

**TOWN OF GUILDERLAND  
PLANNING BOARD**

**January 25, 2012**

Minutes of meeting held Guilderland Town Hall, Route 20, and Guilderland, NY 12084  
at 7:30 P.M.

PRESENT: Stephen Feeney, Chairman  
James Cohen  
Thomas Robert  
Herb Henning's  
Michael Cleary  
Paul Caputo

Jan Weston, Planning Administrator

ABSENT: Theresa Coburn

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Chairman Feeney called the meeting to order at 7:30 p.m. He noted the exits for the sake  
of the audience in the event they were needed.

Chairman Feeney asked for a motion to approve the minutes of December 14, 2011  
minutes with few minor corrections and so moved by Thomas Robert, seconded by  
Michael Cleary and carried by a 5-1 vote by the Board. (Herb Henning abstained)  
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**SCHWORM – 200 Foster Lane**

Chairman Feeney announced that this was a public hearing on the final plat of a  
proposed 3-lot subdivision of 7 acres. Zoned R15 and RA3. Joe Bianchine presenting.

Thomas Robert, Planning Board member, read the Legal Notice as follows:  
The case of Glenn Schwarz will be heard on Wednesday, January 25, 2012  
At 7:30 p.m. at the Guilderland Town Hall, Route 20, Guilderland, New York 12084  
for the purpose of obtaining final plat approval for an unnamed subdivision.

Such subdivision is proposed as 3 lots cut from 7 acres.  
The general location of the site is at 200 Foster Lane.

The property is zoned: RA3 & R-15  
Tax Map # 38.00-5-16

Plans are open for inspection, by appointment, at the Planning Department during  
normal business hours.

Dated: December 20, 2011  
Stephen Feeney, Chairman, Planning Board

Jan Weston, Town Planner, read the comments of the Planning Department as follows:  
Schworm – 200 Foster Lane

The applicant has applied for final approval of a three-lot subdivision which will include the existing house and two additional building lots. All lots have access to municipal water and sewer and there are no environmental concerns. No objection to final approval.

Chairman Feeney noted for the record that there is a referral letter from the Albany County Planning Board, dated January 19, 2012, and their recommendation read as follows:

Modify local approval to include 1. The landowner of the subdivision should notify purchasers of the lots that they must prepare a SWPPP for erosion and sediment control, if construction will disturb more than one acre of land. (Disturbance includes the driveway for a single family home and a septic field.) This is part of NY SPDES GP-0-08-001. The DEC Website has more information. (Letter on file)

Joe Bianchine, ABD Engineers presenting: The applicant has purchased 7 acres of land and there is an existing house on the site and most of the site is wooded and flat. This would be a three lot subdivision which includes the existing house and two additional building lots. The second lot would come off of Frenchs Mill Road, is a little over an ½ acre, and conforms to the zoning. The third lot would be in two zones, R15 zone and RA3, which will be 3 acres and would be a keyhole lot because it would share the access road for lot 1. We have set up the setbacks so that they are consistent with both zonings. There are water and sewer hookups on French's Mill Road.

Chairman asked if you are going to show utilities connections on the final plans.

Mr. Bianchine said that we could do that.

Chairman asked for any comments from the audience and there were none.

Chairman entertained a motion to close the hearing, so moved by Paul Caputo, seconded by Thomas Robert and carried by a 6-0 vote by the Board.

Chairman had the GCAC site plan review for Glenn Schworm, 200 Foster Lane, dated December 6, 2011 and their conclusion read as follows: GCAC sees no adverse effect on the environment if this property is subdivided provided tree cutting is kept to a minimum and storm water is contained on the property itself in a manner by which any contamination of the Black Creek is avoided. Care will also need to be taken to avoid storm water run off onto the Church parking lot to the southwest. (Letter on file)

Chairman wanted addressed the one comment from the county regarding the SWPPP.

Mr. Bianchina explained that this would be a basic swift. It is questionable whether if it will be an acre or not. We can do a basic SWPPP.

Chairman made a motion for SEQR Determination as follows:

In Accordance with Section 8-0113, Article 8 of the New York Environmental Conservation Law, this Agency has conducted an initial review to determine whether the following project may have a significant effect on the environment and on the basis of the review hereby finds:

The proposed project will not have a significant effect on the environment and therefore does not require the preparation of an Environmental Impact Statement. This determination is based on a careful review for the minor nature of 2 additional lots, located at 200 Foster Lane, by the Planning Board and by the comments of the Guilderland Conservation Advisory Council, and by the environmental short form, which the applicant has filled out.

The motion was seconded by Michael Cleary and carried by a 6-0 vote by the Board.

Chairman made a motion for final approval with the following conditions:

- Town Highway Superintendent approval for any new curbcut
- Water & Wastewater Superintendent approval (with building permit application)
- \$1,500.00 per dwelling unit – Park & Recreation Fund (with building permit application)
- \$2, 085.00 per dwelling unit – sewer mitigation fee (with sewer hook-up application)

The motion was seconded by Paul Caputo and carried by a 6-0 vote by the Board.

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Chairman announced that the application for Muccigrosso – 6256 Empire Avenue, has been cancelled.

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#### **BECKMANN – 2261 Western Avenue**

Chairman Feeney announced that this was a site plan review to allow the building to be used as for an events planning business. Zoned BNRP. Laurie Beckmann presenting.

Jan Weston, Town Planner, read the comments of the Planning Department as follows:

Beckmann – 2261 Western Avenue

The applicant has applied for a special use permit to use the existing building as an events planning business. The house was formerly used as an antiques store. Two or three employees will be on site and clients will be encouraged to have an appointment. There is

available parking both in the front and back of the building, which should be more than adequate. This business seems like a great fit for the site. No planning objections.

Laurie Beckmann presenting: We have been doing weddings in the area for almost 30 years and now we have purchased 2261 Western Avenue to do offer offsite events planning and weddings and honeymoon destinations. We did restore the place and uncovered some great architectural aspects inside and reclaimed them.

Chairman stated that this seems to be a good use for the site and is pretty straight forward.

Chairman asked for any comments from the Board and there were none.

Chairman asked for a motion to recommend approval for Beckmann-2261 Western Avenue, so moved by Michael Cleary, seconded by Thomas Robert and carried by a 6-0 vote by the Board.

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#### **WAGNER – Mecosta Lane**

Chairman Feeney announced that this was a site plan review to use the property as an excavation business and landscaping contracting facility. Zoned Agriculture. Victor Caponera presenting.

Jan Weston, Town Planner, read the comments of the Planning Department as follows: The applicant has applied for a special use permit to continue an excavation/landscape contracting facility. The site is a 23 acre, land locked parcel, southwest of the Watervliet reservoir. My comments are as follows:

- The applicant states that this business involves the stockpiling and processing of materials such as soils, rocks, sand, gravel, manure, leaves, blacktop and the like. Much of the eastern portion of this site is within 1000 ft. of, and slopes down to the reservoir. Any storage of manure or materials that may contain pesticides, herbicides or other contaminants could be a serious issue to the reservoir. Any of these kinds of materials should be stored as far as possible from the water supply and the City of Watervliet should be consulted.
- The business entails the use of the heavy vehicles accessing the site from an easement over a private driveway off Hurst Road. The driveway also serves a private home. Ideally, a different access should be explored to prevent any disruption to the adjacent residential properties. If no other access is obtained, days and hours of operation should be limited to protect these properties from the heavy traffic.

Peter Lynch, Esq. Lynch & Hetman, PLLC, presenting: we had inadvertently referred to the zone as Agricultural, when it is RA3, and we had inadvertently sited Section 280-13 of the code when it is in fact Section 280-24.1 Apart from having the correct sections of

the ordinance, the provisions in the RA-3 zone with respect to Special Use Permits, effectively mirrored the formal Agricultural zone. We are proposing a landscaping business and is actually referred to in the ordinance as a landscaping contract facilities which is a special permitted use in the R03 zone.

Historically, the Wagner's had leased the parcel since 1959 and then owned since 1968 the 23.5 acre parcel of land. From 1959 forward, they were involved in an excavation business. About 2 years ago, the issue came up as to whether or not the use was permitted within the zone. We then applied for the Zoning Board of Appeals for an interpretation that it existed as a non-conforming use relying on the ordinance that had been adopted in the early eighties. This has been in effect since 1959. Back in April the ZBA denied the interpretation that the use existed as a non-conforming use because we started in 1959 and we did not exist prior to the 1953 ordinance, but gave us lead to apply to that Board for a SUP. This site is an isolated site and it exists as a former gravel mine. Mr. Wagener is involved in doing site work in construction. The site has been used for years to excavate materials from the site and materials from job sites went back to the site and stockpile. Then the materials were clean, separated for reuse from construction sites and used for high-level mulch soil.

The business that we are seeking for the SUP is to allow for this business to continue using this site to stockpile natural materials to reuse in their site work that they do in conjunction with their construction business.

In 1983, a building permit was issued for the construction of the metal building for storing their equipment on site. From 1983 forward up until a year ago, there really were not any issues on the site. But now the Zoning Board is determined that we were not grandfather in, and the only way that we can continue is by a Special Use Permit. We do have access over an existing road and it is a gravel road that we have a deeded right-of-way to.

There is one other criteria that I am confident that will come up tonight and that is impacts on other properties. During the ZBA process, we access the site along the right-of-way and do go by the home of Mr. & Mrs. Audi. This particular site, excavation, and gravel mine was there long before the Audi's brought their property. It's our contention that this site isolated where it is, does not generate noise, does not generate any kind of adverse impact on its surrounding neighbors and to the extent that there has been some dispute between my client and Mr. Audi. Our trucks do have to go by his home and his home is relatively close to the roadway. With that said this is the only access to the site.

When you are weighing and balancing the interest here, is that what we are really looking for you to recommend back to the Zoning Board, is that we are not really changing anything on the site. We do not have water and sewer servicing this site, and this is not the type of business where my client conducts a business or retail operation where people are coming and going. This is just a location for stockpiling and cleaning of the material and having a location for their materials for reuse.

Chairman noted for the record a letter referral from Albany County Planning Board, dated January 19, 2012, and their recommendation read as follows: Modify local

approval to include: 1. Notification of the application should be given to the City of Watervliet due to the fact that the City owned reservoir is adjacent to the property. (letter on file)

Chairman added that we do not have that communication from the City of Watervliet to see if they may or may not have any concerns.

Chairman asked if this site has a mining permit.

Mr. Lynch said it does not have a mining permit any longer. We have shown areas on the site where they have been reclaimed and are not engaged in the operation of a mining operation except, to the extent of up to 1000 cubic yards a year for which we do not need a permit.

Chairman stated: I think the statute is 1000 tons or 750 cubic yards. You might want to check the statute. If there is still mining going on, that is the limitation. If there was a mining permit, are they in compliance with the reclamation plan and everything that was part of that permit.

There was further discussion about mine land reclamation plan.

Chairman mentioned my other question is that there is an easement and there is a no fee title access. Is that the easement that reads: Also a private road or passway leading along said Hurst's land on a line to a private road or passway to the French Road, for the use of wagons, sleighs, teams, horses and cattle. Also, the privilege of using said private road leading to the French Road near the house formerly of Peter Siver or Charles Severson. (On file) Is this the easement?

Mr. Lynch was not sure.

Chairman asked about the hours of operations.

Paul Caputo wanted to know how many of these large trucks go back and forth everyday.

Fred Wagner owner, explained that there are not many trucks going in and out of there besides the low boys trucks moving some equipment in and out of there.  
The traffic is minimal.

Mr. Caputo wanted to know about the 10,000 yards of leaves stored back there.

Mr. Wagner explained that the town does not dump the leaves there anymore. I have met with three different departments with the DEC and they looked at the site and saw no violations. Also, the building on site was constructed in accordance with the town's regulations so that we can maintain our equipment.

Chairman asked for any comments from the audience.

Victor Caponera, Attorney for Mr. Audi, stated: Both of these properties were used before for gravel pits. That has long since past. My clients states that the rear of the property has been reclaimed 100%. I submit to the Board that the Wagner's property has not been reclaimed 100% as was required back in the 1987 variance that was granted to the Wagners property by the Zoning Board of Appeals. There were several meetings back then and I did submit a memo to the Zoning Board in opposition to what was previously applied for, which was the interpretation that was denied.

Mr. Caponera further explained that the reclamation plan requires that 5 acres be reclaimed in 1987 and five acres in 1988 and five more in 1989. The applicant came for an extension for a SUP, which at time that the gravel pit would cease operation, and no longer going on with a total reclamation by the end of 1991. There has not been a total reclamation.

My review of the files with DEC indicates that there was a fine imposed some years ago on the Wagners for failure to comply. There were also requirements that the applicant pay the expense of the Town Designated Engineer to annually review the operation of the pit to insure compliance with the SUP of 1987. I don't believe that any of this was done. The hours of operation were limited by the ZBA was another condition that was not adhered to.

Bottom line is when Mr. Lynch came before the Board, he requested that the ZBA grant the interpretation that the use can continue, but when it was determined that this town acted in 1953 stature, the zoning of this properties at that time was Agricultural. This use was not allowed.

Mr. Caponera suggested for Mr. Wagner to eliminate the existing easement and have an alternate access route. I further would submit to the Board to take in consideration the entire proposal and look at the hours of operation and the traffic. We want the Board to act in a reasonable way within the bounds of the law and make a fair recommendation.

Chairman asked about the DEC permit conditions and if there is a copy of the reclamation plan. .

Thomas Robert mentioned that it seems like there is some kind of semantics going on here with a lot of the regs and the conditions put on this for the mining portion of this. Now the language seems to be for the landscape contracting operation. It seems like there is two different things here. We are talking about all of the things that were suppose to be done with the mining and the conditions, and now talking about an entirely different business operation.

Chairman stated: It's a different use, and I am assuming that those conditions pertain to the mining operation that no longer goes on. The only issue was that it was supposed to be reclaimed and if it wasn't then that is a different issue.

There was further discussion about whether it was a mining operation, landscaping or construction operation. None of those uses were allowed back in 1987.

Chairman stated that this Board could recommend that if these easements are determined to be adequate for what they want to do, then there should be some reasonable conditions like hours of operation that can be placed on it. An alternate access way might be a better situation where you wouldn't be necessarily subject to restrictions on the use r

There was further talk on the hours of operation and the amount of traffic.

James Cohen wanted to know if Mr. Audi was aware of the conditions when he moved in.

Mr. George Audi explained that I was aware of it but was told that there is very minimal traffic. But now there is heavy trucks going in and out. I would wish that we could come to an agreement and for him to use the old back road. I agreed to help him out with the expenses to scrub the road off, brush around the road and give him a large amount of money to help with whatever Mr. Wagner would like to do. We just want to get the trucks away from our place.

Mr. Lynch did not think that the focus should not be on the mining operation conditions, and the road not being paved created back in 1987. The mining operation is ancient history.

There was further discussion about the site being reclaimed and the pond and the uses for the site.

Paul Caputo stated: We really need to look at this as a new application and not the past history of it. I agree with Ms. Weston comments about having a different access being explored to prevent any disruption to the residential home. Otherwise, the days and hours of operation should be limited to protect these properties from heavy traffic.

Chairman questioned who is supposed to maintain and take care of the easement. Will there be a maintenance agreement?

Chairman added if the access is proposed where it is, then we could propose reasonable conditions. The hours of operation is relatively enforceable but rather difficult was discussion about the number of trips per day. Consider limiting the number of trips per day as a recommendation and the hours if no other access road is provided.

Steve Walrath mentioned that the whole thing with the mining permit and the other uses going on have been going on the same time. The mining does not exist now, but the uses have been there and this has been ongoing for a long time, and has been going on since the Audi's purchased the property and resides there now. . As far as your recommendation for the hours of operations, and the number of trips, I would like to ask



that you keep in mind that all of this activity is seasonal activity and based on market conditions and construction.

Chairman entertained a motion to recommend the approval of Fred Wagner, excavating, landscaping business with the following conditions:

- Attempt to find alternative access route to better avoid single-family residence.
- In the absence of an alternative route, restrict hours and days of operation and volume of daily truck trips.

So moved by Thomas Robert, seconded by James Cohen and carried by a 6-0 vote by the Board.

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MEETING ADJOURNED: 9:50 P.M.

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**BECKMANN – 2261 Western Avenue**

**WAGNER – Maeosta Lane**