

**DEERPARK PLANNING BOARD - JULY 27, 2011 - PAGE #**  
**PUBLIC HEARING - DATANG DEVELOPMENT LLC**

The Deerpark Planning Board met for a continuation of a public hearing on Wednesday, July 27, 2011 at 7:00 p.m. at Deerpark Town Hall, 420 Route 209, Huguenot, N.Y. The following were present:

**PLANNING BOARD MEMBERS**

Al Schock, Vice-Chairman    Dan Loeb    Theresa Santiago    Mike Hunter    Willard Schadt    Bob Vicaretti    Derek Wilson

**OTHERS**

Mr. Alfred A. Fusco, III, Town Engineer	Mr. David Dean, Town Board Liaison
Mr. Karl Brabeneck, Town Supervisor	Mr. Timothy Gottlieb, Gottlieb Engineering
Mrs. Rochelle Johnson, Adjoiner	Mr. Ronnie Bertucci, Adjoiner
Mr. Patrick Cavanaugh, Adjoiner	Mrs. Kelli Brink, Adjoiner
Mr. Richard Decker, Adjoiner	

Al Schock: Number one, the Datang Development. The public hearing continues, represented by Tim Gottlieb.

Tim Gottlieb: Good Evening. I guess I will respond to some of the comments that were made at the last public hearing. I'll be brief. The house location is 399 Galley Hill Road, which is across the street from the bed and breakfast. It's an existing five bedroom house. And of course, Galley Hill Road is an existing town road, two lanes, and it's been that way for a long time. Maintenance issues, if there are any, they should be addressed by the highway superintendent. Speeding is an enforcement issue, that's nothing that we can control. And as far as the bed and breakfast, it's a permitted use, with a special use permit and site plan review by the Planning Board. It'll be open to the public. The traffic generated from that is very difficult to estimate, but it's 8 cars a day at the most, if any bed and breakfast doesn't have 100% occupancy rate. And at the most we can estimate 24 to 32 trips a day on that site.

Al Schock: Does the Board have any questions for Tim?

Derek Wilson: We are continuing the public hearing, so the public should speak first, and he needs to give his name and come up to the mic.

Al Schock: Just come to the podium sir, and state your name. The public hearing is now open.

Derek Wilson: And just so there's no confusion again, you direct your questions to the Board, and we'll try to get an answer for him.

Patrick Cavanaugh: My name is Patrick Cavanaugh, 258 Galley Hill Road. I would just like to bring to the attention of the Board, the definition of a bed and breakfast, from the Webster's Dictionary. A bed and breakfast is a private home that provides rooms and breakfast for paying guests. I don't think that a barn is a private home. So, I think there's some question, if we're changing use, does the change of use include changing something that is not a residential home, into a residential home, does it fit the definition of a bed and breakfast.

Derek Wilson: Without the attorney here, the fact that there's not a house there, that's already in use, the house doesn't preclude the site from being used as a bed and breakfast, if they build a house. And I believe that there will be one full time resident to operate the house, and then the rest will be guests. You can convert a barn into living quarters, as long as that meets the requirements of the Zoning, as far as there's not too many buildings on the site, and one private residence.

Patrick Cavanaugh: I'd also like to say that the residential zone, that it's zoned as, RS, this district is intended to protect the dignity of the single family. Again, in my mind there's some question of a lot of people staying in a single residential home, and this same parcel of property. As I've said last time, there are over twenty people staying overnight, I don't know whether we can just accept by word, that they're not going to go over that limit. If twenty people are illegally staying there, why do we think that they're going to stay within the legal limits, it's in the same area. I would also like to repeat that, some of the concerns that I had two weeks ago are still there. The people that own all of that property are not keeping it up. I know that you're not an enforcement agency, but for two years they've had those buildings on that property and they haven't been kept up. They're shells that have water, and basements that are getting dangerous, it smells, I'm sure animals and things live in there. I don't understand how that has not been taken care of. Also, the silo that got knocked down behind the barn, it was knocked down a year and a half ago, and the debris is still there, it's not been taken away. The grass is not cut, I know it's a petty thing, but when you have 200 acres of road frontage, and that grass grows 4 feet high, and it's unkempt, I don't think that it adds much to the neighborhood. And I find that offensive. And starting a business and all, will they keep up with that? My question is about the bed and breakfast. How many units will there be in there? Five?

Tim Gottlieb: Five.

Patrick Cavanaugh: That's pretty much what I have to say. I think what I'm talking about is a lot of open ended things here, and also I would like to say, what are the criteria that you use to approve a situation like this. Is just asking for it, and giving you specific building plans that meet the Code, or are there questions that the community brings up, such as I have, that are taken into consideration, where you say aye or nay to this thing?

Derek Wilson: I'm going to answer a couple of these questions, because a lot of the members on the Board are new, and they're just learning. So, on review of a site plan the Board has to look at the Zoning, make sure that what is proposed, fits in there. And also, the whole purpose of a public hearing is to get input from the community on possible problems with the site plan. And the Board has the ability to put conditions on the site plan, that the owner of the property would have to meet, if the Board anticipates any problems. I forget if this one falls under a traditional permit, but the site plans are special use, and they would have a time frame on them. So, if there's problems in the future, the Board would have some type of ability to get the site owner to take care of the problems. Is this a special use?

Tim Gottlieb: Yes.

Derek Wilson: Okay, typically the Board puts a one year special use permit, and if there's problems that come up within a year, they need to come in to renew the permit, then the Board can address those issues at the time. Because the Building Inspector is the enforcement authority, but this Board can review the special use permit.

Patrick Cavanaugh: Is it possible to include property owned by the same owner.... they're separating the barn from the rest of the property, and I'm saying that there is over 200 acres of intended property, do they have to keep that up too?

Derek Wilson: That might be a better question for the town attorney, but basically the Board is going to be looking at the parcel of property that is outlined in the site plan. But I have a question for you. I keep hearing reference to twenty people staying there. Now there's a barn that they're going to put the proposed bed and breakfast in, and there's a two story house.

Patrick Cavanaugh: Yes, and there's a trailer behind the barn.

Derek Wilson: Okay, so you're saying that the 20 people in total.... I keep hearing it referenced, but I'm not making a decision on it, but they're apparently residing between the house and the trailer, that is shown behind the proposed bed and breakfast.

Patrick Cavanaugh: My question is, this is a single family resident house, and trailer, and they pay absolutely no attention to the zoning or the law, in this situation, what makes us think that they will pay any attention to the law in a bed and breakfast that is adjacent to it, nobody is going to have any oversight of that.

Derek Wilson: I understand your considerations. It does show on the site plan that the existing trailer will be removed. Is that right Tim?

Tim Gottlieb: Yes.

Derek Wilson: The trailer won't be there, you're going to have a new building on an individual piece of property and it's going to be subject conforming to the Zoning Code. So, if you're concerned that more people will be staying there, that is proposed, it becomes an enforcement problem. We can't anticipate that someone is going to break the law, do you understand that from the Boards' point of view.

Ronnie Bertucci: My name is Ronnie Bertucci, I live at #3 Avenue E in Cuddebackville. As far as the bed and breakfast goes, if in the house there, they already have 20 people. When the Dragon Springs just opened up...

Derek Wilson: May I just correct you there. They're talking about 5 units in a bed and breakfast, so 2 occupants per unit, one or two, so you're talking about a maximum of ten, occupancy rate, so there would be ten or less people, aside from the owner who lives there.

Ronnie Bertucci: Okay, ten or less people, just like when Dragon Springs opened up over here, they said that they were going to have "x" amount of people in there. Maybe 200 people are supposed to be occupying the mountain. There's more than that up there now. What's going to happen when they bring more people in to that place? You said before that it's an enforcement thing, enforce what? How are you going to enforce it? I'm asking, how is this going to be enforced with our police department? What do you have someone monitoring this 24/7?

Derek Wilson: Well, the enforcement wouldn't be through our police department, I believe it would occur through our Building Inspector. When there's a zoning violation, I believe it's up to the Building Inspector, the Code Enforcement Officer.

Ronnie Bertucci: How do you know when there is a zoning violation? If they say there's going to be ten people there, how do we know? Some neighbor or somebody would have to monitor what goes on up there. And then they're going to have to make a complaint, and then the Building Inspector is going to take his time to go down there, and do what he has to do. But I'm strictly opposed to this, because people at Dragon Springs do not apply... they don't do what they say. There's only supposed to be a limited amount of people up on that mountain there, well, there's a lot more than that.

Derek Wilson: Okay, we went through this at the last meeting. I just want to make sure that we're clear. We continued the public hearing for the Datang bed and breakfast, it's a separate entity from Dragon Springs. Even though some of the people might be involved in Dragon Springs, I don't know. But we're not really discussing Dragon Springs operation now, other than maybe, both of these things together might have joint impacts on the traffic. This is not Dragon Springs.

Ronnie Bertucci: This is the bed and breakfast, well, this is how I feel. Whoever has it, is going to say, okay, ten people in here? Now, we're going to have twenty and thirty people in that property. And is this going to be a profit making organization, the bed and breakfast? Are they going to be paying taxes on this bed and breakfast too?

Derek Wilson: As far as I know now, it's a regular business, that we've been told.

Ronnie Bertucci: Are they going to be paying taxes on this property?

Derek Wilson: I can't guarantee you that. Ownerships of properties can change, just like the house that you live in, can change. The information that we have is that it is a regular business, that it's going to be operated as.

Ronnie Bertucci: Is it going to be taxed? I'm just asking.

Derek Wilson: From the information that we were provided, it's going to be a regular business. Is that correct, Tim?

Tim Gottlieb: Yes.

**DEERPARK PLANNING BOARD - JULY 27, 2011 - PAGE #**  
**PUBLIC HEARING - DATANG DEVELOPMENT LLC**

Willard Schadt: There would have to be a separate application made, for them to be exempt from taxes. That would be entirely separate. Right now, until the owner actually makes an application for tax exemption, which we have no control over anyway.

Derek Wilson: We also cannot take that into consideration, when we review the application. Whether it's going to be tax exempt, or not tax exempt. We're prohibited by the restrictions, in State Law, in reviewing this, that we can't treat one differently than another.

Warren Cuddeback: My name is Warren Cuddeback, and I live in Cuddebackville. And I would like the Board to tell me, what is the definition of bed and breakfast?

Derek Wilson: We can get the book out... yeah, we defer to the Town Engineer.

Al Fusco: Give me a minute here. Okay, bed and breakfast. "An existing residence which is used in the manner of a home occupation to provide overnight lodging with breakfast, as part of the consideration, and involving a shared bath, and dining facilities. Also, including youth hostels." Town of Deerpark Zoning Code, page 3.

Warren Cuddeback: Where are you taking the definition from?

Al Fusco: Town of Deerpark Zoning Law, page 3.

Warren Cuddeback: All right, well according to the Town of Deerpark Zoning Law, the definition comes from the Merriam-Webster collegiate dictionary.

Derek Wilson: That's only if the definitions don't occur in the Zoning specifically. In other words, if the zoning spells out a definition, you don't have to go to the dictionary. In other words, if our zoning specifically defines what a bed and breakfast is, that's just a fall back, in case whatever is being discussed, is not spelled out in the zoning.

Warren Cuddeback: Okay. Could you read it again?

Al Fusco: An existing residence which is used in the manner of a home occupation to provide overnight lodging with breakfast, as part of the consideration, and involving a shared bath, and dining facilities. Also, including youth hostels."

Warren Cuddeback: I think you included there, that it's an existing residence?

Al Fusco: Yes, an existing residence.

Warren Cuddeback: Then this application, which is what I understand, for the dairy barn. Does it include the house, is that included in the bed and breakfast too, in this application?

Derek Wilson: Have you inspected the site plan at town hall, Warren?

Warren Cuddeback: No, I didn't realize that there was a hearing tonight. I just found out that it was continued tonight.

Derek Wilson: They're taking a parcel of property and basically changing a lot line, and they're going to convert the barn into a bed and breakfast.

Warren Cuddeback: So, it has nothing to do with the house? This application?

Derek Wilson: No, outside from comments that we've been getting, the residence and the house and the trailer combined... the house is on a separate parcel.

Warren Cuddeback: Okay, so we know now, what we're talking about, is converting the barn into a bed and breakfast. And you can see, by your own definition, that that is illegal. It's not an existing residence. It's a barn, a dairy barn. So, to approve this application would be illegal.

Derek Wilson: Okay, Warren, that's a legitimate question, and we're going to have to address that to the town attorney. I've made comments before, that I believe that a person can have a piece of property and propose a bed and breakfast in a building that is not yet built. I don't think that that is a stretch. In other words, you can buy a piece of property and put in a site plan application to construct a bed and breakfast, as long as it's operated as a bed and breakfast. It's my opinion, from what I've seen. We'll get an opinion from the town attorney, unless any other board members want to address it now.

Warren Cuddeback: If what you say is accurate, which I don't believe it is, the barn is not a residence. You wouldn't proposed to approve somebody building a barn, and then approve it being changed into a bed and breakfast, would you?

Derek Wilson: Are you asking all of the board members? I don't want to get into a debate here.

Willard Schadt: I think that's a legitimate question, based upon the definition in the Ordinance. I think that it's something that we need to refer to counsel. It's a legal issue. I don't think, as a Board, that we can make that determination.

Warren Cuddeback: I don't need a legal opinion, maybe you do. But, when the definition is "an existing residence" being converted into a bed and breakfast, that is not what is being considered to be done here. They are asking for your approval to convert a dairy barn into a bed and breakfast. And that is certainly not approved, by your own definition. And if you had a dictionary, I'm sure it wouldn't be approved by that either. It wouldn't be considered the same thing, an existing residence. Thank you.

Al Schock: Anyone else?

Richard Decker: Hi, I'm Richard Decker, I live up on 271 Galley Hill Road. I've lived here all my life. And I think that we have a number of issues with the property already. Because there has been problems with the sewer system already, tended to, in the middle of the night, it was kind of hushed.

Derek Wilson: Could you be specific, when you talk about problems with the septic system? On what property?

Richard Decker: On the house on that property.

Derek Wilson: The main house?

Richard Decker: Yes. Probably because of so many people living there now. Because when it was previously owned, it was not a problem. Also, there are a lot of fish, bald eagles, frogs in the pond. They're going to have to have an adequate septic system to handle all of these people. Because the barn right now, actually there's no one living there, there's nothing there. So, they're also going to have to have a sewer system, or some kind of study on what is going to go on, with the extra sewage. Which is a total problem already.

Derek Wilson: Did you get a chance to look at the site plan? Okay, they're bed and breakfast, correct me if I'm wrong Tim, but they've designed a complete septic system based on the septic load that they're projecting. And our engineer would review that, to make sure that it's proper.

Richard Decker: Okay, so now, in relevance to the pond which is right next to it, part of the swamp area has already been filled in, around the barn. I don't even know if that was totally legitimate. That was done also. And I know that that is a very wet area, as it is. So, I mean, it's almost like that has to be spread very carefully, because there's a lot of people downstream that have property, and it's going to be a problem. I mean, there's just no question to it. And also, with that kind of liquids and water, there is also already a problem with flooding on the road itself. Now, if there's this many people, and they're actually changing the property, will we have more flooding down the road? The Town Highway Department is constantly there now, trying to keep up with it, and they're just beating their heads against the wall. So, this is something else, that I think we're going to have to look into. And of course, the traffic again. It's just ridiculous. I walk up and down the road every day, and in the last week, there's been 3 dead frogs, there's a dead woodchuck, my dog got hit and it cost me thousands of dollars. I like living on a country road, where it's nice and calm, and it's not going to be that way anymore. And I get brushed off the side of the road. I try to walk before 6:00, because then, there's no traffic on the road like it is after. It's gotten out of hand already. And how many people per unit, were you saying?

Derek Wilson: We'll let their engineer answer. Tim?

Tim Gottlieb: For a typical bed and breakfast, that's 2 people. So, 5 rooms, that's 10 people. This bed and breakfast has been designed for 12, there's a caretaker.

Richard Decker: And I'd appreciate it, if you looked into the stats, because we do have a problem, okay, thank you.

Rochelle Johnson: My name is Rochelle Johnson, I live on Galley Hill Road. What I'd like to find out, is who was supposed to take this traffic control, the plan about traffic?

Derek Wilson: Okay, that subject came up at the last public hearing and we have information that we're going to discuss shortly, that our engineer has provided. The Board is going to discuss the traffic situation.

Rochelle Johnson: Because I have information from Route 209 to Dragon Springs. But I also have information from above, going into Dragon Springs, coming down.

Derek Wilson: Okay, I just want to emphasize, that this is a public hearing for Datang bed and breakfast, and as far as Dragon Springs...

Rochelle Johnson: I'm not talking about Dragon Springs. I'm just saying that from up above, down to Dragon Springs. Okay. All right. Also, what I want to find out is, you made remarks about the bed and breakfast is supposed to go across from where the original house is, or the same side?

Derek Wilson: They're going to convert the barn, across from the house. And when they're going to do that, they're going to remove the trailer. It's right on the plan.

Rochelle Johnson: I didn't look at the map, because I couldn't get any. They didn't have any available. What I want to find out is, because everything from that lake, goes into the brook. Everything from the road, where now they are detouring all of the water, goes into the brook. Dragon Springs lake goes into the brook. And the river comes down in front of me. So, it's a concern.

Derek Wilson: Okay, your question of the septic impact, I'm going to allow their engineer to just briefly explain to you, what consideration he takes into the design, because he has a wetlands rating there, in the design. So, if you could just explain how you do that.

Tim Gottlieb: The septic system that is designed, is not your typical septic system that you would have for your house. It has advanced treatment, and provides a far cleaner effluent. It goes into the septic system. We did that specifically, because of the pond. The water that is going into that septic system is cleaner than the pond.

Rochelle Johnson: What about the traffic problem?

**DEERPARK PLANNING BOARD - JULY 27, 2011 - PAGE #**  
**PUBLIC HEARING - DATANG DEVELOPMENT LLC**

Derek Wilson: I just wanted him to address the one question. The traffic, we're going to have a discussion with him on the traffic, specifically based on our engineers' comments, I believe at the end of the public hearing.

Rochelle Johnson: Because it's terrible now, coming down and coming in. So, and I heard you guys might be going up. I'd wish you'd hurry up. And I have one other question. Why is it... over here... no, I can't talk about that now, I've got to wait for the next one. Thank you.

Al Schock: Any other comments?

Warren Cuddeback: Again, Warren Cuddeback. I'm sorry I didn't bring this up before, but I'll be brief. I'm very much aware of the development of this Zoning Law. And in particular, in this case, the residential settlement district. And I read it before, but I want to read it again. Because it's very appropriate that you board members understand the Zoning Law. This is what it says in your Zoning Law about the residential settlement district. "This district is intended to protect the integrity of single family residential areas of the town, from commercial and industrial intrusion that could cause a decline in the quality of life, these generally single purpose sections within these generally single purpose sections of the town." Again, here it speaks, aside from the Zoning Law definition of a bed and breakfast. It also indicates that a single family can be converted into a bed and breakfast. But only a single family residence, not a dairy barn, which is what they want to do, and it's not a single family residence. And this residential district is particularly defined in this, to protect against what this application proposes. It's meant to protect the integrity of a single family residence, and that is not what is being proposed to convert into a bed and breakfast. This Zoning Law says that if you convert into a bed and breakfast, it would be a typical single family home, nothing else. And this application does not protect the integrity of this zoning.

Kelli Brink: I'm Kelli Brink, I live at 479 Galley Hill Road. I was just curious, is there a zoning guideline or zoning rule, as to how many people can live in a bed and breakfast?

Derek Wilson: When you reviewed this, was there an occupancy limit on the bed and breakfast?

Kelli Brink: Not the bed and breakfast, in a residential home.

Fusco: A residential home would be under the New York State Building Code, and through the Building Department, that would be the size of the house, it's not really stated... the definition of a single family home isn't really defined as how many people, it's gray.

Kelli Brink: There's already many more people living in a single residence.. to be quite honest, I assumed there was already a bed and breakfast in the house across the street from the barn, just judging the amount of people coming in and out of there. I thought it had already been done. As far as fire hazard safety like issues. There's a lot of people living in those houses on that road. I'm not talking large families, I'm talking about 15 to 20 people in one house.

Al Schock: Any other comments?

Richard Decker: I have a photo here, just for reference. That's the house now, it's three years old, but there's also newer ones.

Derek Wilson: So, the date is September 30, 2008?

Richard Decker: Yes, and there's more recent ones that I have, I just happened to come across this one here.

Derek Wilson: Okay, Barbara, would you show that the Board got a photograph, and keep that as part of the record. And your name?

Richard Decker: Rich Decker.

Al Schock: Any other comments?

Derek Wilson: We asked for information on traffic from our engineer, can we get that?

Al Fusco: Yes, just a brief synopsis of what we did. I sent one of our staff engineers out to do a traffic count, and we did it at peak hours, from between 7:00 and 9:00 in the morning, and 3:00 to 5:00 in the afternoon. From those traffic counts, basically, these are our recommendations, in that there will need to be a traffic study done, in regards to the additional load. Basically from what we put together, we see that there's going to be approximately a 20% greater load on Galley Hill Road, from this application. So, at that point, we would like the applicant to address this issue and note any traffic devices that need to be put into place, road upgrades, speed limit, recommendations, that sort of thing. So, at this point we would recommend that the applicant supply us with a traffic study.

Theresa Santiago: What is in the barn now?

Tim Gottlieb: Nothing.

Theresa Santiago: No bathrooms?

Tim Gottlieb: No, nothing.

Bob Vicaretti: There's a foundation under the barn?

Tim Gottlieb: Yes.

Derek Wilson: Do we need a motion on that?

Willard Schadt: I agree, I think there should be a traffic study.

Derek Wilson: So, the motion would be to recommend that the applicant provide us with a traffic study, and I'll make that motion, and suggest we hold the public hearing open until the next meeting, because our attorney was unable to appear at this meeting, and we have two questions that I would like to have answered. One, is basically the question that Warren brought up about the legality of essentially building a new bed and breakfast, and not converting a house into a bed and breakfast, whether that's a problem, or whether that's allowed under the Zoning, or they might need a determination from the ZBA. And my other question that came up tonight, was, since they're not converting the house that already has an existing occupancy, based on the septic, when you convert a house. Am I correct? If it's a 4 bedroom house, you would have an existing septic design, or square footage that would determine maximum occupancy for a bed and breakfast. Since they're basically using a large commercial building, and converting that barn into a commercial building. Under agriculture, they're converting that into a residential use. Is there some limit in the number of units in a bed and breakfast? I would suggest that we ask that question of our attorney, and have him provide input at the next meeting. I also suggest that our town engineer research this second question.

Al Fusco: I believe that the design engineer utilized a calculation that would be for a 2 bedroom apartment, which would be 300 gallons per day. So, what you're looking at, is a 2 bedroom apartment, in his design. Which works out to 300 gallons a day. So, a 2 bedroom apartment, 5 units, so basically 10 bedrooms, which is 300 gallons per day, per unit.

Derek Wilson: Okay, my question would be, suppose if the barn would be 4 times as large, would he be prohibited from creating a bed and breakfast in our Zoning, this is sort of a generic question. We might also have to ask the Town Board to look into it. Do you understand? A bed and breakfast would be very different from a motel, I'm just trying to say, is there a limitation on the total number of units, when somebody proposes a bed and breakfast. And if it is or isn't too, in the zoning, is this also something that we can make a recommendation to the Town Board to look and see if there's a problem with the zoning, so it doesn't conflict with the objectives in the rs zone.

Al Fusco: More or less what the zoning says, it's shared, the dining facility is shared, the bathing facilities.

Willard Schadt: So, the motion is to request a traffic study and hold the public hearing open.

Derek Wilson: And the two questions that we will ask our attorney.

Willard Schadt: Okay, if that's the motion, I'll second it.

Mike Hunter: Aye.

Theresa Santiago: Aye.

Bob Vicaretti: Aye.

Willard Schadt: Aye.

Derek Wilson: Aye.

Al Schock: Aye.

Motion carried. Public hearing held open until August 10, 2011 meeting.

Respectfully submitted,

Barbara Brollier, secretary