

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

Minutes of Planning Board Meeting – May 18, 2009

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

Present: Jay Wilkinson, Chairman, John Kadlecsek, Mark Hodgkins, Connie Wood, Dawn Szurek, Ray Black, William Keniry, Planning Board Attorney, Susan York, Planning Board clerk and Kimberly Caron, Recording Secretary. Chris Mitchell joined the meeting at 7:30 p.m.

AGENDA MEETING:

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

Minutes

Mr. Wilkinson stated that the draft of the April meeting minutes needed to be approved. Mr. Wilkinson stated that Mrs. York provided comments. Mr. Wilkinson stated that he agreed with Mrs. York's comments. Ms. Szurek provided a comment. Mrs. Wood provided a correction and Mr. Hodgkins provided a correction. Mr. Wilkinson stated that the Board could approve the minutes during the business meeting.

Public Hearings

Nielsen/VanGuilder (234-1-17.2)

Mr. Wilkinson stated that there would be a Public Hearing on this matter.

Mr. Wilkinson stated that maps had been issued with a revision date of May 8, 2009. Mr. Wilkinson stated that new maps should be provided tonight correcting the easement right of way. Mr. Wilkinson stated that there is an additional easement on the property that they have been trying to position for a couple weeks now.

Mr. Keniry stated that he spoke to Mr. Rabideau requesting details of another easement found on the property. Mr. Keniry stated that there had been no information found on the easement. Mr. Keniry stated that he had requested that Mr. Rabideau do additional research to find out what the situation was. Mr. Keniry stated that there does appear to be rights in favor of an adjoining owner and they did, as a result of further research in the County Clerk's office, find documents to reflect that. Mr. Keniry stated that after the documents were found, they attempted to locate that description on their maps and in the field. Mr. Keniry stated that he believes that the description is an older farm description, which makes reference to a stonewall, and they were unable to locate it. Mr. Keniry stated that as a result of further discussions between Mr. Wilkinson, himself and Mr. Rabideau, it became apparent that the Board was correct and those rights do exist in favor of an adjoining owner and that as a result of the inability to locate it, what was discussed

was adding a note to the map making a specific reference to a book and page, where the rights originated from so that anybody looking at the map would have actual notice of the fact that those rights exist.

Mr. Black inquired where the property that it provides rights to was located, behind it entirely?

Mr. Keniry stated behind.

Mr. Black inquired that we don't know actually where the right of way is?

Mr. Keniry stated correct. Mr. Keniry stated that they couldn't depict it because they cannot locate it. Mr. Keniry stated that it is in the record title in the County Clerk's office and it is described in words.

Mrs. Wood stated that this is an old easement, not the one that the Board was looking at. Mrs. Wood stated that the one the Board was looking at that has been removed was the logical place for the driveway.

Mr. Black asked Mrs. Wood to explain.

Ms. Wood stated that the applicant showed the Board a map that had an easement that their house was going to use as a driveway. Mrs. Wood stated that they removed this at the Board's request. Mrs. Wood inquired if there was a way to help them out by saying that they could have that easement between those two parties and that at the time if there was a sale of either property the easement would cease to exist.

Mr. Keniry stated that Mr. Valentine suggested in his letter using a maintenance agreement between the two parties. Mr. Keniry stated that is something that is available to them if they chose to use that tool. Mr. Keniry stated that the Board does not have the ability to restrict people from granting rights in the nature of easements if it is not in connection with the Board's process. Mr. Keniry stated that the depiction of the intended and proposed easement was something that the Board was not comfortable approving and the applicant then consented to eliminate that from their plan. Mr. Keniry stated that they will not be approving, if the Board so inclines to approve, a plan with the easement. Mr. Keniry stated that at some point in time if they so choose to enter into the agreement that's contemplated under the County Planning Board's letter or some other agreement, they could.

Mr. Black stated that independent of whether the easement is listed or in place and the Board approves it or not approve it, relative to this process, they still have created the subdivision in such a way that the natural lay of the land and the natural access to that back field which stays with parcel B.

Mrs. Wood stated that they have other access to that land.

Mr. Hodgkins showed the other access.

Mr. Black inquired why the funny shape of the lot.

Mr. Wilkinson stated that they wanted to follow the center of the stream.

Mr. Kadlecek stated that they also wanted to pick up the stonewall.

Mr. Black inquired why not go straight back so that the natural access stays with the original property.

Mr. Wilkinson stated that the Board recommended it but it was the applicant's choice.

Mr. Wilkinson explained the drawing to Mr. Black and the information he missed at the last meeting.

Mr. Wilkinson stated that the Board received the response from the County Planning Board and there were no issues. Mr. Wilkinson stated that Mr. Valentine suggested a maintenance agreement if the easement was going to stay in place.

Mrs. Wood stated that the Board could encourage Mr. Valentine's suggestion to the applicant.

Mr. Wilkinson stated that the Board also referred the application to the Town of Glenville and their response was no concern.

Mr. Wilkinson stated that the Board's changes had been made and the changes suggested by Mr. McNamara have also been made.

Mr. Black stated that, in his opinion, he can't tell if the existing road is the only natural place for the road to be or not because the stream comes underneath it but would guess that it is more built up because it is crossing a wetlands area. Mr. Black stated that his point is that Lot B, the existing house with its barn, wants to retain possession of agricultural land for potential pasture land and the natural land lay, without having to cut through an existing wooded area, they are putting onto a lot and the lot has a very unnatural extension just to include it. Mr. Black stated that it seems an unnatural thing to do and his disposition is to not approve that because it doesn't make sense.

Mr. Hodgkins showed Mr. Black the aerial photograph showing the other access point.

Mr. Black stated that he is not seeing the advantage to having a very small piece of land if there is no access. Mr. Black inquired why not make it part of the other lot.

Mr. Kadlecek showed Mr. Black the original plan.

Mr. Black stated that as a minimum, move the line here.

Mr. Kadlecek and Mr. Black agreed to walk the property.

Mrs. Wood stated that the Board asked at the last meeting and the applicant stated that there was other access.

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

Mr. Black recused himself from discussions.

Mr. Wilkinson stated that this is a lot line change. Mr. Wilkinson stated that the Board has received the requested documents and that the applicant should be present this evening. Mr. Wilkinson stated that the Kuehner's are requesting a 2-foot x 2 foot piece of property from the Millers.

Mr. LaFountain inquired what was the purpose of the lot line change.

Mr. Wilkinson stated that the Kuehner's would like to remain in the Burnt Hills-Ballston Lake school district and the current boundary line would require them to move their child to the Scotia-Glenville school district.

Mr. Wilkinson stated that in acquiring the 2 feet of property in the Burnt Hills school district, there is legal precedence that says they can petition the school district to go to that school.

Mr. Keniry stated that there have been some changes in the law to afford them.

Mr. Keniry stated that the intent is to apply to the district that they own property in.

Reports

Mr. Wilkinson stated that there would be standard reports.

Correspondence

Mr. Wilkinson stated that there is a training opportunity on June 4, 2009

Mr. Wilkinson stated that there would be no Town Board Liaison report as Mrs. Verola is recovering from minor surgery.

Mr. Wilkinson made the motion to close the agenda meeting seconded by Mr. Kadlecek. The agenda meeting was closed at 7:30 p.m.

BUSINESS MEETING

Opened at 7:30 p.m. with the Pledge of Allegiance.

Minutes

Mr. Wilkinson made the motion to approve the draft of the April 20, 2009 minutes with changes incorporated. Mr. Kadlecek seconded the motion. All were in favor. Mr. Black and Mr. Mitchell abstained from the vote.

Zoning Administrator Report

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

Correspondence

Mr. Wilkinson stated that the CDRPC is offering a training conference on June 4, 2009 at 8:00 a.m.-3:00 p.m. Mr. Wilkinson stated that the fee is \$30.00 and lunch is included. Mr. Wilkinson stated that anyone interested needed to respond by May 27th.

Mr. Wilkinson stated that the Board received a letter from the Charlton School attorney, Thomas Peterson. Mr. Wilkinson stated that the letter said they are still on track with the renovations and hope to be able to make those renovations. Mr. Wilkinson stated that the latter said that based on the economy, the matter is on hold but more information will follow.

Mr. Wilkinson stated that there was another training opportunity on June 11, 2009 on case law.

Public Hearing

Nielsen/VanGuilder (234-1-17.2)

Mr. VanGuilder appeared before the Board.

Mr. Wilkinson stated that the Public Hearing notice was published in the Daily Gazette on May 11, 2009

Mrs. Wood inquired if notification cards were sent out.

Mrs. York responded yes.

There was no one from the public in attendance.

Ms. Szurek recused herself from the Public hearing.

Mr. VanGuilder distributed revised maps and presented the following plan:

- total acreage is 16 ½ acres
 - plan is to subdivide a 4 ½ acre lot from the 16 ½ acres on the southwesterly portion of the land
 - existing residence would stay on the 12 remaining acres, which will consist of everything north of the tributary and the easterly portion near the intersection of Hart Road and Western Avenue
 - topography is that it slopes toward the stream and ACOE wetlands have been delineated in the rear of the property
 - plan to maintain the existing vegetation around the perimeter of the field
 - access to lot using the existing field drive that has been used to access fields that the Andersons have been farming
 - proposed house, septic and well are indicated
 - soil data was taken by Wayne Kant and are conducive for a standard design septic system; perk rate was 11 minutes
 - there is a good separation distance from the ACOE wetlands as there is no mandatory separation distance for the house from the wetlands but it is in excess of 100 feet
 - they have added a note (note #3) to the plan regarding the right of way granted by a previous owner of the overall property that was part of a 100 acre farm in 1919, it was general in nature and not plottable or described well enough to reproduce in the field.
- Mr. VanGuilder read the note to the Board.

Mr. Black inquired where the piece of property that the right of way was located.

Mr. VanGuilder stated that it was located to the North. Mr. VanGuilder showed the Board in the aerial photograph. Mr. VanGuilder stated that in 1931 this roadway was shown and in 1947 it no longer showed up.

Mr. Black inquired if this was a landlocked parcel.

Mr. VanGuilder stated that there are two large farms that have frontage on two different roads.

Mr. Black stated that at this point, with road frontage to both parcels of land, the right of way over other parcels isn't even required.

Mr. VanGuilder stated that the roadway here is not used regularly, it is only used seasonally just for access to the field, it is not used as a driveway.

Mr. Black stated that the property itself that the fields are part of has road front.

Mr. VanGuilder stated yes, it has other frontage. Mr. VanGuilder stated that there has been no recent access through their property to other property.

Mr. Wilkinson inquired if there was any public comment.

Mrs. Wood made the motion to close the Public Hearing. Mr. Black seconded the motion. All were in favor. Public Hearing closed at 7:55 p.m.

Subdivision Applications

Nielsen/VanGuilder Deliberations (234-1-17.2)

Mr. Wilkinson stated that the Board has received new maps with all of the Board's requested changes. Mr. Wilkinson stated that Mr. McNamara's changes were also included. Mr. Wilkinson stated that a note regarding the easement has been added. Mr. Wilkinson stated that the Board has the responses from the Town of Glenville and the County Planning Board. Mr. Wilkinson stated that the County Planning Board did make a suggestion of a maintenance agreement if there was going to be an easement.

Mr. VanGuilder stated that the easement is no longer on the map, so as far as the County's suggestion of a maintenance agreement, they have not reserved any easement at this point in time and it is not a part of this action.

Mr. Black stated that there are normal elevation lines depicted but also other lines that are confusing.

Mr. VanGuilder stated that he would remove those lines. Mr. VanGuilder stated that they used the USGS contours in 10-foot intervals. Mr. VanGuilder stated that this would be removed from the final map.

Mr. Black stated that he assumes that the stream continues down though the property.

Mr. VanGuilder stated yes.

Mr. Black stated that the aerial photo shows the crossing of the stream. Mr. Black stated that because of natural vegetation it appears that it is a natural minimum point of crossing of the wetlands and if this piece of property, having control of these fields, it seems unnatural to take the natural access and put it on an adjoining parcel. Mr. Black stated that he does not understand why the boundary line isn't there.

Mr. VanGuilder stated that they could move it over there. Mr. VanGuilder stated that it

is totally flexible. Mr. VanGuilder stated that the reason that it was along here is because they wanted to go along the edge of vegetation and include all of the field with it.

Mr. Black stated that from this point of view, it appears that if ever this farm decided to use these fields from this point, this would be the natural crossing.

Mr. VanGuilder stated that the family will continue to use that roadway through the property and they will formalize some sort of an easement in the future when it is necessary because that is the best access to the piece of property but it is also part of these people's access.

Mr. Black stated that it could be in the future, since this the heavy woodland is here, this could easily be opened up to avoid.

Mr. VanGuilder stated that the culverts are collapsed. Mr. VanGuilder stated that they are able to get farm tractors through there but nothing other than a farm tractor could go through there.

Mr. Black inquired if it was possible to make the change.

Mr. VanGuilder stated that he would ask the applicant.

Mr. Dunn inquired why the Board wanted it moved.

Mr. Black showed Mr. Dunn on the aerial photograph. Mr. Black stated that it is the minimum width of the wetland and the best place to cross the wetland to get to the fields if this parcel retains the fields. Mr. Black stated that the land, not the access should remain with that parcel.

Mr. Dunn stated that was ok with him.

Mr. VanGuilder stated that they will move the lot line over and will reduce the side of the lot by 2/10ths of an acre.

Mr. Wilkinson stated that the Board received a letter from the ECC. Mr. Wilkinson asked Mr. Schorr to comment.

Mr. Schorr stated that the ECC is concerned with the protection of the wetland. Mr. Schorr stated that the septic system seems without much detail and within the 100 foot boundary of the wetland. Mr. Schorr stated that does not meet the Department of Health requirement of a residence not being within 100 feet of a wetland.

Mr. VanGuilder stated that the septic system is more than 100 feet from the wetland. Mr. VanGuilder stated that the house is slightly less than the 100 foot range, more like 80

feet. Mr. VanGuilder stated that the wetlands are ACOE and there is no required buffer from federal wetlands.

Mr. Schorr stated that the DOH does not distinguish between DEC and ACOE wetlands. Mr. Schorr stated that the chart stated that setback from the absorption field is included.

Mr. VanGuilder stated that Mr. Schorr was welcome to call the DOH. Mr. VanGuilder stated that there is no required 100 foot separation distance between federal wetlands. Mr. VanGuilder stated that the requirements read designated wetlands and ACOE are not designated wetlands.

Mr. Schorr stated that the ECC feels that a wetland is a wetland and should be protected as such.

Mr. Wilkinson stated that the Board would like to see the 100 foot buffer but know that it is not a requirement.

Mr. VanGuilder stated that it would be easy to move the house 10-15 feet but if the Town policy is a 100 foot buffer from a federal wetland that it should be noted in the regulations. Mr. VanGuilder stated that because of the nature of the ACOE wetlands, they do not impose a requirement.

Mr. Schorr stated that if they could distinguish between the wetland and the stream the requirement from the mean high water mark of the stream should also be on the drawing.

Mr. VanGuilder stated that he believes that the stream is 3-4 feet wide. Mr. VanGuilder stated that the wetlands shown on the drawing are areas where water leaches out but it is not an active stream until it hits the bed and bank of the stream.

Mr. Mitchell inquired if it was active seasonally.

Mr. VanGuilder stated that some water runs there.

Mr. Dunn stated that he has not seen it dry in the last two years.

Mr. Black inquired if there was an increase in the spring.

Mr. Dunn stated that he shot the center line of the stream and it ranged from 2 feet wide to 6, 7, 10 feet wide down towards Eastern in the spring. Mr. Dunn stated that it does not carry a lot of water.

Mr. Schorr inquired what feeds the wetland.

Mr. Dunn stated from the surrounding water shed from farmlands. Mr. Dunn stated that

they have plenty of room and can adjust the placement of the house. Mr. Dunn stated that he would like to please the Board.

Mr. Mitchell inquired as to the soil types.

Mr. VanGuilder stated that Wayne Kant found sandy loam at 24", sand with silt and traces of gravel at 24"-72", shale/gravel mix at 72"-84" and at 85" hit bedrock.

Mr. Wilkinson stated that, in review, the lot line would be moved to include the crossing to the mother parcel, the position of the house would be locked down and the position of the septic so that there is a 100 foot buffer to the wetlands.

Mr. Black asked for a ghost line for the 100 foot setback line from the existing stream and to acknowledge the buffer on the drawing.

Mr. Dunn stated that they would be more than happy to comply.

Mr. Black stated that the USGS elevation lines would also have to be removed.

Mr. VanGuilder stated that he would remove those lines.

Mr. Wilkinson stated that the Board has a complete application. Mr. Wilkinson stated that all fees have been paid and the engineering account has been funded. Mr. Wilkinson stated that the Board could complete the SEQRA review.

The Board completed part two of the Environmental Assessment Form.

Mrs. Wood stated that there is a discrepancy on #2 pertaining to the AG district.

Mr. Wilkinson stated that the applicant can change and initial.

Mr. Kadlecek stated that the Right to Farm note is not worded correctly. Mr. Kadlecek gave a copy of the correct language to Mr. VanGuilder for correction.

Mr. Black made the motion to classify the action as an unlisted action with a negative impact declaration for the purposes of SEQRA. Mrs. Wood seconded the motion. All were in favor.

Mr. Wilkinson made to motion to approve the Nielsen subdivision contingent upon:

- moving the lot line to include the natural field crossing and move it back to the Nielsen property (Lot A to Lot B)
- move the septic location and the house location placing a 100 foot buffer to the wetlands
- revision of the Right to Farm note and
- removal of the USGS elevation lines

as resolution 2009-02 and authorize the chairman to sign the mylars. Mr. Black seconded the motion. All were in favor.

Resolution 2009-02 was passed.

Mr. Wilkinson reviewed the number of required mylars and the timeclock to file and the park fee amount.

Mrs. York provided the filing instructions.

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

Mr. Black recused himself from discussions.

Mr. Kuehner appeared before the Board.

Mr. Wilkinson stated that this is a lot line adjustment on Dawson Road. Mr. Wilkinson stated that there was a pre-application conference back in March.

Mr. Kuehner stated that they are trying to acquire a small piece of land from the Millers, 2 feet x 2 feet, 150 feet back from the road. Mr. Kuehner gave a brief background of why they wanted to have this lot line adjustment. Mr. Kuehner stated that this lot line adjustment would solve their issues with the school district so they can choose what school district their child attends. Mr. Kuehner stated that there is precedent for this kind of action to resolve that issue. Mr. Kuehner stated that there is one case where the people has 1 square foot in the school district.

Mr. Wilkinson stated that the Board has the drawing. Mr. Wilkinson stated that the drawing is missing the site location insert but it is not necessary. Mr. Wilkinson stated that the Board has part 1 and 2 of the application and the AG data statement.

Mrs. Wood stated that the Right to Farm note is different than the Town's required language.

Mr. Wilkinson stated that would need to be revised. Mr. Wilkinson stated that the Board has the affidavit from the Millers, the neighbor list, the deed and the EAF.

Mrs. York stated that the Board has not yet heard back from the County Planning Board. Mrs. York stated that the property does border the Town of Glenville and would need to be referred to the Town. Mrs. York stated that Mr. Valentine is in possession of the referral.

Mr. Keniry stated that his general impression is that it will not be a problem with the County and that a letter should come any day. Mr. Keniry stated that he would refer the

application to the Town of Glenville tomorrow.

Mr. Wilkinson stated that the Board has a complete application.

Mr. Wilkinson made the motion to waive engineering fees, park fees, engineering review and the Public Hearing. Mr. Kadlecek seconded the motion. All were in favor.

Mr. Wilkinson stated that the Board would need to hear from the County and the Town of Glenville before approving the lot line change.

Mr. Mitchell inquired if Mr. Kuehner had any deadlines.

Mr. Kuehner stated that they have an August 1st deadline.

Mr. Wilkinson made the motion to designate the Planning Board as lead agency status for the purposes of SEQRA. Mr. Kadlecek seconded the motion. All were in favor.

Mr. Mitchell suggested having a special meeting to push this application through once the Board has heard from the County and the Town.

Mr. Wilkinson polled the Board:

Mr. Hodgkins – ok with him

Mr. Mitchell – ok with him

Ms. Szurek – uncomfortable with setting a precedent but would come if the Board asked her to

Mrs. Wood – also uncomfortable with setting a precedent but would also come if the Board asked her to

Mr. Kadlecek – ok with him

Mr. Wilkinson stated that if the information comes back to the Board and the timing permits a special meeting then the Board would contact him otherwise the Board will see him at next month's meeting.

Mr. Wilkinson stated that the Right to Farm note needs to be revised.

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

The meeting was adjourned at 9:00 p.m.

Respectfully Submitted,

Kimberly A. Caron
Recording Secretary