

TOWN OF CLARKSTOWN  
PUBLIC HEARING

Town Hall 2/27/2001 8:57 P.M.

Present: Supervisor Holbrook  
Council Members Lasker, Maloney, Mandia & Smith  
John Costa, Town Attorney  
Patricia Sheridan, Town Clerk

RE: PETITION OF JOSEPH MUSORRAFITTI FOR USE OF TOWN LAW 280-a(2)

On motion of Councilman Mandia, seconded by Councilman Maloney and unanimously adopted, the public hearing was declared open. Town Clerk read notice calling public hearing and testified as to proper posting and publication.

John Costa, Town Attorney, read the following letter from the Town of Clarkstown Planning Board:

The planning Board reviewed the above application at the May 30, 2001 Planning Board Meeting. A copy of the minutes are attached for your review.

The Planning Board suggested the applicant petition the Town Board for request for use of 280.a(2), and if successful, to return to the Planning Board for preliminary and final review.

The minutes of the May 30<sup>th</sup> meeting are as follows with respect to this particular matter:

**PUBLIC HEARING UNDER THE PROVISIONS OF S.E.Q.R & @ PREL. & FINAL:  
MUSORRAFITI (KUNIS) SD 139B30.1, CONGERS (Proposed 2 lot s/d on 1.74 acres R-15 zoned land, between Wisconsin & New Jersey Avenues/S. of Jolliffe Lane).**

Chairman recognized Messrs. Steven Kunis, applicant and Anthony Celentano, engineer, respectively, then read background information (see file).

The following recommendations were read into the record (see file): Building Plans Examiner Maneri, dated 5/22/01; Deputy Director of Environmental Control Letson, dated 5/25/01; Town Highway, dated 5/1/01; Planning consultant Geneslaw, dated 5/24/01; Fire Inspector Papenmeyer, dated 4/27/01; R.C. Sewer District No. 1, dated 5/30/01; McCall Abstract correspondence, dated 1/24/01.

Regarding D.E.C.'s correspondence, Mr. Celentano advised 4' of fill will be required; the style home will be garage under colonial. Brief discussion ensued on grade of property; Mr. Celentano will work out the grading and fill with Town D.E.C.

Mr. Kunis stated the original application was for four lots; the application has now been reduced to two lots; the balance of the property for the drainage easement will be conveyed to the Town.

Chairman Paris advised a 280.a will be required for this subdivision; applicant will have to petition Town Board for same.

Chairman announced call for Public Hearing: The following rose...

Chris Wohl, 107 Highland Avenue: Concerned over the change of grade from applicant's property to his property as there is a great deal of water when it rains, and is further concerned over additional drainage: Discussion ensued on the conservation and drainage easement that will be provided.

Resident on 30 Wisconsin Avenue: Expressed concern over the damage to his trees caused by recent construction, which sustained root damage and had to be removed; concerned over additional drainage issues and "cookie cutting" of property and "dropping" houses in; objected to application. Further expressed his opinion this property qualifies for open space.

Member Cain questioned the piece of property behind the proposed house (shown on the map with a dotted line) and why it could not encompass the wetland area? Mr. Celentano advised this was left for the future property owner if they wanted to install either a shed or a pool; brief discussion ensued.

Motion of Nowicki, Seconded of Yacyshyn, carried 5:0 with Ayes of Paris, Cain & Tullo to CLOSE PUBLIC PORTION OF MEETING.

Motion of Cain, Seconded of Tullo, carried 5:0 with Ayes of Paris, Yacyshyn & Nowicki, approving the following

**RESOLUTION ADOPTING A DETERMINATION OF SIGNIFICANCE  
 UNDER THE PROVISIONS OF 6NYCRR PART 617  
 STATE ENVIRONMENTAL QUALITY REVIEW (SEQR) FOR  
 MUSORRAFITTI (KUNIS), SD 139B30.1**

WHEREAS, a short Environmental Assessment Form (EAF) was received February 27, 2001 by the Department of Environmental Control, acting as technical Staff to the Planning Board, and

WHEREAS, said EAF was distributed to 6 potential interested or involved agencies by letter dated March 12, 2001, and

WHEREAS, no involved agency objected to the Planning Board being Lead Agency for coordinated review under the provisions of 6NYCRR Part 617, whereby the Planning Board is therefore Lead Agency, and

WHEREAS, the Board reviewed the proposed action and identified potential adverse environmental impacts due to the proposed action as follows:

Impact on storm water run off due to increased impervious surface. Mitigation is provided by subdivision into only two lots, with only one additional structure, and by the establishment of a Conservation and Drainage Easement area which will allow for storm water storage.

Impact by removal of vegetation. Mitigation is provided by minimization of the level of development on the parcel.

Impact on water quality. Mitigation is provided by provision for overland flow over grassed areas for filtration.

WHEREAS, the applicant proposed, or incorporated into the design plans for the action measures to mitigate the identified potential adverse environmental impacts.

WHEREAS, at Public Hearing held on May 30, 2001, the application was reviewed and comment offered did not identify any additional potential adverse environmental impacts.

NOW, THEREFORE BE IT RESOLVED that the Planning Board, based on review of proposed action, and the mitigation of the potential adverse environmental impact thereof, makes a determination that the proposed action will not have an adverse environmental impact.

**APPLICANT TO PETITION TOWN BOARD FOR REQUEST FOR USE OF 280.A. IF SUCCESSFUL, APPLICANT TO RETURN TO THE PLANNING BOARD FOR PRELIMINARY AND FINAL REVIEW.**

Chairman Paris requested of applicant if they would grant an open extension of time; Mr. Kunis granted same.

Mr. Costa stated that this particular matter before the Town Board is not like the matter before the Planning Board. It is up to the Town Board to make a determination that the use of the mapped, but unopened streets pursuant to Town Law 280a (2) would provide safe and reasonable access. The Town Board recently had a public hearing of this type with respect to the Capasso property. The issues are exactly the same.

Appearance: Martin Feldi  
New City

This property is over an acre of land. Instead of going for a four lot subdivision, we are going for a two lot. One house is already there. This is not the same thing as the Capasso land. This road is paved and goes beyond the lot where we are proposing to build a house. There are

houses south of us that are already using the road. The road has been open for many years and apparently these people had a 280a before.

Mr. Costa asked Mr. Feldi to identify the right-of-way they would be using to access the proposed two lots.

Mr. Costa stated that this represents an access to streets that are not yet public streets. This is not a dedicated street.

Supervisor: Your intent is to build an additional house with access on to Wisconsin Avenue. Mr. Feldi stated that they offered this land as open development.

Appearance: George Davidson  
18 Jolliffe Lane, Congers

The Town does plow Jolliffe Lane, but they do not plow Wisconsin. That is our driveway. The Town does not take care of the trees, sewers anything. We paved it. We plow it every winter. We maintain the road. It is not an access road. We could not make it to the last meeting. It was suppose to be approved for one house. There is only space for one house. Across from our three houses, there is no way to put two house in there.

Supervisor: The understanding is that there is already one house there as a framed dwelling.

Mr. Beary, Building Inspector: Basically, this is a two lot subdivision to get a new Certificate of Occupancy for the existing dwelling on reduced lot area and a permit to build one home on lot number 2. We are talking about a two lot subdivision. One house already exists and a second house proposed for construction.

Mr. Costa: Mr. Beary, have you made any recommendation or can you make any recommendation with respect to the development of the right-of-way to access this house.

Mr. Beary: I forwarded recommendations to the Town Board today. You should have them.

Mr. Costa: For the purpose of the record, why don't you repeat what you have already said to the Town Board.

Mr. Beary: This application seeks the Town Board's approval to construct a single family dwelling on an unimproved mapped street, that being Wisconsin Avenue. The proposed subdivision complies with all other requirements of the R-15 Zoning District. Attached for your review are the comments from the Department of Environmental Control. The Town Board may want to consider if an effort should be made to secure a maintenance agreement among the property owners along Wisconsin Avenue.

Mr. Costa: Mr. Kalarickal was here tonight. He made some specific recommendations as to the improvement of the right-of-way. Is that correct.

Mr. Beary: Yes.

1. The existing unimproved Wisconsin Avenue provides access to five existing residential properties extending approximately 320 feet south from Jolliffe Avenue.
2. The roadway is presently 18 feet in width and generally maintained by the adjacent residents to the existing edge of pavement. The exception to this is the frontage of proposed lot two in the current subdivision.
3. The roadway is in good condition with a small area of decorated pavement in the area of the driveway to tax map lot 52.08-02-61 on the east side Wisconsin Avenue.
4. The driveways on the south end of the existing roadway provide adequate area to turn an average vehicle or delivery van. Some larger vehicles may need to back out of the roadway, these would be few (i.e. moving van, fire truck) and infrequently expected.

The roadway is adequate to provide access to the total of 6 residential properties which would use it for access. Recommendations for improvement would be:

1. The frontage along proposed lot 2 should be cleaned up when the lot is constructed, and grass established to the edge of pavement. (This will be done in any event given the proposed grading for lot 2.)
2. Raise the existing sewer manhole frame and grate to meet roadway elevation; it is slightly depressed.
3. Patch the deteriorated pavement at the east side of Wisconsin Avenue opposite proposed lot 2.
4. Repair any damage to the existing roadway caused by the construction of proposed lot 2.

Mr. Costa: Mr. Kalarickal, do you have any recommendation as to whether or not this type of access would provide safe and reasonable access for emergency vehicles such as fire trucks, ambulances, etc.

Mr. Kalarickal: This eighteen feet wide is adequate for emergency, but you can always request the emergency departments to get an accommodation from them.

Mr. Costa: You are suggesting that the Town Board should ask the emergency services to comment on this.

Mr. Kalarickal: At this point, there is no turn around at the end of the street. That may be one of the items.

Mr. Costa: There was a recommendation made by the Building Inspector as to the advisability of having a maintenance agreement. While we don't have too much information in the record tonight, it would appear there is no maintenance agreement. There will be no Town services on this portion of Wisconsin. Is that correct?

Mr. Kalarickal: That is correct except the sanitary sewer line.

Mr. Costa: At the present time, the right-of-way is being maintained.

Mr. Kalarickal: By the individual homeowners.

Mr. Costa: Do you join in the Building Inspectors recommendation that there should be some provision for a maintenance agreement?

Mr. Kalarickal: I think it will be beneficial for all the residents concerned.

Co. Mandia: Suppose they don't want it?

Mr. Kalarickal: I think that happened with Capasso's case.

Mr. Costa: Actually, I should report that while at the Public Hearing the parties were not in agreement. I have since been advised by their attorney that they have come to an agreement regarding a maintenance agreement.

Supervisor: Mr. Davidson, are you in favor of the Town granting access for this particular home to be constructed on Wisconsin Avenue?

Mr. Davidson: In favor. There are some spots in the road that are lifting up or sunk down. We have been maintaining that road for years and feel that after all the heavy equipment and traffic that is going to be coming in there, it should be resurfaced from one end to the other just as we did with the other house.

Co. Maloney: If the Town grants a 280-a, this has to go back to the Planning Board. The Planning Board certainly will see that before giving preliminary or final approval which will be based on doing some of the things that you and everybody are concerned about.

Mr. Costa: Would you, speaking for yourself, be willing to enter into an shared maintenance agreement whereby you would participate equally with all of the others who use that right-of-way to share the cost of maintaining it?

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Mr. Davidson: I maintain the corner. I keep the trees cut back. We keep it swept. I am talking for all our neighbors. We don't really need a maintenance agreement.

Co. Mandia: If one of you move, you could have a huge problem. We can't force you.

Appearance: Louis Chilano  
Congers

I live next door to where they are proposing the new house. My only concern is when they finish with all the equipment, that the road will be restored to a decent condition. When I put in my house, we were required to pave the entire road. From that point on, I am not against having a maintenance agreement. It will be something to consider. We have done very well without it.

Co. Mandia: All the other things that were in the letter like fixing a manhole, they will all be conditioned in this resolution as well, right?

Co. Maloney: The Planning will see that all these things are done. We are just referring it to the Planning Board.

Appearance: Ken Hunter  
103 Highway Ave.

I have been here multiple times all for the same piece of property that we are discussing tonight. Wisconsin Avenue has a terrific adverse affect upon me because I am at the bottom of the hill. When you fill in five feet, you put up wooden walls and put in driveways, all that does is make the water on Wisconsin and Massachusetts Avenue run straight down into the lowest point which is right behind my property where this insignificant creek in the warm weather becomes quite a major water source when the rain comes. Things have gotten decidedly worse. I have been here twenty-five years and we have gotten water on occasions during major storms. This past Father's Day, I had to relight water heaters. I have a washer and a dryer that has gotten wet a couple of times. My neighbor, Chris Wohl, had four feet of water during the last hurricane. This is a natural thing. The bottom line, as far as I can tell, is any development more than you have had already is going to be catastrophic to us. I am worried about it. The O'Sullivan home went in what use to be a total swampy area. They stuck it there and it has had an adverse affect. When I hear you talking about Wisconsin Avenue, it brings up bad thoughts because that is one of the most prevalent sources of water for me. In my opinion, I think that piece of property is unbuildable. I think the O'Sullivan home should never have been built in that swamp area. You take the trees out and it is just another runway.

Appearance Rose Hunter  
Read the following memo from Chris & Donna Wohl of  
107 Highway Ave.

Due to a long planned vacation out of State, I was unable to attend this hearing. I would still like to make the Town Board aware of my concerns. As a 50-year resident of Highway Ave. in Congers, I have witnessed many changes in this area. As ponds and low lying areas were filled and developed, the small stream that runs behind the houses along the East side of Highway Ave., south of Jollitte La. become more and more frequently flooded. The O'Sullivan house that was built several years ago by filling in half of the swamp (behind the houses just east of the sharp curve on Highway Ave.) has slowed the flow of surface water and pushed the water back north toward my neighbors and my house during heavy rains. Hurricane Floyd left four and a half feet of water in my basement. I spent a good part of this past Father's day pumping 18 inches of water out of my basement and on my hands and knees trying to relight a flooded water heater. Most of the water that causes the flooding behind our houses comes down the hill from New York Ave. and Wisconsin Ave. Every house that is built up on the hill increases the amount of runoff that comes down into our back yards and basements. I feel that we cannot allow another house to be built unless the builder or the Town finds some way to catch and divert an equal amount of water. This is only fair. I strongly recommend that the Town Board turn

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down this request. If the Board grants this request, I would like to see at least the following done:

1. Storm drains installed on New York and Wisconsin Ave. in this area.
2. More land granted to the Town to prevent building in the area near the stream.
3. The stream cleaned and maintained by the Town.
4. A retention pond dug in the swamp near the O'Sullivan house.

If the Board has any questions, I will return home on July 30<sup>th</sup>. I would love to discuss this matter with you and show you the area in question.

Appearance: Steve Levine  
Massachusetts Ave., Congers

I am very familiar with the Capasso request. The issues are very similar. What Mr. Wohl and Mr. Hunter indicated is the greater problem here. It is the same issues we had in the Capasso subdivision. These are driveways. These are substandard streets. They don't meet State Highway criteria. We have over development. What affects one person, affects the others. Over development is the bigger part of the issue. The run off has to go somewhere. If the Town grants this access, there will be another house. These individuals will be flooded out. There may be minimal water control. The bigger issue here is when is the Town Board going to start to put their foot down? Everybody and his brother are coming in with these 280 access. These roads do not have proper lighting, proper sewers and proper fire hydrants. The emergency vehicle issue was raised earlier. I was not happy that Capasso was granted access under 280. There are a bunch of restrictions put in. I would rather have seen no access to prevent future development. Perhaps the best use of this land is to give to the Town for open space. It seems the owner of the property can still make some money selling it to the Town and it will benefit all of his neighbors. It would mitigate some of the flooding problem. Certainly, building another house will make the problems worse. What happens after this is built and I still get flooded? Who do I sue now that the builder is gone? It is the same issues as Capasso. I would like the Town Board to think once again, when are we going to put our foot down on this type of activity.

Appearance: Margaret DeSalvo  
7 Jolliffe Lane, Congers

Are you talking about an open road going from Jolliffe Lane down through this back property? I know there is a paper road there. Mr. Jolliffe's house was next to me. They subdivided it and built a house there. They promised me that I would not have flooding. My backyard is four feet under water every time it rains. My front yard is at least three feet under water every time it rains because the house next to me is higher. There is always a flooding problem on Jolliffe Lane. The people on Wisconsin are going to have the same problem because what runs through our property is a creek that has been covered over. There is always a flooding problem.

Appearance: Domenic Caravetta  
30 Wisconsin Ave., Congers

I happen to be one of those new homeowners who moved into a cookie cut home on the other end of Wisconsin with a little private road that leads to the other side of the proposed building. I wanted to point that out because my back lawn virtually does not exist. It was land filled to accommodate a home. If it wasn't for the greatest neighbors, I would have felt very disappointed having moved into the area. A lot of land fill went into my home and it shifted quite a bit. Window frames have cracked and had to be replaced. The worse damage is more from the trees. When you move in, you see these beautiful trees and two or three years later they are not there anymore. It cost a lot of money to cut down. We are worried they will fall on the house. Several have fallen on their own. When they meet all the land requirements and the by-law requirements, there is not a lot the Board can do, but to approve. All I want is to make sure that what they do build gets built appropriately. When I made these comments to the Town Board, I didn't get any calls for anyone to come and see the cracked walls on the back of my home. It is more for a preventive stand point that I am talking about. I feel that we don't have any power to prevent any building. At least, I felt that way at the Planning Board Meeting. It felt that this is more therapy than actual impact.

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Supervisor: In this particular case there is discretion. The Town Board does not have to grant this. Is that correct?

Mr. Costa: The general rule to obtain a building permit is that your property must have frontage on a Town maintained right-of-way. The rule can be varied by the Zoning Board of Appeals under Town Law 28a3 or in the instance when the property has frontage on a mapped, but unopened street the jurisdiction shifts to the Town Board. The Town Board's discretion is there to provide for a conditional approval or no approval depending on what it believes to be necessary to provide safe and reasonable access which would not only be for the resident, but also for emergency equipment that may have to access that right-of-way for the purpose of saving lives.

Mr. Caravetta: Thank you for pointing that out. I have a neighbor who, the day after New Years, help me shovel my road. There was a foot of snow. We did not know these things when we moved in. We didn't know that we were on our own. We found that out when we put a mail box up and the mailman wouldn't deliver it. We think we have a real nice place, but I can't stand outside much past seven o'clock because of the fear of west Nile. There is a swamp in the back. It is much worse after they built that home just south of us. We were told by our builder that the land was land locked. I am not that surprised that I was not contacted by any Planning Board people to find out exactly what kind of damage can be prevented in this new home. I was contacted by another prospective builder who would like to build next to me on a very narrow strip of land. It does not meet the by-laws. I think he would like to petition that and we would like to fight that when the time comes. Whenever we hear a chainsaw, we think something is being built behind us. They built some kind of drainage thing. It some how satisfied the Planning Board. After the hurricane, it flooded out most of the homes that had never seen water in the past. I welcome anyone to come and look at the damage to my home. Our floor is a little off and the walls are cracked. Make sure the new homeowner doesn't have the same regrets.

Appearance; Diane Smith  
93 Highway

We have a tremendous increase in the flooding with all the construction on Wisconsin. With hurricane Floyd, there was so much water moving so fast through my back yard that it took a mature oak with it. This is the of kind of stuff that happens every time it rains. The neighbor behind me just redid his whole yard with truck loads of dirt (40 or 50 truck loads). He changed the whole level of his property. When it rains, we get new amounts of water. My yard is about where this little brook generates. We don't have a lot of water on a dry day, but it rises. Now it is backing up because of the Sullivan property and the changes above us. Now you want to do another one. Please don't do another one.

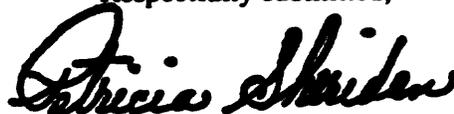
Appearance: Joann Vasil  
59 Wisconsin Ave., Congers

On the map, it shows a paper road. My concern is if the road is going through.

Supervisor: The proposed building will come in off Jolliffe Lane.

There being no one further wishing to be heard, on motion of Co. Maloney seconded by Co. Mandia and unanimously adopted, the Town Board Meeting was declared closed, RESERVED DECISION, time: 9:45 P.M.

Respectfully submitted,



PATRICIA SHERIDAN,  
Town Clerk