

# Minutes August 21, 2008

## *Town of Corinth Planning Board*

Meeting called to Order 7:04pm  
Pledge of Allegiance

Eric Butler, Chairman  
Edwin Eggleston, Vice-Chairman  
Louise Reed  
Althea Rivette  
Joan Beckwith -Absent  
Attorney Pozefsky  
Fred Mann, Building Inspector  
Cheri Sullivan, Secretary

### Public Present:

Sigrid Koch, Arleen Springer, Dave Barrass, Lorraine DiMartino, Barbara Jenkins, Lester Jenkins Jr., Shirley Crast, Tom Millington, Winifred Millington, Sandra Berg, Jose' DelValle

After Roll Call and the Pledge of Allegiance the following business was conducted:

### **\*MOTION TO APPROVE MINUTES FROM JULY 17, 2008 .**

Motion~ Eggleston  
Seconded~ Rivette  
Polled as follows:  
Butler- Yes, Eggleston-Yes, Reed-Yes, Rivette- Yes

### **Public Hearings:**

**Lorraine DiMartino:** Public hearing on minor subdivision located at 86 Fuller Road. Tax Map # 87.1-1-5 Property is zoned R2 along Fuller Road and RR on the back half of the property. Applicant owns 39 acres+/- and is proposing to subdivide 1 Five-acre lot. Mrs. DiMartino reviewed her proposed subdivision for the board. Mrs. DiMartino said she had updated her maps to show approximately where the wetlands were located, as requested by the board at last months meeting. Ms. DiMartino informed the board that

she had an appointment scheduled with DEC for September 09, 2008 when they will be on her property to flag the wetlands.  
The public hearing was read into record. There was no input from the public present for or against this subdivision.

**\*MOTION TO CLOSE THE PUBLIC HEARING**

Motion~ Eggleston

Seconded ~ Rivette

Polled as follows:

Butler- Yes, Eggleston-Yes, Reed-Yes, Rivette-Yes

Attorney Pozefsky reviewed all five questions on part 2 (Impact Assessment) of the short environmental assessment form with the Planning Board and it was decided that all five answers were no and the following motion was presented.

**\*MOTION FOR A NEGATIVE ENVIRONMENTAL IMPACT.**

Motion~ Eggleston

Seconded~ Rivette

Polled as follows:

Butler- Yes, Eggleston-Yes, Reed-Yes, Rivette-Yes

**\*MOTION TO APPROVE SUBDIVISION.**

Motion~ Rivette

Seconded~ Eggleston

Polled as follows:

Butler- Yes, Eggleston-Yes, Reed-Yes, Rivette-Yes

Board member Reed asked if this was preliminary and Final approval or just Preliminary. It was decided that it was both Preliminary and Final Approval and the following motion was presented.

**\*MOTION TO APPROVE PRELIMINARY AND FINAL MINOR SUBDIVISION.**

Motion~ Reed

Seconded~ Eggleston

Polled as follows:

Butler- Yes, Eggleston-Yes, Reed-Yes, Rivette-Yes

## **Public Hearings Continued:**

**Keith Wells:** Public hearing for minor 3-Lot subdivision on Spotswood Drive. Tax Map # 99-3-15.11 Property is zoned R3. Dave Barrass spoke on behalf of Keith Wells regarding this subdivision. Mr. Barrass said that the wetlands are shown on this subdivision. Board member Eggleston asked if there were any changes from last month. Mr. Barrass said there were not. Board member Reed asked how close to the driveway was to the wetlands. Mr. Barrass said he did not feel that there would be an issue as someone put it in a long time ago. Mr. Barrass said the driveway is in the wetlands, presently there is a logging road there and it will require improvements to be an acceptable driveway. Mr. Barrass said there was potential for DEC to require a permit for this driveway, but he did not feel that there would be an issue. Mr. Barrass said that as the Saratoga County GIS shows that the driveway is in the wetlands, and they would need a permit for it. Code Enforcement Officer Mann requested that it be stated in the deed that a permit will be required by DEC for the driveway. Code Enforcement Officer Mann asked Mr. Barrass if he had actually seen the driveway, because the property gets very wet back there. Mr. Barrass said he had not. Board member Eggleston wanted to know in which direction the water flowed on the land. Mr. Barrass said it does not really flow it is contained water; there is no place for the water to escape.

Public Hearing is read into record. The following comments were made at public hearing:

**Tom Millington:** Mr. Millington wanted to know what the zoning was at the location of subdivision and if it was zoned agricultural. Mr. Millington said he did not want any pig farms, horse farms or cow farms behind his house. Mr. Millington said it is wet in there on the lower side all the time and that Mr. Wells put in the road and on either side of that road it is wet all the time. Board member Rivette read through all the permitted uses for R3 and said Agriculture is a permitted use in that zone. Chairman Butler asked Mr. Barrass if his information regarding the wetlands came from the GIS. Mr. Barrass said that he uses the Saratoga County GIS mapping program. Mr. Barrass said that what is on his maps is what Saratoga County shows on their mapping system. Chairman Butler clarified that what was on Mr. Barrass' maps is what Saratoga County is calling the wetlands. Mr. Barrass said yes and that the hundred feet buffer line is also what Saratoga County shows.

Tom Millington Cont:

Mr. Millington also told the board that there was no natural buffer between the properties because Mr. Wells had cut down the trees right to the line.

Shirley Crast:

Ms. Crast said her property also abutted Mr. Wells's property. Ms. Crast said her concern is that according to where the wetlands are located on the map; she wanted to know how close a house could be built next to her property line. Mr. Barrass explained that according to Town Code the rear setback for that zone is 15feet. Mr. Barrass explained, there was more than enough acreage for an individual to build on; there would be no need to build that close to the property line. Ms. Crast wanted to know what assurances were in place that this property would remain residential and none of the things that Board member Rivette mentioned earlier (permitted uses for that zone) would take place. Attorney Pozefsky said that was a question for the Zoning Board. Attorney Pozefsky said that the Planning Board could consider requesting a deed restriction, that states that the property would not be used for pig, cow or horse farms. Attorney Pozefsky said if there is something allowed in zoning now that is a concern to residents it could be addressed with a deed restriction. Mr. Barrass said the applicant was not present and he could not speak for him, but probably, he would want to put the property on the market for what it is zoned. Mr. Barrass said if it is not zoned correctly, then maybe it needs to be rezoned. Mr. Barrass said under the current law, zoning allows those permitted uses and it would not be in his clients' best interest to give away his property rights. Mr. Barrass said his client would probably want to go with the current zoning and not restrict himself.

Board member Rivette said the planning board could ask for a buffer to be put in place between the properties. Ms. Crast said there used to be a buffer until it was logged off. Board member Eggleston said it could be in the deed restriction regarding the animals, but he does not think that DEC would allow animals on the wetlands. Board member Rivette asked Dave Barrass about the space available between the property line and the proposed house. Mr. Barrass said it was approximately 75ft. Board member Rivette did not feel that was much of a buffer. Mr. Barrass said that by Town Law his client could have the proposed house 15ft from the property line, legally they have the right to do that under the current zoning for this area. Board member Rivette said that she has issues with this because she feels that there should be some type of buffer to protect the boundary line and the applicant is not

present to answer questions; it leaves her wondering what he really does have proposed for these lots. Mr. Barrass said if the public is here asking his client to give away his land rights, possibly they should be addressing the zoning board to change the zoning to something that is more practical to that neighborhood. Chairman Butler said this is just a proposed site where Mr. Barrass placed the house, in reality, it could be anywhere on the property as long as it meets the setbacks required and a permit can be obtained from DEC. Board member Rivette said people that own land want space and she is not satisfied with this scenario.

Sandra Berg:

Ms. Berg wanted to know where the driveways were and what is going on. Mr. Barrass explained what was happening to Ms. Berg. Ms. Crast asked if the board members ever go out to a site and look at it. Chairmen Butler said that they do. Ms. Crast said the board was welcome to look at the property anytime and she did not need to be home for them to be on her property.

Jose' DelValle:

Mr. DelValle said his concern was to keep the area residential. Mr. DelValle said at one point someone in the area was considering creating a halfway house for ARC. Mr. DelValle said he lives on Spotswood Drive and he had to sign a good faith contract when they bought the house stating that it would only be for residential use. Mr. DelValle said he wanted the area to remain residential use only. Mr. DelValle said he had lived at this location for 13 years.

Tom Millington: Mr. Millington requested to speak again. Mr. Millington said from his property line to where the wetlands start is about 400-500ft, if a house goes in there, it is going to be next to his property; the same stands for his neighbors because the wetlands run at an angle and the creek comes down and goes right into the swamp behind the neighbors house. Board member Reed wanted to know where the creek was on the map and if the wetlands have been flagged. Dave Barrass said to his knowledge the wetlands have never been flagged. Chairman Butler said legally the lands do not have to be flagged to subdivide. Chairman Butler said the wetlands would need to be flagged before an applicant can build on the property, but not to subdivide. Board member Reed said that was an Attorney question and asked Attorney Pozefsky to elaborate further. Attorney Pozefsky said at the present time all that is required is the approximate locations of the wetlands on the maps; and then if and when a building permit is applied for

at that time, the wetlands would have to be flagged. Mr. Barrass agreed and said that is usually the way it is done. Attorney Pozefsky said a building permit could not be obtained without a Dec Permit to cross those wetlands. Board member Reed said her point was that the wetlands are not just a swamp; they have to do with vegetation also. Dave Barrass said the wetlands on this map are off the Saratoga County wetland maps. Board member Reed asked Mr. Barrass if his information was from DEC. Mr. Barrass explained that it is DEC mapping which the County GIS has on its website. Mr. Barrass explain that from the county website he can superimpose the wetlands onto a tax map parcel and that is how it is done. Mr. Barrass said this property is not a flagged wetland and that DEC has not been out there. Board member Reed asked if anybody had checked the wetland maps that are in the office. Chairman Butler said that he understood where Ms. Reed was going but he did not feel that it was relevant to the subdivision that was before the board; because even if it was all wetlands, he could subdivide, and whether he improves on the land or not is actually up to DEC and the Town Code Enforcement Officer. Chairman Butler said the DEC flagging has no effect on the proposed subdivision map. Board member Reed said that all she is stating is that he may not have any land to put anything on. Chairman Butler agreed and said the reality of it is, that he may not be able to build on it at all once DEC gets in there. Chairman Butler said at that point the applicant has just divvied up a piece of property that is useless. Board member Reed asked if you would want to know that prior to subdividing. Chairman Butler agreed and said personally he would, but he does not believe that would stop this subdivision from happening. Chairman Butler did not see where the applicant had done anything wrong in his application. Board member Reed said if there are more wetlands there, than what is showing on the maps then the applicant his wasting money by subdividing this.

Board member Eggleston said the applicant is asking this board to subdivide this parcel into three separate lots. Board member Eggleston said this board still has control over this property if it is to be turned into a building lot, by placing certain conditions on it for approval. Board member Eggleston said what the applicant is proposing to do right now is just subdivide these lots up. Board member Eggleston said the buffer issue is something that the board needs to look at. Board member Rivette said she believes the board has the right to make the buffer a condition of approval. Board member Eggleston said he believes that the Planning Board has the right to request of the Zoning Board that they review the setback limits because they are to close to neighboring properties. Board member Eggleston said this does not

need to be decided tonight; tonight we need to decide if we should allow the applicant this three-lot subdivision.

Ms. Crast asked at what point does a perk test on the property take place. Board member Eggleston said it takes place when an applicant applies for a building permit. Code Enforcement Officer Mann said normally a prospective buyer will come in and ask for a perk test to be done and, quite often if necessary he would have a deep hole dug also. Code Enforcement Officer Mann said there is a lot of ledge over there to. Code Enforcement Officer Mann also said the wetlands would have to be flagged before he would issue any building permits. Board member Eggleston said the wetland buffer zones might be too great to do anything with, this does not need to be determined right now, the issue is whether we should allow this one lot to be turned into three lots. Mr. Millington asked the board if they were aware that the creek on that property runs right into the back side of Alpine lake and, if there were ever any sewer issues, that is where it would end up. Board member Eggleston said if the wetlands might not support septic systems, then this is an issue for the future, we have to decide if this gentlemen should have this property divided into three lots; what he does with those three lots, whether valuable or invaluable is his decision, not this board's. Board member Eggleston said these are issues that the applicant should have considered and looked into prior to applying for the subdivision.

Ms. Crast also wanted to know how these houses would affect the wells that are currently there. Chairman Butler said seeing that the whole subdivision is on 39+/- acres and there are only two proposed homes he would think that the impact would be minimal.

Attorney Pozefsky said he would like to add a couple of things about the board approving a lot that is 100% wetlands. Generally a board does not approve lots unless they are apparently buildable. Attorney Pozefsky said that the board looks at a map and decides whether it is possible or practical to build on the lot. Attorney Pozefsky said it might turn out, that if it is approved and it is not developable, then the developer is the one who is taking the risk. Attorney Pozefsky said the planning board's job is to look at the maps and determine if they are fairly accurate and if they can build on it. Attorney Pozefsky said if it was 100% wetlands then Mr. Barrass would probably not be here, but if it were 100% wetlands then there would be a serious problem by approving a lot that on the face of it was not buildable. Mr. Barrass said under the present zoning his client could put 30 houses in there, the minimum acreage required is 40,00sqft, his client is only

proposing two homes with two lots each, of which are well over 5 acres. Attorney Pozefsky said that was correct from a density standpoint but might not be with DEC.

Attorney Pozefsky said another point to look at is if the same owner owns both sides of the line and for some reason once DEC got on the property and if there was not sufficient space on a lot to be buildable then all the applicant would have to do is a boundary line adjustment to create a buildable lot.

Board member Rivette asked Attorney Pozefsky if there would be a problem with Code Enforcement Officer Mann commenting because she would like to hear what he has to say, but wanted to know if first, he should recuse himself because he is the go between. Attorney Pozefsky said there are only two times when someone must be recused and they are when someone has a financial interest or a family interest. Attorney Pozefsky said Mr. Mann does not have to be recused, but if Mr. Mann felt that he was biased because he was neighbor then certainly he could step down. Attorney Pozefsky said if the board was uncomfortable with that they could ask him to step down.

Board member Rivette said she would like to hear what Mr. Mann felt about this property and what is shown on the maps. Chairman Butler felt it would be okay for Mr. Mann to speak because he does not actually have a vote on the board. Mr. Barrass said that on behalf of his client he would not object to Mr. Mann speaking since he is a resident of the neighborhood. Board member Eggleston said he did not have a problem with Mr. Mann speaking either. Board member Rivette said that she really thinks that Mr. Mann is setting in the wrong chair, with his property being right there, and he should recuse himself and sit in the audience so that he can tell the board what he feels about the property. Chairman Butler said Mr. Mann is not a voting member of the board and he should be fine to comment on the subdivision. Board member Rivette said she wants to hear what he has to say. Board member Reed asked Mr. Mann if he had ever walked this property. Mr. Mann stated he had. Board member Reed asked Mr. Mann if in his opinion could someone build on it. Mr. Mann replied that as Mr. Barrass said that the proposed home may be within the 100ft buffer, but he would want to run as perk test to see. Mr. Mann said he is a little more fortunate than his neighbors as he does have a wooded buffer of trees on his own property. Mr. Mann said it is very wet out there and there is an old logging road, but where Mr. Barrass has this proposed home is where there are the most wetlands.

Board member Rivette said she believes the board has the right to ask for a buffer on this land, the board has done it previously with Passerelli's

subdivision and these types of stipulations are allowed. Mr. Barrass said they do not want to get caught up in where he drew the houses on the maps, because they may not work in those locations, they are just proposed. Mr. Barrass said he is sure that his client would work with the buffers as long as it does not take from the value of the land. Board member Eggleston felt that the board should give him his subdivision. Board member Eggleston stated that when it comes to selling this property and a buyer comes in, then that is where the restrictions come in. Chairman Butler said something could be added to the deed of the property as a condition of approval. Chairman Butler said every class he ever been to states that the wetlands have to be flagged, but not at this point in the process. Board member Reed asked Chairman Butler if he had walked the property and looked at this land. Board member Rivette said that the board had an offer from an adjoining property owner. Board member Eggleston said the board should approve the three lots period or send the applicant back and request more information. Board member Rivette said she feels the board should look at the land to get a better picture of what they are looking at other than what is before them. Mr. Barrass requested the board get permission from the landowner prior to walking it. Board member Reed made a suggestion to table the application until next month, and go down there and look. Board member Reed said Chairman Butler should look at the wetlands map in the office and review the section where this property is located. Board member Reed said to leave the public hearing open until next month. Chairman Butler asked Attorney Pozefsky if there needed to be a motion to leave the public hearing open. Attorney Pozefsky said a public hearing could be left open. Mr. Barrass asked why the public hearing needed to be left open, everyone knows what the concerns are, and it is just a matter of the board going out and looking to see if their concerns are justified. Board member Reed said because then we can come back and tell the public what we found. Chairman Butler said that the board would also like to hear from Mr. Wells next month. Attorney Pozefsky said the board is not tabling the public hearing so it is okay to just leave it open. Chairman Butler said he would coordinate with Mr. Wells and Mr. Barrass a time to walk the land and reminded the board that they could not all walk it at the same time, as it would constitute a quorum.

**Old Business:**

Debbie Kropf: Regarding correspondence with the APA involving the parcels of land up on Jenny Lake. Attorney Pozefsky explained letter from APA regarding Debbie Kropf only means that her application to

APA is complete. Attorney Pozefsky said APA has jurisdiction and they will make a decision sometime in October and will be in contact with the Planning Board.

**Other Business:**

Chairman Butler said Lester Jenkins was before the board for a proposed boundary line adjustment, so that the applicant can do a Family exemption, subdivide the property and give one parcel to his daughter. Mr. Barrass speaking on behalf of the Jenkins' said both proposals are non-jurisdictional however, this board has previously said if a boundary line adjustment is more than an acre then it is a subdivision, but either way this proposal is involving only family, in which it would be a family subdivision, and is still non-jurisdictional. Board member Reed asked if the board ever had a small amount of land defined. Chairman Butler said it has not been decided yet. Board member Rivette said they are still waiting on the Town Board. Mr. Barrass said in his opinion, as long as you have two lots when you start and you have two lots when you finish, and can still meet the required setbacks, then it should not matter how much property is involved with the Boundary line adjustment. Chairman Butler said he had talked to Code Enforcement Officer Mann last week regarding this proposal and had a question regarding the concrete foundation that the line crosses directly over. Mr. Barrass said that it could be removed to remedy the situation. Mr. Jenkins agreed. Chairman Butler asked Attorney Pozefsky if he had the legal authority to request this of the applicant. Attorney Pozefsky said that if it was non-jurisdictional, probably not. Chairman Butler said he was still required to sign off on the maps. Attorney Pozefsky said it would be beneficial if all involved agreed. There was no opposition involved; all were in agreement that the cement pad be removed.

**\*MOTION TO ADJOURN MEETING** ~ Eggleston

SECONDED ~ Rivette

ALL IN FAVOR~ Butler, Eggleston, Reed, Rivette

Meeting Adjourned 8:27 pm.

Respectfully Submitted



Cheri Sullivan