

Minutes September 18, 2008

Town of Corinth Planning Board

Meeting called to Order 7:04pm
Pledge of Allegiance

Eric Butler, Chairman
Edwin Eggleston, Vice-Chairman
Louise Reed -Excused 8:30pm
Althea Rivette -Excused 8:17pm
Joan Beckwith
Attorney Pozefsky
Fred Mann, Building Inspector
Cheri Sullivan, Secretary

Public Present:

Sigrid Koch, Arleen Springer, Dave Barrass, Shirley Crast, Jose'
DelValle, Keith Wells

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

***MOTION TO APPROVE MINUTES FROM AUGUST 21, 2008.**

Motion~ Eggleston

Board member Rivette questioned Attorney Pozefsky about the top paragraph on page 10 of the August minutes where Chairman Butler stated that they could not all walk the property at the same time because it would constitute a quorum. Board member Rivette told Attorney Pozefsky that unless a meeting was called to order she did not believe that having three board members together looking at a proposed site would constitute a quorum, if no meeting were taking place. Board member Beckwith said that at any time, if there are three board members together it is considered a quorum. Board member Rivette said that is what they have been told, and wanted to know how many times board members have been down to New York City and all rode together. Board member Eggleston said that would be different because, it was not Planning Board business. Board member Rivette said that you are on Planning Board business if you were going down to school for Planning.

Attorney Pozefsky said when there is a majority of the board together at any given time it would constitute a quorum. If a board were to do so then you could not discuss the merits of the project or make any decisions without notifying the public. Attorney Pozefsky said this is because of the open meetings law which states; if there is a quorum and the board members will be discussing the merits of the project and a decision could be made then the public must be made aware of the meeting.

Attorney Pozefsky said there are boards that do go to proposed sites together, they can discuss what they see but they can not deliberate the merits of the proposed project, meaning board members cannot say “this is what I think we should do” or “This is how I think it should be handled,” because then at that point it would constitute a meeting. Board member Rivette said that was her understanding of it that if there was no official calling of a meeting to order, then it is not officially a meeting and people are allowed to take notes. Board member Rivette said the way the minutes ended she felt that, if three members went out and walked the property she was in the wrong, and she was just looking for clarification to know that the next time it would be ok to go out and walk the property and not be in the wrong. Board member Rivette asked Chairman Butler if he was okay with that. Chairman Butler replied that it was the law and he was under the same impression as board member Beckwith. Board member Rivette said it was the same as when the board was deciding, what is a big or small piece of property; doesn't our own good judgment answer that question all the time? Board member Rivette said she does not think there should be an answer to that question; she feels it should be based on their own good judgment.

Chairman Butler asked Board member Rivette if she wanted to change anything in the minutes? Board member Rivette said no she just wanted clarification.

***MOTION TO APPROVE MINUTES FROM AUGUST 21, 2008.**

Motion~ Eggleston

Seconded~ Rivette

Polled as follows:

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

Public Hearings:

Keith Wells: Public hearing for minor 3-Lot subdivision on Spotswood Drive. Tax Map # 99-3-15.11. Property is zoned R3. Chairman

Butler stated the public hearing was still open from last month and asked Dave Barrass to recap for the board what was proposed last month. Mr. Barrass said that his applicant has demonstrated that there is a buildable site on each of the lots; lots two and three are impacted by the wetlands. Chairman Butler asked if there were any questions from the board members. Board member Eggleston asked if there was an area on the map that was elevated well above the wetlands. Mr. Barrass said that it was. Board member Eggleston said that there was more than enough room then for a house to be built and not be within the 100ft buffer. Board member Beckwith asked for clarification from Mr. Barrass on the maps regarding driveways. Chairman Butler asked the board if there were any other questions. The board had no further questions at this time. Chairman Butler opened the public hearing.

Shirley Crast: Ms. Crast stated that she was at last months meeting and voiced her concerns then. Ms. Crast said at last months meeting they had talked about buffer zones. Ms. Crast addressed Mr. Wells stating that she was not opposed to Mr. Wells doing this subdivision only that she did not want someone building within 15ft of her property line and that the area was zoned R3 and she wanted it to stay strictly residential because she did not want any of those other sub zonings to be taking place behind her home. Ms. Crast asked Mr. Wells if he was going to build the house on the lot, then sell it, or just sell it. Mr. Wells said he was just going to sell it. Ms. Crast asked Board member Rivette what happened to the 50 ft buffer zoned that she was requesting at last months meeting. Board member Rivette said there is a 15 ft buffer zone allowed by code and that the board and the Chairman would make the decision if they wanted to add a condition. Board member Rivette said she would hand it over to the chairman who has walked the property, along with Fred and see if there is a need for a restriction in the deed. Board member Rivette said that if Fred and the Chairman see a need for a restriction because agriculture was an allowed use; but R3 also is a moderate residential use and that covers quite a bit also, that is in the law, so that would also prohibit someone coming in there. If you pushed this law in R3, and there was a restriction added that you did not want any farm animals within 50 ft of your home. Board member Rivette said that she was using 50 ft but now that it has been looked at, they have a better idea of what would be appropriate. Ms. Crast asked how she would know what is appropriate in the boards' eyes.

Chairman Butler asked Attorney Pozefsky if the board should listen to each individual first, and discuss situations as they arise or listen to the public as a whole, then further discuss it as a board after the public hearing is closed. Attorney Pozefsky explained that boards do it all different ways but he feels the best way is to turn it over to Dave Barrass and let him answer any questions about buffers and setbacks.

Ms. Crast asked if the board does approve the plan as it currently is, what measures are in place to prevent this property from being further subdivided again by a new buyer. Chairman Butler said another individual could come in and subdivide one of those lots again according to the Zoning Laws; however, there are many variables to consider here, one of which is the wetlands.

Ms. Crast wanted to know if the board knew any more about the wetlands than they did last time. Chairman Butler said that he has walked the property and felt that the wetlands are well represented on the map and due to the wetlands there really would not be a lot of area left over for development. Ms. Crast asked Mr. Barrass if he felt that further subdivision of the lots would not support one-acre lots as defined by the code but it would support more lots than what Mr. Wells is currently proposing. Mr. Barrass explained if that were to happen, that person would be right back in front of the planning board as Mr. Wells is right now and they would have to go through the exact same process. Ms. Crast said she was just concerned about something coming in behind her that would be less than desirable and how it would affect her property value in the end. Board member Eggleston said this parcel of land as it sits would not hold more than one or two houses.

Chairman Butler asked Mr. Wells what his purpose was for dividing the property into three lots. Mr. Wells said eventually he is planning to build his own home on lot#2. Mr. Wells explained he planned to have restrictions in the deed as to what can or can not be built out there to ensure that his property value would not be diminished either, as he will still be a neighbor. Board member Rivette said maybe Mr. Wells could sell Ms. Crast some property to ensure that there is enough of a buffer. Attorney Pozefsky said he wanted all board members to know that under R3 any agribusiness proposals would have to come before the Planning Board for site-plan approval. Ms. Crast said she was satisfied. There was no further comment from the public present.

***MOTION TO CLOSE THE PUBLIC HEARING**

Motion~ Beckwith

Seconded ~ Rivette

Polled as follows:

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

Chairman Butler opened the discussion amongst the board members. Chairman Butler asked Board member Reed what she thought because she had went out and walked the lands also. Board member Reed said there were a lot of wetlands and she thought they should be flagged as a condition of approval of the subdivision. Board member Reed said the lots are nice and she does not have a problem with it as long as the wetlands get flagged. Board member Reed said you really don't know where the wetlands begin and end because they change. Chairman Butler said there was a very large area that sits on a shelf, up away from the wetlands and there is sufficient room to build a home there. Board member Reed said there is still the hundred foot buffer area in which you cannot build. Chairman Butler said you can build in the 100ft buffer but you need a permit from DEC. Mr. Barrass and Code Enforcement Officer Mann confirmed that they could build within the buffer but only with a permit from DEC. Chairman Butler said DEC would be involved with this lot regardless because of the wetlands.

Code Enforcement Officer Mann said that Mr. Wells is not going to be building on that lot any time soon, and even if he had that lot flagged now, before he would issue a building permit, in say two years, he would require that the lot be flagged again, so the wetlands would be clearly defined. Code Enforcement Officer Mann said just like the one on Heath Road is going to have to be re-flagged before he will issue any building permits because it has been so long. Board member Eggleston said Mr. Wells' intention right now is just to split this land so that it is ready for sale. Mr. Wells said his intention is to separate this land from what is currently mortgaged so that it is free and clear and then at a later date sell the lot next to him and his present home and build a new one on lot #2. Board member Eggleston said he has no objections to this proposed subdivision.

Chairman Butler said at the last meeting one of the concerns was if this was a buildable lot, and after walking it, it definitely is a buildable lot. Board member Reed said she feels there should be a condition of the

subdivision approval that the buyers are aware of the wetlands on the lots that he decides to sell. Because it may not be him selling it, it could be a developer. Mr. Wells stated the wetlands are already delineated on the maps. Mr. Barrass said item #4 on the top left corner of the maps states “ wetlands are shown on Saratoga County G.I.S Mapping. Any activity within the 100ft buffer will require a NYSDEC wetlands permit.” Board member Eggleston asked if that would show up on the deed also. Mr. Barrass said not on the deed, but it would definitely be on the maps filed at Saratoga County.

Board member Reed said she wanted to make it a condition on the subdivision. Board member Reed said you can make a condition and they have to follow any conditions. The conditions should be that the buyers have to be told about the wetlands that are on the maps. Board member Rivette said that is so the buyer knows how much they can build on and she agrees it should be a condition. Board member Reed said Ms. Crast said it earlier, that the board has to protect the wetlands because of the aquifer. Board member Eggleston said he feels that the subdivision should be approved the way it is.

Chairman Butler said he feels that between the note on the maps and the wetlands showing on the maps that it is sufficient and is not sure that they should delay approving the subdivision just because the wetlands aren't flagged. Board member Rivette said the board has done it before and she felt secure knowing that the people knew exactly where each parcel, and the wetlands were, and be able to see how much useable land that they were paying taxes on. Then if they decided that they wanted it, then they had no gripes and no one to come back to, and in her opinion it was done right.

Board member Beckwith said to Dave Barrass that he has previously stated in each of the pieces of property that he sells that there are wetlands on lot#3 and it looks to her that it shows that there is about 50% of that lot that is covered by wetlands and wanted to know if Mr. Barrass could make another note stating that in writing, regarding lot #3.

Dave Barrass asked Board member Reed if she wanted a condition on the maps, what would the condition be. Board member Reed said she wants a condition that the wetlands have to be flagged. Mr. Barrass wanted to know at what point, when the wetlands would have to be flagged. Board member Reed said before building takes place. Mr. Barras asked if she wanted a note on the maps that states that wetlands will have to be flagged before a building permit is issued. Board member Reed made a suggestion to Mr.

Wells to flag the wetlands as soon as possible, because it takes a long time.

Mr. Wells said that he was not planning on building for a long time. Mr. Barrass said that it could be years before Mr. Wells decides to build, so it did not make any sense to flag the wetlands right away, because the flags would be gone and the wetlands change. Mr. Barrass said just as the Code Enforcement Officer said he would require the wetlands flags to be done again three years from now because the wetlands change.

Chairman Butler said the board needed to address another big issue from last months meeting which was the buffer area. Board member Eggleston said they have the building buffer now in their rules and regulations and wanted to know what other buffer was needed. Chairman Butler said he was addressing the issues because it was brought up last month. Chairman Butler said there is a nice wood line at the tail end of the properties. Board member Eggleston asked if they were discussing a silence buffer or a scenic buffer. Chairman Butler said they were discussing a scenic buffer but he doesn't feel that if there are 14 acres that anyone would buy a lot of that size and place a home within 15 ft of the property line. Board member Reed said she felt there was a good amount of trees along the property line.

Chairman Butler asked the board members if there was anything else that needed to be discussed prior to moving on to SEQR review. The board had no additional comments.

Attorney Pozefsky reviewed all five questions on part 2 (Impact Assessment) of the short environmental assessment form with the Planning Board. Attorney Pozefsky told the board members if they had any questions regarding the questions he was about to read to stop him and they would review the answers. Attorney Pozefsky said what the board was looking at was whether any of these items listed were potentially **significant**. It was decided that all five answers were no and the following motion was presented. Chairman Butler asked the board if anyone had any concerns regarding SEQR. Board member Eggleston said he was confused with the SEQR issue. Attorney Pozefsky said Board member Eggleston was not alone; this is a confusing section of the law and briefly reviewed what the State was looking for regarding significant impact of the proposed project. Attorney Pozefsky told all the board members that they have been trying to do a better review of the SEQR, not that the old practice was wrong but because it is better to read it out loud so that the members of the public present know that the board has touched on everything that the form covers.

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

Motion~ Eggleston

Seconded~ Rivette

Polled as follows:

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

***MOTION TO ADD ON TO MAPS OF PROPOSED
SUBDIVISION A NOTE STATING THAT THE WETLANDS
MUST BE FLAGGED PRIOR TO BUILDING ON THE
PROPOSED LOTS.**

Motion~ Rivette

Seconded~ Eggleston

Polled as follows:

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

Board member Reed said actually it should be the wetlands have to be flagged prior to bringing buyers to the property so they know what they are buying. Board member Rivette agreed and said she would again make that motion to state that the wetlands have to be flagged prior to bringing buyers to the property.

Dave Barrass asked to speak to the board prior to passing this motion. Mr. Barras said now the board is requesting that the wetlands be flagged not before he builds but when he sells and asked Mr. Wells if this was okay with him. Mr. Wells said if it is stated on the maps whys does it have to be a condition. Mr. Barrass told the board they are now putting a burden on the land owner and they have a right to do it, but if he has to have the lands flagged prior to bringing buyers out there then, if when, he sells the property in a year or two, he will have to have DEC back out there again to re-flag the property. Mr. Barrass said in his opinion, if someone is buying this as an approved subdivision, there is a filed subdivision map that will clearly show where the wetlands are on the lots and it will clearly state with a note something along the lines of “ wetlands must be flagged prior to the issuance of a building permit”, this would alert any potential buyer.

Mr. Wells said if he flags it now then the potential buyers don't build right away then the wetlands are only going to have to be flagged again because Code Enforcement Officer Mann has already stated that if the wetlands are flagged now and no one builds within a short amount of time that he will require the wetlands to be re-flagged prior to issuing a building permit. Mr. Wells said that he felt that the board was getting carried away. **Board member Reed said she did not feel that the board was getting carried away; she felt the board should protect the wetlands.** Board member Eggleston stated that the maps show the wetlands and the board could put a restriction on it that the property could not be sold until the current owner advises the potential buyer that there are wetlands on the property. Board member Reed asked Attorney Pozefsky if he had any words for this discussion. Attorney Pozefsky said he would be leaning towards what Mr. Barrass suggested and put a note on the maps stating that the wetlands have to be flagged before a building permit is issued, and that has to be done anyway. Attorney Pozefsky said that Code Enforcement Officer Mann would want flagging that is up to date. If the wetlands are delineated on the maps as approximate locations, there really is not much more to do. Attorney Pozefsky said this board has requested that the wetlands be flagged at this stage before and they do have the right to do that. Board member Reed said that is correct. Mr. Barrass said if this was a situation where it was marginal of whether or not you could fit a house in there, then he would suggest to his client that they should get it flagged, but in this situation there is more than enough room; it's just an issue of having the wetlands flagged prior to building. Mr. Barrass said if the board makes it a requirement that the lands are flagged before a potential buyer looks at it, how is the board going to enforce that. Mr. Barrass said it is an unenforceable requirement. Board member Reed said yes but if it were a condition on the map the board would be able to pull the subdivision approval if the applicant did not follow through with the conditions.

Board member Reed stated to Mr. Barrass that he was the surveyor on Babsons' subdivision and that was flagged before we approved the subdivision. Mr. Barrass said that was a whole different situation, those lots were marginal lots that he was surprised were even approved. Mr. Barrass told the board that was the right thing to do with that subdivision. Mr. Barrass said that flagging at this time is an unnecessary burden on a citizen that can be avoided. Board member Rivette said the board has to think of the layperson that has to look at these maps. Mr. Wells said it is stated on the

maps that the potential buyer cannot build within a 100ft of the wetlands. Mr. Wells said that anyone who buys it would go out and walk it. Board member Rivette said there are a lot of young people out there right now going belly up because they did not read everything. Chairman Butler said he feels that the wetlands are well delineated on these maps and no one is going to buy a piece of property without walking the land. Chairman Butler said that with note number four on the maps, the maps were sufficient. Chairman Butler said the board should not hold up the subdivision, because the wetlands are delineated on the maps, there is a note on the maps and you cannot walk the property without seeing them. Chairman Butler said these are wetlands that are very well formed. Chairman Butler said he feels that the board is trying to go an extra step that in the long road won't make a difference.

Board member Reed said that note number four on the map, does not say DEC, it says Saratoga County. Mr. Barrass said that the Saratoga County GIS is the same wetlands that DEC has. Mr. Barrass told board member Reed that she could look at the wetland maps and he could go into Saratoga County GIS and they would be looking at the same wetland maps. Board member Reed was shaking her head no and Dave Barrass said this was his business. Mr. Barrass told board member Reed to open up the maps that she had in front of her because this was his job she was implying that he has incorrect information on his maps. Mr. Barrass said that he was taking offense to the situation. Board member Reed and Mr. Barrass looked at the DEC map and Mr. Barrass said that the quality of his map showing the wetlands is actually better because on the GIS it is computer enhanced over the tax maps.

Chairman Butler said the boards' intention is to draw attention to the wetlands and with these maps he feels that this has been done. Chairman Butler said he is not sure how much the board is suppose to be educating the potential buyer prior to purchase. Chairman Butler said the lots have to be flagged by DEC prior to any building permits given out, that's law.

Board member Beckwith asked Attorney Pozefsky if the board could put in a stipulation that on lot # 3 it is stated on a note that there is less than 50% buildable property because of the wetlands. Attorney Pozefsky said that the board might want to consider is request that the wetlands are shaded darker so that they stand out. Mr. Barrass said that he did that for the Babson

subdivision and it would not be a problem. Board member Beckwith requested maybe making the 100ft buffer line stand out also. Board member Reed said that there are cattails in those wetlands and they are endangered species. Mr. Barras said he would disagree but are certainly a sign that wetlands are present. Board member Beckwith just that she was just requesting this on lot#3 because she wants to ensure that someone does not think that they are buying 14 acres and find out that only 7 acres are buildable. Mr. Barrass said that if he put a note on the maps stating, “that wetlands significantly affect lot number three”, would that be sufficient. Board member Rivette said that seems to cover what they are trying to get accomplished without hindering Mr. Wells. Board member Rivette said that she was withdrawing her previous motion.

***MOTION TO APPROVE THE MINOR SUBDIVISION WITH THE WETLANDS HIGHLIGHTED AND A NOTE ON THE MAPS STATING THAT THE WETLANDS SIGNIFICANTLY IMPACT LOT# 3.**

Motion~ Beckwith

Seconded~ Rivette

Polled as follows:

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

Mr. Barras asked if that was the final approval. Attorney Pozefsky said that was final approval because under the Town Code, with a minor subdivision there only needs to be a final approval. If the board wanted you to come back with any changes then you would need preliminary and final approval.

Old Business:

Other Business:

1. Letter from Palette Stone requesting a 120-day extension on the public hearing. Secretary Sullivan read the request into record. Chairman Butler also told the board that they had received a letter from DEC requesting to be lead agency on the mining permit. Chairman Butler said he thought that they were the most qualified agency to handle this. The board agreed that it was best to leave it with DEC.

***MOTION TO EXTEND PUBLIC HEARING ON PALLETTE STONE MINING PERMIT FOR 120 DAYS.**

Motion~ Beckwith

Seconded~ Rivette

Polled as follows:

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

Linda Lawrence a member of the public present apologized for not getting on the agenda, but she was waiting to hear from her attorney who did not get back in touch with her in time. Chairman Butler asked her if she would like to speak to the board. Ms. Lawrence said that she had a lot of questions. Board member Rivette was excused.

Ms Lawrence said that she had a copy of the proposed subdivision. Ms. Lawrence explained to the board that her father passed a way in 1999, she was left as executor of the estate, there are 11 siblings and it has taken quite sometime to get to this point. Ms. Lawrence said that according to the Town Code section 112-1 this is allowable. Chairman Butler asked where the property was located. Ms. Lawrence said it was located on outer Main Street. Attorney Pozefsky said Ms. Lawrence is here because under our current code to do a family exemption a subdivision form has to be filed. Once the board reviews this and decides if it is truly a family subdivision then it becomes non-jurisdictional as long as the lot sizes meet what that zone requires. Ms. Lawrence said the piece that she is keeping for her-self has a lot of wetlands on it and that she would like to make that parcel forever wild. Attorney Pozefsky said if the deed restricts building on that lot, then that lot would be removed from the equation. Ms. Lawrence said she has a letter from DOH stating if the subdivision were an approvable family subdivision by the Town then they would have no jurisdiction over it.

Attorney Pozefsky said according to code family subdivision states “it shall not constitute a subdivision and shall not be subject to review by the planning board”. Attorney Pozefsky said that the Town law allows the board to look at it and decide if it truly a family subdivision and if it is then this board is done. Attorney Pozefsky said that an interesting question about this is the number of lots, however the Town Code does not specify the amount of times that land can be subdivided into for family. Chairman Butler asked Attorney Pozefsky if the board had any input as to whether the applicant meets the required lots sizes. Attorney Pozefsky said yes, the code requires that Family subdivisions comply with the minimum lot sizes for each zoning district. Board member Reed asked if there was still a house there. Ms. Lawrence said that it was removed. **Board member Reed was excused.**

Attorney Pozefsky said that Ms. Lawrence needs to include with her application a list of all the people who will receive these lots along with their respective lot number so that there is documentation that they are all related. Attorney Pozefsky also said that the lots should be numbered. If this is done along with the maps then she will be set for next months meeting. Attorney Pozefsky said that the code states that it can be by inheritance, so she has met that requirement of the code.

***MOTION TO ADJOURN MEETING** ~ Eggleston
SECONDED ~ Beckwith
ALL IN FAVOR~ Butler, Eggleston, Beckwith
Meeting Adjourned 8:45 pm.

Respectfully Submitted

Cheri Sullivan