

**Town of Kinderhook
Planning Board Meeting
3211 Church Street
Valatie, NY 12184
August 18, 2022**

Draft

Minutes

The Town of Kinderhook Planning Board met on Thursday, August 18, 2022, at 7:00pm at the Town Hall. The Chairman called the meeting to order and the secretary called the roll.

A. Roll Call

Present:

Jonathan Cavagnaro, Chairman
Jake Samascott, Ag Member
Andy Howard, Town Attorney
Patrick Prendergast, Engineer
Dale Berlin
James Hogencamp
Nataly Jones, Secretary

Excused:

Jeff Pinkowski
Joseph Suafoa
Patrick Ball
Starlynn Di Angelo

Absent:

None

Also in attendance:

Various applicants and members of the public

B. Correspondence

1. Review of Minutes;
June 9, 2022 - Workshop
June 16, 2022 -Meeting
July 14, 2022 - Workshop
July 21, 2022 - Meeting
Mr. Hogencamp made a motion to approve the minutes as drafted. Mr. Berlin seconded the motion. All in favor. Motion carried.
2. Kinderhook Creek Preserve Wetland Mitigation Project – Request form DEC for Lead Agency;
A brief review and discussion of the issue ensued.
Mr. Hogencamp made a motion to affirm DEC’s wishes to assume lead agency status for this action. Mr. Berlin seconded the motion. All in favor. Motion carried.
3. Town Engineer’s Review Letter (Sun Communities);
Mr. Prendergast commented on the content of the letter with note to review of the SWPPP prior to DEC approval, and DOH review of the water and sewer plans and discharge permits.
4. Comments received from Community Members;
 - a. Letter from Beth St. Dennis and Miachael Shimazu (Sun Communities);
 - b. Emails received from Richard Forlani (Sun Communities);
 - c. Letter from Thomas Shepardson of Whiteman, Osterman & Hannah (Sun Communities);
 - d. Letter received via email from Martin Smalline and JoAnne Harri (Thomas Driscoll/HST Enterprises, LLC)

**Town of Kinderhook
Planning Board Meeting
3211 Church Street
Valatie, NY 12184
August 18, 2022**

Draft

- e. Affidavit in Opposition and Exhibits from Jeffrey Ouellette (Thomas Driscoll/HST Enterprises, LLC);

C. Public Hearings

- 1. 7:01pm - Cavagnaro, Matt and Dawn Marie, 1044 Newton Hill Road - Minor Subdivision, 33.-1-84;

Mr. Berlin made a motion to open the public hearing. Mr. Samascott seconded the motion. All in favor. Motion carried.

The notice as it appeared in the newspaper was read by the secretary (on file).

Mr. VanAlstyne, representing the applicant, addressed the board and the public and explained the location and scope of the subdivision proposal. He noted that the approximately 13-acre lot is proposed to be subdivided into two lots, one of approximately 6-acres, the other 7-acres. There is an existing house and barn on the lot which will be included on the 6-acre lot at the front of the parcel. The rear parcel is proposed to have a drive from the road for access to a house at the rear of the lot.

The Chairman invited the public to address the board in regard to this application.

Mr. Selva inquired about the purpose of the subdivision and the location of the house currently under construction. He had no objection to the proposal as presented.

As there was no one else from the public that wished to address the application, Mr. Berlin made a motion to close the public hearing. Mr. Samascott seconded the motion. All in favor. Motion carried

The State Environmental Quality Review (SEQR) was reviewed by the Attorney:
Part II: Impact Assessment of the EAF (Short Environmental Assessment Form).

- 1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations? *Proposed answer is no or small impact. Does not require any variances.*
- 2. Will the proposed action result in a change in the use or intensity of use of land? *Proposed answer is no or small impact.*
- 3. Will the proposed action impair the character or quality of the existing community? *Proposed answer is no or small impact.*
- 4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)? *Proposed answer is no.*
- 5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway? *Proposed answer is no or small impact.*
- 6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities? *Proposed answer is no or small impact.*
- 7. Will the proposed action impact existing:
 - a. public / private water supplies? *Proposed answer is no or small impact.*
 - b. public / private wastewater treatment? *Proposed answer is no or small impact.*
- 8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources? *Proposed answer is no or small impact.*
- 9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, water bodies, groundwater, air quality, flora and fauna)? *Proposed answer is no or small impact.*
- 10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems? *Proposed answer is no or small impact.*

**Town of Kinderhook
Planning Board Meeting
3211 Church Street
Valatie, NY 12184
August 18, 2022**

Draft

11. Will the proposed action create a hazard to environmental resources or human health? *Proposed answer is no or small impact.*

If the board was in agreement with the proposed answers, they could entertain a motion to issue a negative declaration on the environmental impact of the proposed action under SEQR.

Mr. Berlin made a motion to issue a negative declaration of the environmental impacts and approve the application as submitted. Mr. Hoegencamp seconded the motion. All in favor. Motion carried.

Fees in the amount of \$200 due upon approval.

2. Adjourned from May, 19, 2022 - Sun Communities/Sun Uncharted Kinderhook Resort, 58 Orinsekwa Road, Niverville, Tax Parcel IDs: 13-1-33.1, 13-1-33.211;

Mr. Samascott recused himself from the proceedings.

The board did not have a quorum to open the public hearing. No further formal action can be taken at this time. The reason for Mr. Samascott's conflict of interest and recusal was noted.

Mr. Prendergast addressed his comment letter again.

The applicant had no questions and nothing new to add or submit.

Note was made to the correspondence received and noted..

Mr. Samascott returned to the meeting.

3. 7:05pm - Driscoll, Thomas/HST Enterprises, LLC, 332 CR 28B, Valatie - Home Occupation, 13.-1-29;

Mr. Berlin made a motion to open the public hearing. Mr. Hogencamp seconded the motion. All in favor. Motion carried.

Mr. Driscoll addressed the board and distributed revised site schema for review. He described the location of his property. He reviewed the scope of his home occupation proposal. Mr. Driscoll stated that he converted an existing barn into a gymnasium space with volleyball nets and basketball hoops. He coaches for Legion Volleyball Club and runs youth league basketball camps. He noted that it is private, not open to the public or memberships. He also hosts firearms safety training classes. Mr. Driscoll stated that there is no live fire used in the firearms classes.

The Chairman invited the public to address the board with comments and questions regarding this application.

Ms. Nancy Kim inquired about and sought confirmation that there would be no live fire on site in conjunction with the firearms safety training classes.

**Town of Kinderhook
Planning Board Meeting
3211 Church Street
Valatie, NY 12184
August 18, 2022**

Draft

Ms. Carol Winn stated the location of her property, across from the driveway of the applicant on RoundLake Road. She expressed her disappointment that this was not a previously approved use. She was not aware there had been no permits issued as the use has been ongoing for some time. She expressed her concern that a business owner would not go through the proper channels to get approval. Additionally, she expressed her concern and disappointment about the condition of the parking area, noting a considerable amount of mud. Again, she felt a responsible business owner would see to issues such as this. Ms. Winn also addressed the additional use, noting videography and photography. She was of the opinion that these are a lot of uses for a home occupation. She is confused by and disagrees with the scale of and process of the business operation. She is also concerned about the amount of traffic entering and exiting the property onto a small road. Ms. Winn was of the opinion that this is more than one occupation and needs additional description of the various uses proposed.

Mr. Driscoll addressed the board regarding the addition of the use for photography. He spoke about his process of learning photography. He addressed frustration with limitations of access due to Covid and vaccination status. At the time he spoke with a photography instructor about having small private classes on his property. Mr. Driscoll addressed the questions about the diligence of his business ownership, stating he couldn't plan for Covid. Additionally, he stated that Covid and the subsequent shutdowns was the reason the Legion Volleyball Club started using the facility. Mr. Driscoll stated that he did not want to invest in improvements to the parking area if we would not receive approval from the planning board. He addressed the muddy conditions of the area stating that it is not always muddy.

Mr. Adam Vooris addressed the issue raised about child drop-off and pick-up when the driveway has been muddy, noting that families were instructed to use the driveway loop for drop-off and pick-up; children have not been dropped at the road.

Mr. Cavagnaro noted that this process is an attempt to rectify and improve some of what has occurred in the past.

Mr. Thomas Winn stated he is in favor of the proposal and is supportive of the children's activities and the firearms training. However, he has concerns about the number of cars and the mud. While he understands the applicant not wanting to make significant improvements prior to formal approval, he thought it negligent to not have installed some crushed stone at the least to mitigate the situation. Mr. Winn also expressed concern about the scope and number of business functions proposed.

Ms. Winn inquired why this application is just now before the board. She is bothered by the process and the number of businesses proposed and is confused. Ms. Winn stated there is an impact to her through the additional traffic on the road and headlights.

Mr. Vooris spoke about the positive impact the operation has had on the community and children.

Ms. Kim inquired about the entrance from Round Lake Road and reviewed the plan for clarity.

Ms. Winn spoke about the protocols for starting a business noting that those protocols were not followed. She stated she has trust issues as a result of the process. She is concerned about the umbrella under which the multiple uses are housed and the proposal seems bigger than a home occupation. Ms. Winn did not disagree with the value of sports programs for children.

**Town of Kinderhook
Planning Board Meeting
3211 Church Street
Valatie, NY 12184
August 18, 2022**

Draft

Mr. Jeff Mayes commented about the positive nature of what the applicant is doing.

Mr. Ouellette addressed the board and noted that he is an adjoining property owner to the applicant. Mr. Oullette stated they live in an AR zone, not an industrial district where many of these uses are permitted. He spoke about the history of the property. He noted that agricultural land use is defined as the use of land, buildings, or structures for the raising of non-domestic animals, livestock, handling or growing of plants for food or crop production. Mr. Oullette disagreed with the applicant's statement that physical fitness and agriculture as one in the same use. Mr. Oullette submitted an affidavit stating that the application is defective and does not comply with town code. He requested that the board take a hard look at the issues raised prior to their consideration and making a ruling on the application.

Mr. Driscoll addressed Mr. Ouellette's comments about the comparison of physical fitness and agriculture. He stated that he is not using the property for agriculture and the impact made to the environment were less than that of agricultural use in regard to fertilizers, noise, etc.

Mr. Berlin made a motion to close the public hearing. Mr. Hogencamp seconded the motion. All in favor. Motion carried.

Board discussion ensued. Mr. Hogencamp stated he reviewed the code and from a general perspective, it is not clearly defined where we go from a commercial or where we're at a home occupation use. He referenced an example of a home occupation in his neighborhood. Mr. Hogencamp stated that when Mr. Driscoll brought up the HST prospects, where it was anything of concern to neighbors, it appears to be an umbrella over anything and everything that could be a training use. Mr. Driscoll already understands we are not going to permit live firearms training. Conversely, when Mr. Driscoll bought the property, the original use of the barn under the town code was as a garage. Mr. Hogencamp spoke to the process by where we got to this point, citing the process from the property owner changing the use of a structure, a complaint being made and a violation issued by the code enforcement officer, it is then up to the homeowner to apply for a home occupation. Mr. Hogencamp addressed the troubling issue of how many cars and how often is it going to happen. Mr. Hogencamp cited a number of other organizations conducting youth programs with note to CYO Basketball, Chaos softball and baseball, among others. If the use is deemed to be more of a health club, than a training facility, then the use is clearly not allowed; and if it is a training facility that is frequently used, we have gone beyond a home use to a commercial operation that happens to be on the property, rather than renting a facility as the other programs do.

Mr. Berlin noted that the idea of home occupation versus commercial, if it is a commercial, money making venture, his concerns are around the parking and the access from Round Lake Road. Entrance to the property from Route 28B would alleviate some of the neighbors' concerns and impact on the neighbors. Additionally, Mr. Berlin addressed the maximum space allowable for a home occupation, not more than 25% of the gross floor area of the residential unit or 1,500 square feet of an accessory residential structure. Mr. Berlin also noted hours of operation stipulated in the code. his concern about the compliance issues of the size of the structure.

Mr. Hogencamp inquired if the board can limit the hours of operation, can they also limit the frequency of operation.

**Town of Kinderhook
Planning Board Meeting
3211 Church Street
Valatie, NY 12184
August 18, 2022**

Draft

Mr. Howard read from section 250-19A(1)(d)(8) regarding board discretion when limiting the hours of operation. Additional design and parking standards as stipulated in the section were also reviewed. Mr. Howard also noted the extent of use within a qualified structure shall not exceed 1,500 square feet, and in accordance with § 250-19A(1)(b). Additionally, Mr. Howard also noted that if the board were to take favorable action on the application, it would be with the condition that there would be no live fire allowed. Mr. Howard also noted that what home occupations are is not specifically defined in the code on purpose.

Additional discussion ensued regarding the amount of traffic on Route 28B and alternatives to ingress and egress from the property.

Mr. Samascott was of the opinion that the home occupation idea is a little tricky due to this proposal being bigger than what is typically thought of as a home occupation. He reviewed some of the points of the home occupation and suggested the board take more time to review before making a determination.

Mr. Hogencamp addressed the need for screening of the parking area.

Mr. Driscoll had a few closing words regarding limiting the square footage which would be prohibitive for any sports activity.

Mr. Cavagnaro offered that if the use was outside, the square footage requirements wouldn't be an issue.

Mr. Hogencamp stated he has most trouble with the amount of cars and frequency of use. The use being proposed would change the look of the neighborhood from residential to commercial.

Mr. Berlin commented about the impact of the entrance from Round Lake Road being more significant than that from Route 28B.

Mr. Howard commented that the public hearing was closed and the board can deliberate on the application as submitted. If any significant changes were made to the application, the public hearing may need to be re-opened.

D. Old Business

1. Seaboard Solar, C&M Farms/Greenhouses LLC at 321 Running Creek Rd, Valatie; Tax ID # 22.-1-7.111 & 22.-1-9;

Mr. Rodriguez addressed the board and minor changes. He submitted detailed renderings of the underground connections and some photographs from another project of what the pad mounted equipment might look like. It was stated that the site visit with the DEC is scheduled for tomorrow. The plans were reviewed with specific attention to the screening plan.

Mr. Hogencamp addressed the response from National Grid. Discussion ensued regarding the CESIR report from National Grid which stated no new lines would be required. If it was determined at a

**Town of Kinderhook
Planning Board Meeting
3211 Church Street
Valatie, NY 12184
August 18, 2022**

Draft

later date that new or additional poles were required, the applicant would have to return to the planning board.

Mr. Hogencamp made a motion to schedule a public hearing for Thursday, September 15, 2022, at 7:07pm. Mr. Samascott seconded the motion. All in favor. Motion carried.

Mr. Hogencamp made a motion to refer the application to the County Planning Board. Mr. Samascott seconded the motion. All in favor. Motion carried.

2. Katchkie Farm, 745 Fischer Road, Kinderhook - Site Plan Review and Special Use Permit;

Mr. Ronsani requested via email that the application be removed from the agenda pending completion of the survey.

3. Hendlin, Beth, DDS PLLC, 3321 US Route 9, Valatie, Tax Parcel ID: 23.-1-6 - Site Plan Review for Change of Use;

No one was in attendance to represent this application. The secretary noted an update via email.

4. Open Space Institute and Equity Trust, US Route 9 - Minor Subdivision, 53.-1-19.111 and 53.-1-22.200;

Ms. Jodi Bolluyt and Mr. Peter VanAlstyne addressed the board and distributed plans for review. They explained the scope of the proposal to change lot lines of existing parcels owned by OSI and Equity Trust respectively. It was noted that no new lots would be created and no development is proposed. Ms. Bolluyt stated Roxbury Farms has a 99 year lease to farm the land. The wetland areas were identified. Easement language for access to the lower parcel through an existing farm road has been drafted. Fees were discussed and determined to be \$200. A discussion ensued about the potential of creating a landlocked lot. Mr. Howard read from section 215-25 of the code in regard to avoidance of unnecessary hardship, "Where the Planning Board finds that extraordinary and unnecessary hardships may result from strict compliance with this chapter, it may vary the regulations so that substantial justice may be done and the public interest secured, provided that such variations will not have the effect of nullifying the intent and purpose of the Official Map."

Mr. Berlin made a motion to schedule a public hearing on Thursday, September 15, 2022, at 7:01pm. Mr. Samascott seconded the motion. All in favor. Motion carried.

5. JM Auto Repair, 3337 US Route 9, Valatie - Site Plan Review for Change of Use

Mr. Mayes addressed the board and submitted a prior approved site plan for review. Mr. Gary LeGuesse, property owner, was also in attendance. Mr. Mayes also had photographs to show the parking area, ingress and egress and lighting. Location of the dumpster was discussed as was lighting and signage. There is an overhead door at the side of the building. The board requested multiple copies of a new survey showing details be submitted.

The process of application, public hearing and approval was reviewed for the applicant.

**Town of Kinderhook
Planning Board Meeting
3211 Church Street
Valatie, NY 12184
August 18, 2022**

Draft

E. New Business

1. None;

F. ZBA Opinions

1. None;

G. Liaisons

1. Village Planning Boards;
2. Town Board;

H. Other

1. Public Comment

Mr. Watt addressed the board regarding the Seaboard Solar application. He was confused about what had been submitted from the consultant and National Grid. He also expressed concern about the DEC wetlands and the loss of prime farm land. Mr. Watt addressed the significant impact of an 80 acres of solar farm. He was of the opinion that the screening proposed was insufficient. Additionally, Mr. Watt addressed his concerns about malfunctions of installations and the danger of breakage and fires in substations, and noted a recent fire in Ghent. He noted several other installations proposed in the county and stated that these installations do not provide solar power to the community. Mr. Watt stated that there is clearing of trees on the site.

Discussion ensued regarding what is entailed in county review.

Mr. Berlin made a motion to adjourn the meeting. Mr. Samascott seconded the motion. All in favor. Motion carried; meeting adjourned at 9:24pm.

Respectfully submitted,

Nataly D. Jones, Secretary