to make a decision. Mr. Marcus stated that his experts will testify to the environmental impact on human health and also on pesticides.

Mr. Allan McGeorge, Esq. stated he represents Mr. Marcus, Mr. Feder and Suzanne Mair. Mr. McGeorge asked the Board for an expert's response to the documentation submitted by Mr. Marcus and recommends the application remain open for one more meeting. Mr. McGeorge stated this would also give him an opportunity to submit a written statement. Marshall Katz replied that the Board would not finish this application at this meeting. Mr. McGeorge then referenced the case in the Rockland Supreme Court (Article 78) Challenging the Local Law. Mr. McGeorge explained that the Wickes site is located in an R-35 residential district and allowing a business would constitute "spot zoning" which is prohibited.

Ben Selig responded that this litigation which is before the Court on this matter could result in either the Article 78 proceeding being dismissed and the local law found valid; or if the case is successful, any activity by the Board here would be moot because if the law is knocked out there would be no basis upon which the Board could grant the special permit with or without any conditions. Mr. Selig explained that this Board's responsibility is to pursue, hear and ultimately determine this special permit application. Mr. McGeorge agreed with Mr. Selig's explanation.

Marshall Katz asked if anyone else wished to speak. Ira Emanuel, Esq. representing the applicant, stated he understands the decision to continue the hearing and expressed disappointment that Mr. Marcus' expert witnesses could not attend this meeting especially since the last time everyone met was on July 13, 2009 which is well over two months ago. Mr. Emanuel stated that he would not like to get into a situation where the next time the Board meets on this application yet another witness is promised resulting in the process dragging on. Marshall Katz responded that the reason he is leaving the hearing open is because a lot of material was submitted by Mr. Marcus late and could not be reviewed prior to the meeting and Mr. Bontje will be submitting a reply to Mr. Marcus' questions. Mr. Katz explained that once all open questions are addressed, then the public hearing will be closed and the Board could move forward but it is difficult to determine a precise timeline.

Mr. Marcus stated that the date for this meeting was determined by the Board. Marshall Katz confirmed that the date was decided two months ago and Mr. Marcus was present at that time. Marshall Katz explained to Mr. Marcus that there will not be any more special meetings scheduled for this application. Marshall Katz stated that the next Planning Board meeting is scheduled for October 28, 2009 and this application will be on the agenda. Ben Selig asked Mr. Marcus if he will be ready with his expert witnesses for the October Planning Board meeting and Mr. Marcus responded he was not sure. Mr. Selig informed Mr. Marcus that in order to move this application along and prevent further delays, all efforts should be made to present the proposed testimony by his experts. Any written testimony should be submitted 2 weeks prior so it can be reviewed prior to the meeting.

Marshall Katz motioned to adjourn the public hearing until October 28, 2009. Marvin Finker seconded.

Vote: Marshall Katz-Yes, Don Isenberg-Yes, Marvin Finker-Yes, Uri Kirschner-Yes, Ester Ben-Dov-Shucht-Yes, William Fried-Yes

Motion Approved

Meeting adjourned at 8/45 p.m.