

MINUTES
TOWN OF GORHAM PLANNING BOARD
January 28, 2019

PRESENT: Chairman Harvey Mrs. Rasmussen
 Mr. Zimmerman Mr. Farmer
 Mrs. Harris Mr. Hoover

EXCUSED: Mr. Dailey ABSENT: Mr. Wood

Chairman Harvey called the meeting to order at 7:30 PM. Mr. Zimmerman made a motion to approve the October 22, 2018, minutes. Mr. Hoover seconded the motion, which carried unanimously.

PUBLIC HEARINGS:

Application #01-2019, Justin J. Martin Jr. owner of property at 4091 & 4117 State Rt. 364, requests subdivision approval to subdivide a 2.191 acre parcel out of a 173.5 acre parcel.

The public hearing was opened and the notice, as it appeared in the official newspaper of the town, was read.

Brennan Gooding & Kathleen Draper was present and presented the application to the board.

As a neighboring property owner Mr. Farmer recused himself and took a seat with the public.

Mr. Gooding stated they are subdividing the 2.191 acres out of the parent parcel to build a home eventually at a later date.

Chairman Harvey questioned the proposed Ingress/Egress easement listed on the subdivision map.

It was explained that the easement is an access easement for the new parcel, lot 2 and for the land behind lot 2.

Chairman Harvey stated that they will need to document showing how far the existing drive is from the other existing drives in that area. The document will need to show compliance with the Town's Access Management Local Law or show a reason for the board to overrule the town's requirements.

In this area the requirement for driveway separation is 240 feet.

Chairman Harvey explained that if the driveway to the south is closer than 240 feet to the existing driveway being proposed the board may require that the easement be also granted to the property to the south.

The parcel is not served by the County Sewer District.

Chairman Harvey asked if they were going to pursue putting the parcel into the County Sewer District.

Mr. Gooding stated that the cost would be astronomical to put the parcel into the County Sewer District.

Chairman Harvey asked if they have done perk test on the proposed parcel.

Mr. Gooding stated that perk test have not been done at this time. Judging by soil profiles in the past in the area it should be a non-issue.

A note will need to be added to the map that future construction is subject to site plan review by the town.

Chairman Harvey asked if there were any comments from the public. Hearing none, the public hearing was closed.

Chairman Harvey asked if the EAF was done on line with the EAF mapper. The map and check list must be filed with the town showing that it was done on line.

Kathleen Draper stated that she probably will not be building until sometime in 2020.

The Planning Board discussed and completed Part 2 of the Short Environmental Assessment Form. The board determined this to be an unlisted action under SEQR that will not receive coordinated review since no other discretionary agency approval is required.

Mrs. Rasmussen made a motion to approve the Short Environmental Assessment Form, part 1 as completed by the applicant and part 2 as completed by the Chairman making a "negative determination of significance" stating that the proposed action will not result in any significant, adverse, negative environmental impacts as the board did not find a single potentially large impact related to this project. Mr. Zimmerman seconded the motion, which carried unanimously.

Mrs. Rasmussen offered a resolution [attached hereto] to approve the subdivision with the following conditions: 1. Note that the proposed Ingress/Egress easement shown on the map is to be granted to Lot 2. 2. The driveway on the parcel to the south now formally owned by Jonathan D & Sara Z. Pragle property be within 240 or the Ingress/Egress easement be granted to the parcel as well for future use. 3. Future construction is subject to site plan review by the Town of Gorham. Mr. Hoover seconded the resolution, which carried unanimously.

Mr. Farmer re-joined the board at this time.

MISCELLANEOUS:

Welblest Farms asking for an investigation of the Zoning and Planning procedures, process and violations of regulations in accordance to the Zoning Ordinances, Right to Farm, Town Design Guidelines and Town Master Plan for projects permitted and non-permitted for property 3304 Lake to Lake Rd.

Joshua Watkins was present.

Chairman Harvey explained to Mr. Watkins that he has read the materials and understands his concerns. But at the present time with the un-going lawsuit with the neighbor, the board will listen to what Mr. Watkins has to say but as the Chairman of the Planning Board he is not going to allow discussion, feedback and answers from the board until we consult with counsel.

Mr. Watkins presented to the board maps of his and his neighbors property that he printed off of ONCOR.

He explained that the maps show the slope of the land, aerial tile view that is on the property and retention ditch that the neighbor filled in, geographical contours with the footprint of the neighbors existing building. He also supplied pictures of the neighbors building as of 4 days ago. In the accusal against him is that he supposedly dug up field tile plugged it and is promoting the water flow into the gentlemen's building. The picture shows that water cannot penetrate frozen ground. So tile has no play in this.

Mr. Watkins stated that the lawsuit against him has nothing to do with the town.

Mr. Watkins stated just for information the swale that was filled in by the neighbor took many field tile into that. It was about 8 foot deep and about 8 foot wide on the north to south pitch and then it was 4 foot wide by 2 foot deep running west to east to his retention ponds. There was never any permission on entering the outside parcel. In tile drainage law you can't effect by artificial drainage to a lower sloped property. Just for awareness after reading through the town bylaws he back filled and filled in the swale without permits. Anything in the bylaws over 200 cubic square feet of fill needs an environmental study and permit. He also filled in a natural water swale without a permit. His permit was issued in 2015 or 2016, but as the picture shows everything was filled in way before that without permits issued. He also has a secondary driveway.

Mr. Watkins presented a big picture of the full view of the two properties. The water that comes off the rear of the Town transfer station property makes a bee line by the water tower to the top west corner and then pitches to the ditch that the neighbor filled in.

Chairman Harvey asked Mr. Watkins if he is asking for a formal answer from the Planning Board or the Town in general.

Mr. Watkins stated that what he would like from the Planning Board and the Town is to look back and look at what got ignored and look at what violations are happening at this moment. And what the town would like to look at doing to solve these violations and lack of following the permit guidelines that he did not follow. "I had to follow the bylaws to a tee being agriculture. As it sets right here in the Farmland Priority District no residential property shall have a negative impact on surrounding agricultural properties. This has been nothing but a negative impact and a nuisance and harassment involving what he is not abiding by the town bylaws."

Mrs. Harris asked if he should have had site plan review when he built the pole barn.

Gordon Freida, Code Enforcement Officer stated that he should have come to the Planning Board. "However over the last 10 years I've probably issued over 100 barn permits. I'm not making excuses. This is just a situation he created himself."

Chairman Harvey stated that it doesn't matter if it is administrative review or it comes to the Planning Board. The rules are the same. It is up to the Zoning Officer to make the determination based on the application of whether it meets the guidelines for administrative review or requires the Planning Board to review it.

Mr. Zimmerman asked if this should be discussed in executive session.

Chairman Harvey stated that the town is not being sued so the answer to that would be no. "However, that is one of the reasons that I would recommend the board not discuss this other than ask clarification or fat questions until we confer with counsel. An executive session is allowed to confer with counsel."

Mr. Zimmerman asked Mr. Watkins when he became aware of the magnitude of the problem.

Mr. Watkins stated that he didn't have the problem. "The problem is by the person that built what he built and I'm reeking the downward effect of not only water but also his negative impact of his own doing."

Mr. Zimmerman asked when he felt the impact of this.

Mr. Watkins stated that his impact was not the second lawsuit but the first lawsuit July 20, 2017, when he tried to put a cease and desist on his farm. "I'm getting sued for water drainage issues, farm equipment and property damage, and requesting me to engage legal license engineer services to examine the property and to come up with a plan to divert water

from the property and follow up and engage in fixing the problem."

Chairman Harvey brought up the fact that there has been a request made that Mr. Watkins agricultural practices are in compliance with the standard accepted agricultural practices with New York State Department of Agricultural and Markets.

Mr. Watkins stated that "in 31.4.1 Farmland Priority District it states that any accessory building including residential garage over 800 square feet involves and should have gone in front of the AG committee and should have had full site plan approval. His building is 3400 square foot. In your control runoff bylaws it basically says no change in quantity rate control quality of runoff from existing conditions prior to development shall exist after development. Which he's changed and diminished quality and sped up the rate of water. I'm not going after the permit side of it. That's not my point of making this known. I would just like to make it aware the violations to the current bylaws are currently happening and as a neighboring property and a farm and agriculture it would be no different than some of us at this table that are farmers. If you had a property that was negatively influenced and you're in the Agricultural Priority District that's one thing it states is Agricultural properties are ranked number one over residential in this district."

Chairman Harvey stated that "the only thing that they can do right now is refer this thing to the Code Officer and the Town Attorney to take appropriate action. Again we will confer with counsel and see what kind of response that we can provide you. I appreciate your time and if there is anything else you want to say or provide the town please do so."

Mr. Watkins stated "I appreciate everybody's time. I understand it's a tough situation and I look forward in seeing what the town can do to keep this from happening to other people."

Mr. Zimmerman made a motion to adjourn the meeting at 8:19PM. Mr. Hoover seconded the motion, which carried.

Thomas P. Harvey, Chairman

Sue Yarger, Secretary