

Town of Charlton
Planning Board Minutes
784 Charlton Road
Charlton, New York 12019

Minutes of Planning Board Meeting – March 16, 2009

Chairman Jay Wilkinson called the meeting to order at 7:00 p.m. at the John W. Taylor Hall.

Present: Jay Wilkinson, Chairman, Ray Black, John Kadlecsek, Mark Hodgkins, Connie Wood, Bill Keniry, Planning Board Attorney, Susan York, Planning Board clerk and Kimberly Caron, Recording Secretary. Chris Mitchell and Dawn Szurek joined the meeting at 7:15 p.m.

AGENDA MEETING:

Mr. Wilkinson stated that there is a quorum of five members.

Subdivision Applications

Heflin/Durst (255-1-40.1, 41, 43.1, 43.2, 43.3)

Mr. Wilkinson stated that this matter is ongoing and on hold.

Ward (225-1-15.1)

Mr. Wilkinson stated that the Board sent a letter to the applicant in January requesting additional information and actions to move forward. Mr. Wilkinson stated that the Board is still awaiting a response. Mr. Wilkinson stated that this matter is on hold.

Lot Line Change

Tasse/Vincent (226-1-70 and 226-1-658.111)

Mr. Wilkinson stated that Mr. Tasse should be present for the meeting. Mr. Wilkinson stated that last month the Board received new drawings. Mr. Wilkinson stated that the Board has received a clarification from the attorneys involved regarding the additional information requested. Mr. Wilkinson stated that the Board requested a revised map that has been received. Mr. Wilkinson stated that the revised map still has the right of way but states that it is to be extinguished. Mr. Wilkinson stated that the file is still missing the deed and the affidavit authorizing James Vincent to act on behalf of Alberta Vincent.

Mr. Wilkinson stated that there are e-mails back and forth between Larry Mahar, Esq. representing Mr. Tasse and Bob VanVranken, Esq., representing Mr. Vincent. Mr. Wilkinson stated that the Board could move forward with the approval contingent upon written proof, within 30 days, that the right of way has been extinguished, new deeds have been signed and proper filings.

Mr. Keniry stated that the Vincent's do not want to relinquish the rights of access unless Mr. Tasse gets the necessary approvals and then has the purchase closing. Mr. Keniry

stated that Mr. Vincent is slow to give up right of access to the back property in case the transfer to Mr. Tasse does not happen. Mr. Keniry stated that after the transfer, the deeds would be prepared and filed in conjunction with the filing of the mylar. Mr. Keniry stated that what is on the drawing pertaining to the right of way is sufficient. Mr. Keniry stated that if the Board makes it clear on the record that it is the Board's intent to grant the approval based on those conditions occurring and the Board subsequently finds out that it has not been done then that does stand as a basis upon which the approval is either going forward or not in compliance of one of the conditions. Mr. Keniry stated that he does agree that there are practical questions about how to follow this. Mr. Keniry stated that these are public records and the Board has the ability to say to Mr. Tasse that the Board expects the documentation to follow. Mr. Keniry stated that he is comfortable with regard to the statement on the map that says it is their intention to relinquish those rights. Mr. Keniry stated that the notation on the drawing is sufficient to put a searcher on notice.

Mr. Kadlecek inquired when Mr. Wilkinson signs the mylar.

Mr. Keniry stated that so long as the Board grants an approval conditioned upon that relinquishment and that merger occurring by virtue of proper instruments being filed in the Saratoga County Clerks office, as long as that condition is in the approval, Mr. Wilkinson could sign the mylars when an acceptable map is presented.

Mrs. Wood stated that the easement is on a parcel that has nothing to do with what Mr. Tasse is acquiring.

Mr. Keniry stated that was correct.

Mrs. Wood stated that the Board's reasoning behind that was because it means that there is no access to the back for further development of the lot back there.

Mr. Black stated that the access comes off the road on property that they actually own. Mr. Black stated that at the end of this, Mr. Tasse's land would increase by a total of 12 ½ acres in a unified deed and then the lot that the right of way goes through would become one.

Mr. Wilkinson stated that it would not be unreasonable for the Board to give contingent approval and have Mr. VanGuilder give a new drawing with the right of way removed.

Mr. Keniry stated that the Board might not necessarily have a new drawing. Mr. Keniry stated that they might file a drawing of this nature with the representation that it is their intent to do it and with the conditional approval, that is ok from an attorney's perspective.

Mr. Black stated that he would like to make sure that the Board is all in agreement on the objective. Mr. Black stated that there is a large piece of land now behind Mr. Vincent

and Mr. DeLucia, to remain with the Vincents Trusts, and there is a convoluted way of getting access to it through both right of way a narrow and 360 foot of road frontage. Mr. Black stated that if the right of way goes away, the remaining parcel is very difficult to approve cutting it off, which keeps it all in one piece and prevents landlocked land.

Mrs. Wood inquired if the Board could prevent the land from being landlocked in the future.

Mr. Keniry stated that it would create a non-conforming lot. Mr. Keniry stated that it would be preferred to see property access by virtue of access that is owned.

Pre-Application Conference

Kuehner/Miller (246-3-64 and 246-3-63.2)

Mr. Wilkinson stated that this matter pertained to adding 4 square feet from the Miller property to the Kuehner property to allow the Kuehner child to continue to go to school in the Burnt Hills-Ballston Lake School District.

Mr. Wilkinson stated that it appears that there are rules that do not allow this to happen. Mr. Wilkinson stated that the Kuehner's have hired a land surveyor. Mr. Wilkinson stated that he has spoken to Anna Stanko at the Saratoga County Real Property Tax Service and she stated that Real Property could not file any map that merges land from another school district. Mr. Wilkinson stated that he was told that you couldn't merge property across school district lines for the sole purpose of enrolling a child in that school. Mr. Wilkinson stated that there is an ordinance supporting this rule. Mr. Wilkinson stated that he spoke to MR. Kuehner and he was going to consult an attorney. Mr. Wilkinson stated that they wanted to be on the agenda, but when Mrs. York contacted them on Sunday they stated that they were not yet ready to come back before the Board.

Mr. Black stated that he works with Mr. Kuehner and the attorney is aware of case precedent in New York State and they were going to argue that case precedent and challenge that in court. Mr. Black stated that the attorney is doing research to see if the case is winnable or not.

Minutes

Mr. Wilkinson stated that there were minutes to approve.

Public Hearings

Mr. Wilkinson stated that there are no Public Hearings.

Reports

Mr. Wilkinson stated that there would be standard reports.

MHP Properties (256-1-103)

Mr. Wilkinson stated that there are revisions to review for the MHP Properties matter. Mr. Wilkinson stated that everyone should have received a copy of the changes. Mr. Wilkinson stated that some of the changes are minor. Mr. Wilkinson stated that he has asked Mr. McNamara for his opinion.

The meeting was closed at 7:32 p.m.

BUSINESS MEETING

Opened at 7:33 p.m. with the Pledge of Allegiance.

Minutes

Mr. Wilkinson made the motion to approve the draft of the February 16, 2009 minutes with changes incorporated. Mr. Kadlec seconded the motion. All were in favor. Mrs. Wood and Mr. Black abstained from the vote.

Subdivision Applications

Heflin/Durst (255-1-40.1,41,43.1,43.2,43.3)

No one representing this matter appeared.

Mr. Wilkinson stated that there has been no action and this is a placeholder.

Ward (225-1-15.1)

No one representing this matter appeared.

Mr. Wilkinson stated that this matter is on hold.

Lot Line Adjustments

Tasse/Vincent (226-1-70 and 226-1-68.111)

Mr. Tasse appeared before the Board.

Mr. Wilkinson stated that the Board has received new maps on February 16, 2009. Mr. Wilkinson stated that at the last meeting the Board requested proof that Mr. Vincent

could act on behalf of the trust, a copy of the deed and the removal of the right of way for ingress/egress easement.

Mr. Wilkinson stated that the drawings have the notation that the 50-foot right of way “is to be extinguished”. Mr. Wilkinson stated that the Board could move forward with the current drawing with a contingent approval. Mr. Wilkinson stated that there have been some e-mails back and forth between all of the attorneys involved. Mr. Wilkinson stated that the Board’s assumption is that the Vincent’s want to leave this right of way in there for the time being until a time that the transaction has gone through.

Mr. Tasse stated that it has no bearing on the transaction. Mr. Tasse stated that the right of way would terminate upon Mrs. Vincent’s passing. Mr. Tasse stated that it has nothing to do with the lot line change he is attempting to implement. Mr. Tasse stated that the Board had discussions relative to the right of way for a higher purpose. Mr. Tasse stated that he has no interest in that piece of property.

Mr. Keniry stated that he does not know in terms of the details of the transaction other than the representation that the Board has received in writing from Mr. VanVranken dated February 12, 2009. Mr. Keniry read paragraph three of that letter. A copy of the letter is annexed hereto as **Attachment 1**.

Mr. Keniry stated that he agrees with Mr. Tasse that he is not under contract to purchase that property, that property is the subject of the review because of the representations of the attorney for the seller.

Mr. Black asked Mr. Keniry to clarify what the two independent parcels are as described in paragraph three of the letter.

Mr. Tasse showed the independent parcels on the drawing together with the easement.

Mr. Keniry read paragraph three again.

Mr. Black stated that the letter cites two separate parcels but that is not the way it is shown. Mr. Black stated that the drawing cites two separate deed books.

Mrs. Wood stated that note #3 explains the deeds.

Mr. Tasse stated that there is a separate deed by way of the easement conveyance.

The Board reviewed the tax map books.

Mr. Black stated that there are three separate tax parcels: the large area of which a piece is going to Mr. Tasse, and two other parcels owned by James and Maryann Vincent, one of which is the 50 foot right of way.

Mr. Keniry stated that the letter from Mr. VanVranken acknowledges the accuracy of the VanGuilder survey map. Mr. Keniry stated that where the map depicts the 50-foot right of way, Mr. VanGuilder does not indicate it as a broken line but as a solid line. Mr. Keniry stated that if the Board interprets the letter that the Vincent's are in agreement with the map, and if it is agreed to merge the two parcels and it is now known that that the 50 foot right of way is a stand alone parcel, it stands to reason that they would agree to simply merge the two James and Maryann Vincent parcels and at the time that this was offered they just simply did not know or recognize that the 50 foot was a parcel.

Mr. Tasse stated that he couldn't say that they would merge both.

Mr. Keniry stated that doesn't it stand to reason that they would if they agreed, as stated in their letter, to merge the two parcels and extinguish the right of access.

Mr. Black stated that there are two separate tax parcels listed.

Mr. Tasse stated that the ownership is the same.

Mr. Black stated that the tax roll lists the larger of the two parcels is James alone.

Mr. Keniry stated that the representations on the drawings are based on the deeds.

Mr. Black stated that the intent is still the same. Mr. Black stated that since the lot line change affects these two lot line adjustments at the same time. Mr. Black stated that one lot line adjustment on parcel two is going to Mr. Tasse and the other lot line adjustment eliminates the 50-foot right of way and merges the remaining two parcels into one.

Mr. Keniry stated that the Board could approve the lot line adjustment contingent upon these events: real estate closing that is going to involve a number of different deeds and the filing of the mylar.

Mr. Black stated that the Board no longer needs the affidavit allowing Mr. Vincent to act on behalf of the trust because the Board has the letter from Alberta Vincent's attorney, Mr. VanVranken, so the Board could waive that requirement. Mr. Black stated that the Board has a map indicating the intent of the right of way is to be extinguished and the deeds are listed on the mylar.

Mr. Black stated that if the Board takes contingency action it would be contingent on the coalition of the two tax parcels represented as two parcels into one parcel.

Mr. Wilkinson inquired if the Board needed a new drawing showing the parcels merged.

Mr. Keniry stated that the Board has the representation that the right of way extinguishes

upon Alberta Vincent's death.

Mr. Black made the motion that the Planning Board be designated as lead agency for the purposes of SEQRA and that the proposed action is classified as an unlisted action with a negative declaration relative to SEQRA. Mrs. Wood seconded the motion. Roll call vote was taken:

Mr. Hodgkins – aye

Mr. Black – aye

Mr. Wilkinson – aye

Mr. Mitchell – aye

Mrs. Wood – aye

Ms. Szurek – aye

Mr. Kadlecek – aye

Motion carried.

Mr. Black made the motion to approve the lot line change as Resolution 2009-01 contingent upon the modification of the drawing to indicate a merger of two tax parcels (226-51-12 and 226-51-2) into one tax parcel and extinguish the easement and authorize the chairman to sign the mylars. Mr. Kadlecek seconded the motion. All were in favor.

The Board reviewed the short environmental assessment form. For the record, Mr. Tasse stated that he plans on no further development of the parcel.

Mr. Wilkinson stated that Mrs. York would be sending Mr. Tasse a letter reviewing what the Board is requiring.

Mr. Keniry stated that he would contact Mr. VanVranken tomorrow.

Zoning Administrator Report

Mr. LaFountain provided his report for the month of February 2009. The Board reviewed the report.

MHP Properties (256-1-103)

Mr. Wilkinson stated that there have been revisions to the final approved site plan submitted by Lansing Engineering. Mr. Wilkinson stated that he asked Mr. McNamara to review the submittals, which he has done. Mr. Wilkinson read the letter from Mr. McNamara. A copy of the letter is annexed hereto as **Attachment 2**.

Mr. Black stated that Mr. LaFountain would normally review the changes and flag any concerns. Mr. Black stated that the gutter and septic line changes are minor. Mr. Black

suggested that the Board contact Mr. McNamara for his opinion on the pavement change.

Mr. LaFountain stated that the Board needs to see any changes pertaining to the site plan but as far as construction changes, the building department will catch those.

Mr. Wilkinson stated that going forward, the Board would review changes to the site plan as originally approved and ask Mr. McNamara to review the reduction of the pavement sub-base from 12" to 6", which the Board reviews as significant.

Mrs. York stated that the engineering escrow account has been extinguished .

Mr. LaFountain suggested that the Board contact Mr. Lansing for an explanation.

Mr. Black stated that after speaking with Mr. Lansing, the Board could ask Mr. McNamara for an opinion.

Mr. Wilkinson stated that he would contact Mr. Lansing regarding the reason for the changes and suggest that they set up an escrow account so if there is something that Mr. McNamara needs to review there is money to for their review.

Town Board Liaison

Mrs. Verola was not present.

At 8:15 p.m., Mr. Wilkinson made a motion for the Board to enter into Executive Session to discuss the pending Article 78 proceeding of Nigriny vs. the Town of Charlton Planning Board. Mr. Black seconded the motion. All were in favor.

Mr. Wilkinson made a motion to close the Executive Session at 8:35 p.m. Mr. Kadlecek seconded the motion. All were in favor.

Business Meeting

Correspondence

Mr. Wilkinson reviewed with Mrs. Wood and Mr. Black the discussions at the last meeting pertaining to asking Mr. Armer to attend all of the meetings as an alternate.

Mr. Wilkinson stated that the Board also talked about asking people speaking at Public Hearings to sign up so that the names and addresses are available.

Mr. Black suggested providing a sign up sheet up front where they would need to sign their name and address and then address the Board.

Mr. Wilkinson stated that it was also suggested providing a table for the applicants to

approach to present their plan.

Mr. Wilkinson stated that there were also discussions about Part II of the environmental assessment form and having two Board members for each item to conduct research. Mr. Wilkinson asked the Board members to think about it.

Mr. Wilkinson stated that the Board also discussed having a separate agenda night. Mr. Wilkinson stated that it would still be posted for the public.

Mr. Wilkinson proposed dropping the Heflin/Durst matter off of the agenda until they notify the Board, 14 days in advance, they have new information and would like to proceed.

Mrs. Wood made the motion to adjourn the meeting. Mr. Kadlecek seconded the motion. All were in favor.

The meeting was adjourned at 9:07 p.m.

Respectfully Submitted,
Kimberly A. Caron
Recording Secretary

Attachment 1

A copy can be viewed at Town Hall

April 7, 2009

Attachment 2

Mr. Jay Wilkinson
Planning Board Chairman
Town of Charlton Town Hall
784 Charlton Road
Charlton, N.Y. 12019

Re: MHP Properties, LLP
Medical Office Building – Stage and Lake Hill Roads
Review of Plan Addenda
Tax Map Parcel No. 256.00-1-103

Dear Chairman Wilkinson:

As you requested, we have reviewed three separate plan addenda submitted for the Charlton Family Medicine Capital Care plans. Addendum #1 dated November 25, 2008 replaced sheets LM-1 and DT-2. The revisions include the addition of roof drains, a curtain drain around the storm basin perimeter and soils information on test pit holes #3 - #5. Addendum #2 dated February 26, 2009 superseded the earlier revisions. A full set of revised plans were submitted with the notable changes including the reduction of pavement subbase from 12 to 6 inches, the relocation of the east side roof drain and the addition of a concrete walk and integral curb detail. The final addendum dated March 3, 2009 replaces sheet DT-3 of the prior set. The changes in this revision include the correction of the noted dimensions on the proposed built up septic system.

We have reviewed each of these changes and offer comment only on the reduction of the pavement subbase. It is important to note that the pavement for this project will be privately owned and maintained. The reduction of the subbase thickness will not have any observable impact on the site plan originally approved by the Town. This cost saving revision will, however, likely reduce the life expectancy of the paved surface and may eventually result in broken pavement or potholes. This is especially true given the loamy soils and high groundwater conditions found on the property. The acceptability of these conditions and the timing of repairs would be up to the facility owner.

Of greater concern to the Town is the ability of the revised pavement section to support an emergency vehicle. For driveways longer than 500 feet, Charlton requires the drive to be constructed so that it will support a 50,000 pound vehicle. It is reasonable to expect the same performance from the parking lot of the proposed medical office. We recommend that the Town insist that the applicant's engineer certify in writing that the proposed asphalt design will adequately support a 50,000 pound vehicle.

If you have any questions concerning this project, please feel free to call.

Very truly yours,

Michael McNamara, P.E.
The Environmental Design Partnership

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Cc: Scott Lansing, P.E.