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**Town of Shandaken Planning Board
 Minutes for Regular Monthly Meeting
 April 14, 2021**

The regular monthly meeting was called to order with the pledge of allegiance at 7:04pm.

Roll called by acting Secretary to the Planning Board Sarah Pellizzari, and attendance was recorded as follows:

Cliff Rabuffo, Chair	Present
Art Christie	Present
Joanne Kalb	Absent
John Horn	Present
Allen Shiner	Present (via msteams meet)
Sam Spata	Present (via msteams meet)
Vivian Welton	Present

Roll Call Summary: 6 Present, 1 Absent

Others Present: Howie McGowan (CEO,) Via msteams: Ellen Hart for SLR, Mark Moriello lawyer for Aurum and Firelight, Matt Rudikoff for Aurum, Allan Dumas, Matt Moss, Dr. Joe Diamond historian for Firelight.

Minutes:

Motion was made by Board Member Welton to accept the minutes from the previous meeting as written, seconded by Board Member Christie. All in favor.

Communications:

The Board is in receipt of an email from Brent Gotch regarding training classes for their continuing education. Chair Rabuffo reminds the board to email Secretary Pellizzari as to which classes they would like to take.

Old Business:

Firelight III, LLC

Site Plan Review applicant

Chair Rabuffo first requests clarification from Ellen Hart SLR representing the Town of Shandaken Planning Board as to where the SEQR process is. To which Ellen Hart responds the board is waiting to hear back from SHIPO (State Historic Preservation Office) who requested phase 1b study. Ellen Hart also states the board is waiting to hear back from Lisa Massie who works for the DEC regarding timber rattle snakes. Chair Rabuffo asks the board if they all read Firelight's response to a phase 1b study that SHIPO requested. Once they all confirm that they had Chair Rabuffo asks for historian Dr Diamond who represents firelight in this matter to explain why the phase 1b study may not be necessary. Dr Diamond proceeds to explain that a vast majority of the project is raised river cobbles with very little soil deposit that continue to wash away and back in. He continues to explain in the past this was probably much worse. He expresses that if there were anything there it would have been brought down stream and deposited in the Ashokan reservoir. Chair Rabuffo asks Dr Diamond what his opinion is to why SHIPO would want this phase 1b study. Dr diamond refers to an article as an example as to why that came out ten years ago in regard to flooding in the Shenango Valley which they found deep inundated sites in the flood plain area out there which resulted in using back hoes. Dr Diamond has used back hoes in the Esopus areas and states there is mostly cobbles in this area and there isn't a lot of soil deposit there. And certainly not a lot of silts and sands which leads him to believe there won't be anything there. Dr Diamond states it's also in a restrictive area where if you have high water, it washes everything away. Matt Moss from Firelight asks to jump in and states that Firelight is not objecting to do a phase 1b, however wants to clarify if the SEQR determination can still happen without the results from the phase 1b or do they have to wait on the results. Dr Diamond had a conversation with the group at SHIPO who do the phase 1b study and they agreed they can do the study in a less restrictive area of the property where flooding does not occur as often and is outside of the flood zone and dig the required number of holes and sift through the soil to make sure there are no artifacts.

Chair Rabuffo reminds the board that they are required as a board to make a SEQR determination and take a hard look at all the facts be able to make a negative declaration of adverse impact. SHIPO gave this report to the board in March and was turned in shortly after received by the board within a week and no one expected SHIPO to request a phase 1b and the applicant is requesting the board to make a negative declaration without the study based on what Dr. Diamond has said. Chair Rabuffo reminds the board to make a decision whether they need this study to make their determination or have do they feel they are comfortable with the information they have received and okay to move forward.

Chair Spata follows up with a question for doctor diamond in regard to his experience in dealing with SHIPO a historical article or publication are looked at to lend any information. Doctor diamond says that is no longer a requirement from SHIPO and was stopped in 2005. Doctor diamond says on a personal. It's he looked at historical and pre historical (pre-colonial) publications on this site and there wasn't anything Native American related. Board member Weldon asks if the board is able to make a neg dec without having response back yet on the timber rattle snakes yet. Ellen Hart SLR states as her advisory role to the board there are things to note the board is responsible for assessing environmental impacts for determining neg dec which will require them to look at the context, the probability of the occurrence, the duration of impact, irreversibility of impacts, and geographic impact which is a tall order

re them to look at the context, the probability of the occurrence, the duration of impact, irreversibility of impacts, and geographic impact which is a tall order for a board. To which she says by the board taking a thorough assessment it shows they are taking a hard look. She also continues to state it's entirely proper to rely on outside feedback i.e. Dr Diamonds report to assist them in their decision. Ellen Hart SLR says that as her advisement to the board it would be good to hear SHIPO's response to the letter. She also reminds them once again there is still a response needed from the DEC. Matt moss asks to add to the point that in regard to Firelight as they are willing to adhere to the phase 1B study for SHIPO they are also willing to implement any matter they see fit if the DEC come back with anything in regard to the timber rattle snakes. They are confident from their own study done on the site that there isn't a habitat suitable for the rattle snakes. They stand ready to do any mitigation that the DEC may recommend. Matt Moss explains to the board it is important to them to keep the process moving because it is a seasonal business and delays due to Covid have put them in a little jeopardy. Dr Diamond is asked how long a typical time span for SHIPO to do a phase 1B survey to which his answer is roughly three weeks. Board member Spata offers his opinion that he is comfortable with a neg dec. His opinion is not based on the economic hardship of the applicant but because construction will be monitored and should something be uncovered that he knows they will stop work and accommodate whatever has occurred. Which can prevent something irreversible from happening. Mike Moriello the lawyer for Firelight agrees with Sam and states so in his memorandum to the board that the board is allowed to resend a neg dec or amend it should they see fit if there were to be something that comes up. As there can't be conditional to the neg dec there can be voluntary actions from the applicant offered up ahead of declaring a negative declaration. All board members present agree with board member Spata in the idea that should something come up that the applicant has voluntarily stated they would stop and re address. This is based on the reports they have received of an unlikely hood that anything will arise. Ellen Hart SLR clarifies that the board is happy to move forward with a neg dec regardless of hearing back from Lisa Massie from DEC and not doing a phase 1b survey with SHIPO. Chair Rabuffo reminds everyone that the timber rattle snake den is across the street and up the mountain. It's decided that the board will review the negative declaration at the next monthly meeting. Which will be at 7pm on May 12, 2021.

Board member Christie makes a motion for a public hearing for a site plan review/special permit occurs at 715pm on May 12 2021. Board member Welton seconds the motion.

Role call votes as follow:

Cliff Rabuffo yes
Art Christie yes
John Horn yes
Joanne Kalb absent
Sam Spata yes (via msteams)
Al Shiner yes (via msteams)
Vivian Welton yes

6 yes 0 no 1 absent

A Public Hearing for Site Plan Review/Special Use Permit for Firelight III, LLC Firelight Phoenicia camps is set at the Town Hall of Shandaken on May 12, 2021 at 715pm.

Aurum

Matt Rudikoff speaks on behalf of Aurum which is an applicant for a site plan review/special permit. Matt Rudikoff comments that he had a conversation with Ellen Harts SLR that the Board is still expecting to receive an updated site plan review in regard to drainage, architectural approaches and the schematics as to how to deal with it. As well as wetland maps. Matt Rudikoff says he spoke with Luke Interrante, design firm for Aurum in regard to this submission who claims it was made to the Planning Board in February. However, by not having these plans submitted it makes sense to Matt Rudikoff as to why they haven't had any feedback from the Board. If in fact the Board did review their submissions of an updated site plan it is Matt Rudikoff's understanding that they as an applicant are in a similar position as Firelight III, LLC, and just waiting to hear feedback from Lisa Massie from the DEC on the timber rattle snake den. Since the Board's last meeting Matt Rudikoff states that they have made a submission to Lisa Massie in regard to the rattle snake den as to what kind of measures she would like them as an applicant to possibly consider. Matt Rudikoff states they are also waiting for feedback from the DEC DEP and Department of Health. Which makes him confident they submitted their updated plans to the Board, because these are the same plans they submitted to those agencies. He claims that since they don't have much of an environmental impact, they would like to continue on in next procedural steps such as referral to county and get a neg dec draft. It is their hope as well they could have a similar arrangement in regard to a site plan review public hearing as Firelight III, LLC applicant had scheduled. Ellen Hart SLR comments that in regard to lead agency it was everyone's understanding that Aurum was going to look into receipt of circulation. Where Mike Moriello lawyer for Aurum comments that an affidavit signed by Aurum stating when it went out would be helpful. Matt Rudikoff states that a letter confirming receipt of a circulation package should have gone out by the DEC, and to look for a copy at the Town Hall. Ellen Hart SLR also asks when the applicant thinks their revised EAF went out, because she is not familiar with that happening. Matt Rudikoff states that he has to check on what happened because he is unsure. Ellen Hart SLR reminds him that they had said they the applicant wanted to send it out to make sure it was handled. Ellen Hart SLR also requests any revised plans be re submitted to the Town and to her. Ellen Hart SLR comments she is comfortable with them submitting a part 2 of the EAF. At this point Ellen Hart SLR speaks to the audience in regard to Public Hearings for this project. She explains in March the applicant requested a Public Hearing be scheduled by the Town Board under the SEQR process. It was their hope they could get feedback from neighbors and abutters and have that information be used in their updated site plan application. Upon further investigation it turns out the SEQR Public Hearing cannot be held until the Planning Board makes a determination of significance either positive or negative declaration on the proposed project. This mandatory timing on the Public Hearing stems from a legal case Kitteradge vs. The Town of Liberty which found that the Planning Board must make a SEQR determination before the Public Hearing is held. Ellen Hart SLR emphasizes to the public that a Public Hearing will be held as part of the review process of this applicant. It will either be held after a negative declaration has been issued and if an environmental impact statement is not required it will be held as part of the site plan review/special use permit. This hearing will notify abutters and neighbors via certified mail a minimum of ten days prior to happening. It will also be posted in the Town web page, along with a legal notice submitted with the Daily Freeman newspaper. Another possible way a Public Hearing may be held would be if a positive declaration was determined by the Board as a part of the environmental impact statement in addition to the site plan review process. Chair Rabuffo makes the next steps clear for this applicant by requesting the re circulate for lead agency, and provide written proof as to such. A draft EAF part 2 be submitted by Mike Moriello the lawyer for Aurum. As well as a draft neg dec

for Ellen Hart SLR to review, along with the revised site plan. This concludes Aurum's business before the Planning Board tonight.

New business:

Lot Line Adjustment

Denis Ryan lot line revision represented by his surveyor Daniel McCarthy discusses the hardship with the applicant in regard to encroach meant. Mr. McCarthy explains to the Planning Board Denis Ryan had built a shed and bluestone patio that encroaches onto the neighbor's property about 20 ft. When the neighbor went to sell the property next door instead of having Denis Ryan tear down the shed and blue stone patio, she looked to sell Denis Ryan an additional 25 ft of land. This property line runs from the yard to about 100 feet back. Originally the line was about 420 feet. Denis Ryan will acquire about twenty feet or in acreage it's about a .10 of an acre. Which will be added to his existing 9/10's of an acre lot which will give him roughly one acre. The neighbor selling off the land has around 2.4 acres. The existing zoning is residential 3 acre and, in this situation, the two lots in the application are preexisting. Chair Rabuffo comments that this was very thorough, and this applicant has presented their application at the previous workshop to get any initial feedback from the board or comments. Chair Rabuffo states that they are both small lots and this helps move everything in the right direction. Chair Rabuffo regards this as the best possible solution. Board Member Welton makes a motion to accept the application for lot line revision. Board Member Christie seconds the motion

Role call vote as follow:

- Cliff Rabuffo yes
- Art Christie yes
- John Horn yes
- Joanne Kalb absent
- Sam Spata yes (via msteams)
- Al Shiner yes (via msteams)
- Vivian Welton yes

6 yes 0 no 1 absent

The Lot Line Adjustment application from Denis Ryan has been approved by the Planning Board as submitted.

Other business

CEO McGowan comments that he spoke with Don Brewer a local surveyor in regard to two parcels that have been purchased by a single party. One of which has a .5-acre lot and the other of which is a .25-acre lot. The applicant would be purposing to combine the two lots. To which CEO MCGOWAN asks the Board if this would have to be presented to the board, or can it go the other channels and be combined and notify county? Board Member Christie asks If both properties have a dwelling. To which CEO McGOWAN responds that the .25 acre lot is vacant land. The .5 acre lot has a dwelling. The boards response is to have the applicant present in front of the board to have a recording in the minutes and in front of the town. Then the map can go to the county and change the section block and lot and merge them together. Chair Rabuffo

asks them if this is an application for a lot line adjustment. It's CEO McGowans understanding in our town code if two undersized lots are owned by the same person they should combined.

The next comment under other business is mentioned by Board Member Christie. He questions with the legalization of marijuana who's responsibility it will be between the Town Board or the Planning Board as to putting it in the code book as a permitted use. Board member Christie questions whether this is the Planning Boards or Town Boards request to the Zoning Board of Appeals to adopt this into our zoning laws. Chair Rabuffo poses that Secretary Pellizzari draft a letter on behalf of the Planning Board for the recommendation to the Town Board to find a way to adapt this into the Town of Shandaken zoning code.

CEO MCGowan brings up another item for the Planning Board to take a look at which is Short Term Rentals. STR. CEO McGowan states that there is an STR committee that has been in the process of coming up with guidelines for STR's in The Town of Shandaken. CEO MCGowan states that while that committee works on it with no result as of yet, the Town of Shandaken is being inundated with short term rentals and no guidelines. CEO MCGowan ask the Planning Board if they think they should review the STR committee results and make a suggestion to the Town Board? It's Board Member Spatas opinion that because that committee is comprised of representatives of each board. I.E. Planning Board, Zoning Board of Appeals, and Town Board, that the STR's committees' purpose is to report any recommendations to the Town Board. Board member Spata states it serves no purpose of having a mediator. Chair Rabuffo requests for Secretary Pellizzari to draft a letter from the Planning Board to the Town Board asking where the process is on the STR committee. CEO McGowan comments that by not having any result from the STR committee to date it puts the Planning Board in many predicaments. One case in point being the applicant from Norsdale who purchased a preexisting 4-unit motel and wanted to operate as an Airbnb. Board Member Welton questions if the structural work was done to all the codes of the Town of Shandaken Building and Zoning laws why can't there be a Certificate of Occupancy given for the work. CEO MCGowan says he is trying to get the ball rolling on STR because of how quickly it is happening in this town. Board Member Christie agrees the situation is getting complicated quickly. He states an example as to where multiple family members are buying residential homes as an LLC, and then becoming an STR right away. Board Member Shiner states that you can't stop trusts or corporations from buying properties. Board Member Shiner makes the point it's all about use not who owns it. To which Board Member Christie agrees. Board Member Spata comments with a solution for the Norsdale applicant who has been referenced earlier as it being an accessory use to which has been updated. This operated in the past as a four-unit motel, and has now been brought to use and updated so should be considered an accessory use. If the owner of Norsdale chooses to use it as an Airbnb, then once the Town of Shandaken has guidelines they can re-apply at that time. It's stated by all that the board suggested a special use permit on the motel for Norsdale to which the applicant denied wanting, because they had no intention to operate as a motel and want it solely as an Airbnb.

Adjournment:

There being no further business before the Board, a motion was made to adjourn the meeting by Board Member Christie, seconded by Board Member Welton. All in favor. Meeting adjourned at 8:40pm.