



300 Westage Business Center, Suite 380
Fishkill, New York 12524
T 845 896 2229
F 845 896 3672
cuddyfeder.com

Jennifer L. Van Tuyl
jvantuyl@cuddyfeder.com

December 2, 2022

BY EMAIL

Hon. Bruce Flower, Chair, and members of the Planning Board
Town of Wappinger Planning Board
Town Hall
20 Middlebush Road
Wappingers Falls, NY 12590

Re: December 5, 2022 Agenda: Subdivision Plan for Ketchamtown Land
Development LLC (Dylan Aguado), Ketchamtown Road, two flag lots
Tax Grid No. 135689-6157-03-070275 ("the Parcel to be Subdivided")

Dear Chairman Flower and Board Members:

We previously submitted a letter regarding Ketchamtown Land Development LLC's (Dylan Aguado) subdivision application in advance of the October 3rd Planning Board meeting. A copy is enclosed for your reference.

At that meeting, the Planning Board and Planning Board Attorney discussed at length the prior litigation and the recorded settlement Agreement granting the Bosmans an easement and ultimate right to purchase the garage and lands immediately surrounding it. The Applicant's resubmission does not address or resolve this important issue.

The subdivision plat fails to show and delineate the Bosman's easement

Mr. Aguado's recently submitted subdivision plat, prepared by Povall Engineering, PLLC, dated September 12, 2022, last revised November 7, 2022, does not meet the Town Code's subdivision requirements. The Town Code explicitly mandates preliminary and final subdivision plats show the location, status, and dimensions of any existing easements impacting the proposed subdivision area. *See* Town Code § 217, Appendix A.

While the plat no longer indicates that the existing garage is to be removed (the new language is: "EXISTING STRUCTURE TO REMAIN"), it does not delineate the Bosmans' easement for the garage or describe the Bosmans' rights to acquire title to the land where the garage is located upon approval of the subdivision application. This creates an erroneous and misleading implication that Mr. Aguado has unencumbered ownership of the lands underlying and surrounding the garage, which is contrary to the terms of the recorded Agreement.

5481287.v2



December 2, 2022

Page 2

The subdivision plat should show the proposed lot line realignment around the garage

We reiterate that the rights granted by the recorded Agreement are intrinsically related to the subdivision before the Planning Board. The Applicant should be required to show on the plat the proposed lot line realignment for the transfer of the lands underlying the garage to the Bosmans. This is an integral part of the “whole action” under the State Environmental Quality Review Act and avoids needless duplication of Town effort.

Further, the input of the Department of Environmental Conservation (DEC) is critical to determining if a DEC wetland crossing will be permitted and if DEC will require a shared driveway as a predicate to approval. This input and the submission of a shared driveway agreement that implements DEC’s requirements, as well as the Town’s, should be before the Planning Board before any public hearing is scheduled.

The proposed shared driveway can easily be moved further south to a more central location

We request the plans be revised to show a more central location for the driveway, as will be shown in a forthcoming sketch prepared by the Bosmans’ engineer, Mike Gillespie, P.E.

We thank the Board for its consideration.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'JL Van Tuyl', is written over a light blue circular stamp.

Jennifer L. Van Tuyl

cc: (by e-mail)

James Horan, Esq.

Jon Bodendorf, PE

Malcolm Simpson, Planner

Barbara Roberti, Director of Strategic Planning & Municipal Codes

Bea Ogunti, Planning Board Secretary

Rod MacLeod, Esq. Attorney for Mr. Aguado





300 Westage Business Center, Suite 380
Fishkill, New York 12524
T 845 896 2229
F 845 896 3672
cuddyfeder.com

Jennifer L. Van Tuyl
jvantuyl@cuddyfeder.com

October 3, 2022

BY EMAIL

Hon. Bruce Flower, Chair, and members of the Planning Board
Town of Wappinger Planning Board
Town Hall
20 Middlebush Road
Wappingers Falls, NY 12590

Re: October 3, 2022 Agenda: Subdivision Plan for Ketchamtown Land
Development LLC (Dylan Aguado), Ketchamtown Road, two flag lots
Tax Grid No. 135689-6157-03-070275 ("the Parcel to be Subdivided")

Dear Chairman Flower and Board Members:

The above matter is on the Board's agenda this evening for discussion, and we understand that the present owner and applicant ("Applicant") may be requesting the scheduling of a public hearing on their proposed subdivision to create two flag lots.

This firm represents Garth Bosman and Kathleen Patrick, (hereafter, collectively, "the Bosmans") owners of the property that immediately abuts the northerly side of the proposed new driveway, near its entrance to Ketchamtown Road.

We believe that it is important that the Planning Board be aware of the past litigation between the Bosmans and the prior owner of the Parcel to be Subdivided, as that litigation directly impacts the proposed subdivision layout.

Based on that, we believe it is premature for the Planning Board to set a public hearing on this application.

Litigation History between the owners of the adjoining parcels:

In September 2014, the Bosmans instituted litigation in Supreme Court Dutchess County, seeking to quiet title/adverse possession relating to an existing garage on land to the south of the Bosman driveway, including both the land under the garage itself, and the land leading up to the garage.

In September 2016, the parties settled the litigation between them in a settlement agreement signed by both parties, and recorded in the Dutchess County Clerk's office on November 15, 2016 as Document # 02-2016 7882, which agreement provided for the creation of an easement to the

5418168.v1



October 3, 2022

Page 2

Bosmans for future access to the garage, and provided that the Agreement shall be binding on Grantor (Lopane) and all subsequent owners of the Grantor's Property.

There are several provisions of this Agreement that have not been complied with, either by Joseph Lopane or Mr. Aguado:

- The Agreement required that Mssrs. Lopane/Aguado would design "an access road" from Ketchamtown Road, in order to develop his property and would make "reasonable and good faith efforts" to design such access road in a manner that allows for the continuation of [the Bosman's] rights hereunder, to wit: continued use of the existing garage pursuant to an easement to be granted to the Bosmans by Lopane/Aguado.
 - The plans before this Board appear to violate the provisions of the agreement as they summarily show the garage as "EXISTING FRAME STRUCTURE TO BE REMOVED."
 - The Bosmans have requested to have their engineer discuss the plans with Mr. Polvall, but to date the representatives of Applicant Aguado have not agreed to any such discussions.
- The Agreement (par. 5) required Mssrs Lopane/Aguado to provide the Bosmans with a copy of any proposed development plan, showing the location of the proposed "access road" in relation to the proposed easement to be granted to Bosman for access to the garage, **at least 30 days prior to submitting any application to the Town Planning Board.**
 - No such notice was provided to the Bosmans, either of the August 1, 2022 meeting, or of tonight's meeting, and all appearances before the Planning Board were without compliance with the obligations in the Agreement.
 - No copies of the plans have ever been provided to the Bosmans. Instead, the Applicant's consultants advised the Bosmans to "get the plans from the website." To comment meaningfully, the Bosmans require access to CAD files. A printout of a pdf from a website is inadequate.

The above matters are relevant to the scheduling of a public hearing:

This recorded Agreement relates to private real property rights, which ordinarily are to be enforced through court proceedings. Indeed, the recorded Agreement provides that, "The Court retains jurisdiction of this settlement agreement and either Grantor or Grantee may seek Judicial Intervention to enforce any provision." The Bosmans may well seek access to this remedy.

C&F: 3122857.1



October 3, 2022

Page 3

But this Agreement also directly relates to the land development/subdivision process. It requires Joseph Lopane and his successors to “make reasonable and good faith efforts” to accommodate a proposed easement to the Bosmans to continue use of the garage. It is therefore appropriate that the Planning Board be fully familiar with the obligations under the Agreement before setting a public hearing to move forward with a plan that flies in the face of the recorded Agreement.

The Bosmans also want to avoid any assertion later that they did not act promptly in enforcing their rights after they became aware of the instant application.

The Bosmans have attempted to work with the new owner and its consultants, and stand willing to perform all their obligations under the Agreement to work out a plan that allows Mr. Aguado the full development of his land, while also accommodating access to the existing garage by the Bosmans. However, we believe it is premature to set a public hearing at this point, and believe that the submitted plans should include, at the very least, a development scenario that can preserve the garage and the Bosman’s access to it.

Very truly yours,

A handwritten signature in blue ink, appearing to read "JL Van Tuyl", is written over a faint, light blue circular watermark.

Jennifer L. Van Tuyl

cc: (by e-mail)

James Horan, Esq.
Jon Bodendorf, PE
Malcolm Simpson, Planner
Bea Ogunti, Planning Board Secretary
Rod MacLeod, Esq. Attorney for Mr. Aguado

C&F: 3122857.1

