

**TOWN OF MIDDLESEX**  
**PLANNING BOARD**  
Minutes

Wednesday October 5, 2016, 7 pm

Board Members present: Marty DeVinney, Chair; Board Members: John Gilbert, Lynn Lersch, Robert Mincer, and Bruce St. Lawrence; Dawn Kane - CEO

Others Present: Sue Sage, John Savage, Tom Mahaney, Mike Greene, Doug Doebler, Donald Sheive, David Moynihan, Nancy Evans, Tom Fromberger, Rocco Venezia, Jason Marks, Don Marks, Brennan Marks, Sam & Gina Imburgia, Robert Brenner, Richard Bolton

Chairman DeVinney opened the meeting at 7:03pm giving the floor to CEO Kane who wanted to preface the meeting's agenda with some old business that would affect some of the applications on the agenda.

Old Business:

CEO Kane distributed correspondence to the Planning Board Members that she had received from the NYS Board for Engineering, Land Surveying and Geology referencing the legal process of requirements for NYS Licensed Land Surveyors and Engineers when submitting applications to municipalities. This correspondence answered a request she made of the NYS Education Department to give clarification to the process, after learning of a concern expressed at a Planning Board meeting by a local Land Surveyor who complained of his licensed survey work being used in Engineered Site Plans without his certification. The email distributed stated the following response to her inquiry: "the determination of boundaries and subdivision of real property can only be performed by a NYS licensed land surveyor (LS). Any proposed work such as location of buildings, utilities must be performed by a NYS licensed professional engineer (PE). No bearings and distances may be shown on the site plan prepared by the PE unless it is also sealed by a LS. If the site plan does not have the seal of a LS, then the PE may reference an attached survey sealed by a LS. If the PE believes the site has changed and needs to be updated for the design, then an updated survey performed by the LS must be done." Also stated, "It would be up to the municipality if they required an updated survey or believed the site had changed."

Ms. Kane stated she received legal confirmation from the Town Attorney and would be requiring this directive of all future applications submitted to the office.

Chairman DeVinney offered to review any applications as conceptual reviews to expedite the review process for anyone on the agenda who might be impacted by this news.

Agenda: Site Plan Reviews:

1. Application # 072016-SPR / Mr. Doug Doebler and Mike Greene, representing agents for property owner, Mr. and Mrs. Lee Muncy of 672 Fisher Rd., requesting Final Site Plan Review for demolition of an existing house and a rebuild with new septic system, Tax ID #11.50-1-7 & 8, (LR)

Ms. Kane stated the application had received pending County approval, comments from Yates County Soil & Water had been resolved with the Code office, and the application was currently awaiting NYSDOH approval for some revisions to the new septic system. She had received notification from George Barden that a letter of approval from NYSDOH was expected by the end of the week. The septic revisions included adjusting the pump location and reconfiguration of some leach lines. A recommended lot line reconfiguration of both parcels was in process and was being handled through the Code Office. Representing agent, Mike Greene stated he had revised the Site Map, as requested by the Planning Board, showing management of drainage off the roof, notation of additional silt fencing and height of house peak had been noted on the architectural plans. Referencing the discussion on Site Map licensing requirements, Mr. Greene noted he would include the required stamps on the Site Map, certifying his work, as he was the licensed surveyor.

Without further discussion, a motion to conditionally approve the application, prior to permitting, was offered by Board Member St. Lawrence and seconded by Board Member Gilbert with the following contingencies:

- a. Applications' revised Site Map must display both the licensed Surveyors' and the Civil Engineers' Professional Seal.
  - b. Submitted copies of the revised Site Map for filing purposes.
  - c. NYSDOH Letter of approval for revisions to the septic system.
2. Application # 091416-SPR /Mr. Tom Fromberger, representing agent for property owner, Mr. Andrew Komarek of East Lake Road, requesting Site Plan Review to construct a tennis court on vacant land, Tax ID #2.03-1-23, (LDR)

Representing agent Engineer Tom Fromberger, stated the application was a voluntary submission when owner realized he needed a permit for installation of a tennis court on his property. Mr. Fromberger's vacant parcel contiguous to his single-family residence is in Low Density Residential, which allows a tennis court to be installed with a permit if under 15% slope, which is regulated by the Town's Steep Slope Law. To prepare the land for the project it was graded from its' native slope, trees were removed, and stone was placed. The proposed clay tennis court would measure 120 ft. x 46 ft. with a chain link fence around the perimeter, a retaining wall would follow the length of the tennis court providing a seating area, and a storage shed would be located onsite.

Board Members inquired if a complaint had initiated the discovery of this action by the Code Enforcement Office.

Ms. Kane noted that Engineer Fromberger came to the Code Office, informing her that owner Mr. Komarek was unaware he needed a permit for the project.

Board Members inquired about the gradient natural slope that existed prior to site grading and when the intent to install a tennis court was proposed. Agent Fromberger stated that the vacant land had been the location of spoils from the construction of the single-family residence. This area had been graded at that time. Contractor Sam Iburgia was in attendance and stated that this specific area was where he, as contractor had balanced the dry soils on this location from wet upland soils to manage the septic field location for the residence. Mr. Fromberger learned of the intent to install a tennis court in August and alerted Dawn, filing the application. At this point stone, already been placed onsite.

Board Members inquired if a permit was necessary for ground disturbance created by this action and Ms. Kane stated that she had not been given the total amount of soil disturbed.

Resident Rick Bolton offered comments on slope and ground disturbance.

Discussion continued to designate the site's original slope and the setback from the proposed chain link fence proposed to surround the tennis court. The Planning Board requested a site visit to better review the parcel, its grade and original topography for this parcel to determine if the site would need variances from both the Steep Slope Law as well as side setback area requirements for Low Density Residential. A date would be scheduled that would be convenient for all.

After a pause in the evening's agenda, Mr. Tom Fromberger-P.E. for Mr. Komarek, requested to be placed back on the night's agenda for further discussion on an alternate option for the proposed tennis court discussed for Site Plan Review. His plan was to move the tennis court to the south and away from the property line and remove the chain link fence in order to comply with area setback requirements. Hoping to confirm original gradient slope, he also stated he had located a topography map from February 2015, produced by Passero Associates, representing Civil Engineers for Mr. Komarek in the design for construction of his single-family residence on the contiguous parcel.

After more Board discussion, it was determined that the Board would convene in November after review of information gleaned from the site visit, as well as the Passero Associates topo map for the contiguous parcel and a LIDAR map showing the slope on the parcel. Meanwhile, the applicant had the option to file an application for an area variance by the ZBA through the Code Office for the proposed dimensions of the tennis court.

Mr. Fromberger thanked the Board and stated he would complete the filing for the Zoning Board of Appeals in order to be placed on the November agenda.

3. Application # 021716-SPR/Venezia & Assoc., representing agent for property owner Mr. David Seconi of 989 South Lake Rd., requesting Final Determination for structural improvements to shoreline property, Tax ID #21.33-1-10, (LR)

Dawn Kane stated pending revisions had been obtained. A revised wall detail by Engineer Price of Fisher Associates had been provided with the requested stamped seal. A letter stating the revision date of the detail would be provided to the Code Office. The project would commence by Fladd Stone in October with an estimated completion within 30 days.

Without further discussion, Chairman DeVinney entertained a motion to approve the application with the condition that all had been resolved. Board Member Mincer made the motion, which was seconded by Board Member Lersch. The motion carried with all Board Members present voting in favor.

4. Application # 091714-SPR/Venezia & Assoc., representing agent for property owned by the Milton Johnson Estate with parcel located at 6070 South Hill Rd., requesting review of a 2-Lot Minor Subdivision of Parcel Tax ID #22.03-1-13.1 (LDR)

CEO Kane summarized the application for Board Members stating the application was a 2-lot subdivision that had been reviewed by the Board some time ago and had been withdrawn pending a reconfiguration of frontage requirements.

The Board inquired of the reason for the two access entrances shown on the map before the split and how the parcels would be accessed after the split. Rocco Venezia explained that the parcel contained an existing 50 ft. flag lot which was allowed and would remain as a pre-existing access easement for an

existing home on Lot 2. Lot 1 would be accessed by the driveway shown. It was the only way to keep both parcels in compliance with area frontage requirements. The total acreage is approximately 119 acres with Lot 1 to become 65.233 acres and Lot 2 to become 53.777 acres after subdivision.

Without further discussion, Chairman DeVinney asked the Board to review the submitted short form SEQR. After careful review, the Planning Board deemed the action to be a Type II action needing no further review. Chairman DeVinney entertained a motion to declare the SEQR. Board Member Mincer offered the motion to declare it a Negative Declaration with no significant impact to the environment and Board Member Gilbert provided a second. The motion so carried with all Board Members present voting in favor.

A motion to approve by resolution the two lot Minor Subdivision was offered by Board Member Mincer and seconded by Board Member Gilbert. Motion so carried with all Board Members present voting in favor.

5. A proposed local business plan brought before the Board conceptually in June by owner Mr. David Moynihan was now before the Planning Board for Final Review. Mr. Moynihan stated his desire to purchase the building known as Document Reprocessors for locating a business entitled "Astrapouch" within the building shown as Lot 2 on the Subdivision Plat. This building has access off West Avenue in the Hamlet Residential Zoning District.

CEO Kane summarized for the Board, the following details for final review. She stated the property had been reviewed and approved as part of a 3 lot Minor Subdivision in August and readied for county filing purposes. It had received approvals for area variance requests from the Zoning Board of Appeals in September, and a new approved septic system had been installed. The property was ready for final purchase, pending a ROW easement from the client's attorney. It was the intent of the Code Office to issue a 90-day temporary building permit for Mr. Moynihan's business to begin installation procedures if the business received Planning Board final approval. Ms. Kane would inspect the building next week and the Fire Company and security company had already done so, deeming it safe. Ms. Kane would write up her report to prepare the operating permit, which would then receive annual renewal criteria.

Without discussion, Chairman DeVinney entertained a motion to approve the business application as presented. Board Member Mincer provided the motion, which was seconded by Board Member Gilbert. Motion so carried with all Board Members present voting in favor.

#### Conceptual Reviews:

1. Mr. Brennan Marks of Marks Engineering, representing agent for property owner, Mr. Jack Motz, at 714 East Lake Road, (LR) requests conceptual review for a Site Plan application for a new driveway installed without a permit. Ms. Kane, CEO summarized the application stating the Code Office had received as-built plans from Mr. Marks, following a directive from the Code Office that this driveway be brought to Site Plan Review for determination as required by the town's local zoning code and variances granted through the Zoning Board of Appeals.

Agent Mr. Marks stated the driveway was installed in April 2016 for serving property owned by Mr. Motz by an existing right of way starting at East Lake Road. This existing right of way allows access across several lots. Mr. Motz is in the process of filing a new 20 ft. right of way line for access to lot designated as Tax Map #10.13-1-3.12 which is owned by Mr. Motz and will

be filed under the deed of Lot 4-G. This driveway replaces an existing access driveway that crosses the lot to the north without a filed right of way. Mr. Marks submitted a 1992 Survey from surveyor Freeland-Parinello with the application.

Mr. Marks was hired by the owner in response to a letter from the Code Office, dated April 2016, requiring the owner to resolve the matter and show proof that the driveway was built to town's standards for new driveways as required. Mr. Marks stated it was and the driveway includes an existing right of way across lot 4-D and therefore a letter from the neighboring property owner at 710 East Lake Road is not required. All pending paperwork would be filed with the Code Office upon Planning Board approval

The Planning Board discussed the submitted survey showing two parcels deeded with the same Tax Map ID # and was concerned what would become of the deeded ROW if one of the two parcels were sold. Also of concern, was the liability issue with the Site Plan referencing a 1992 survey without the Land Surveyor's required certification seal as required by NYS Education Dept. Also discussed was that a 15 ft. setback from property line for the installed private road must comply with Town Laws boundary setback requirements for Lakeside Residential Zoning District under Local Law #3 of 2008, Section 4/4.7 which is are the regulations for any Private Driveway/Private Road within the Town.

Mr. Marks requested as agent for owner, Mr. Motz, a letter from the Planning Board referencing their concerns and all regulations cited, in order to clearly communicate the Board's decision to the property owner.

The Planning Board stated the following concerns would be referenced and must be resolved, prior to any determination of approval for the driveway:

- a. Area Variance is required, for the driveway's setback requirements, by Towns' Local Zoning Laws and Private Driveway/Private Road Law, Section 4/4.7.
  - b. A professional seal from the surveyor Freeland/Parrinello used to determine the Site Maps' boundary dimensions, certifying permission to use copyrighted work referenced in the Site Plan Map stamped by Marks Engineering.
2. A Conceptual Review for revisions to a retaining wall at 1217 South Lake Rd., (LR)  
Tax ID #21.64-1-3 was tabled for rescheduling due to neither the owner Mr. Nate Bidner, nor the agent was in attendance to present the submitted application.
  3. A Conceptual Review for owner Mr. Donald Burkard of 697 East Lake Road, Tax Map ID # 11.59-1-2 (LDR), represented by Mr. Brennan Marks of Marks Engineering requests Site Plan Review to install a new septic for an existing residence at 697 East Lake Road. This application had been reviewed in July conceptually by the Planning Board. At that time, the Board suggested slight revisions to the design due to an existing ROW shared with an upland neighbor and possible setback concerns.

Mr. Marks stated the new septic had been reconfigured to meet the ROW setback requirements of the Town so it would not need application for a variance. Both parcels including Lot 1 & Lot 2 are both owned by Mr. Burkard. Lot 1 includes the existing residence and Lot 2 is a vacant contiguous lot. The lot line reconfiguration will be handled through the Office of Code Enforcement by Ms. Kane.

After some discussion, Chairman DeVinney entertained a motion to approve the lot line reconfiguration contingent on the submittal of the Land Surveyor's seal certifying the use of the boundary dimensions used on the Site Plan produced by Marks Engineering, as required by the NYS Education Dept.

A SEQR was not required for the septic application, and Board Member St. Lawrence made the motion to give a conditional approval and Board Member Lersch seconded the motion. The motion so carried with all Board Members present voting in favor. The next step in the permitting process would be through the Office of Code Enforcement.

4. Mr. Robert Brenner, owner at 262 East Lake Road, Tax Map ID # 2.61-1-2 (LR), requests conceptual review to install a new set of stairs to provide access to an existing cottage at the shoreline of property he recently purchased. The property has a pre-existing two story residence at the shoreline and currently has a winding driveway providing access to a mid-way point off of East Lake Road, but without access to the shoreline. Existing wood trams in disrepair, used for access in the past will be demolished and his intent was to install a proposed stair system with two platform landings to provide shoreline access to his residence.

Mr. Brenner provided the Board with a conceptual drawing of the proposed stair system, which was designed to follow two outcroppings of the cliff embankment. A retaining wall at shoreline would be added to follow the toe of the existing cliff to shield the natural sloughing off of falling shale debris from the area.

After some discussion referencing current plan details, Mr. Brenner provided the following:

- a. The existing driveway will be maintained as it is.
- b. The property will be used on a seasonal basis whenever possible.
- c. Materials for the stair system and retaining wall will be brought in by barge during site construction.
- d. Tree removal will be at a minimum and only those in the location of the stairs.
- e. Septic system would be the type of system designed by George Barden for his neighbor with a pit at the house and a grinder pumping uphill.

The Board stated he would need a variance for property line setbacks for two of the stair platforms shown. They advised Mr. Brenner that the Board would carefully review the shoreline retaining wall and recommended a low impact aesthetic design for protecting views of neighboring parcels. All tree removal within the construction area should be noted on the submitted Site Plan. Mr. Brenner was advised that tree removal on the cliff will be carefully reviewed as trees and vegetation experience slow growth and ground disturbed is not easily re-stabilized.

5. Martin DeVinney, owner of the Indian Village RV Park in Vine Valley requested a Planning Board conceptual review of an application he has submitted to the US Army Corps of Engineers for approval which is still pending. The intent of this application was to stabilize a 99-ft. section of the stream bank on the north side of Vine Valley Creek which was severely eroded when the creek flooded in the spring of 2014. The eroded streambank ran vertically approximately 70 inches high at the site of the damage. Stabilization would prevent further erosion damage to the streambank and protect nearby RV homes for seasonal clients.

Mr. DeVinney also sought outside local resources for project consultation. They included Kevin Olvany - Watershed Manager for the Canandaigua Lake Watershed Council; Rick Ayers – Yates

County Soil and Water Conservation District; and Steve Lewandowski – consultant to the Canandaigua Lake Watershed Association and former 20-year employee with the Ontario County Soil and Water District. Advisement from these outside resources recommended a comprehensive method of reconstruction for the streambank to include 2.5 to 3-foot riprap boulders to be placed on the stream embankment, embedding the larger toe stones below grade and on the up-stream edge. The riprap would be positioned in place by Field's construction equipment from the top of the bank without entering the streambed. Silt fence would be placed in the empty streambed at the most downstream point of construction to prevent any disturbed soil from entering any flow that may develop during possible rain events. DeVinney had submitted all documentation and mapping suggested by the NYS DEC and USACE from which permits would be required.

The Board inquired of funding resources to which DeVinney replied he had received a grant for the funding due to its' proximity to the lake and the need for stabilization to help protect the watershed.

After a short discussion by the Planning Board Members, permission was granted to all Board Members to visit the site to view the damage. The Board stated they would consider a determination upon receipt of pending approval by the NYS DEC and USACE.

#### Other Business:

Resident John Savage in attendance inquired of the Planning Board if he would need Site Plan Approval to construct an addition to his existing residence. CEO Kane, replied that based on the zoning district his residence was located in, he would not need Site Plan Approval from the Planning Board; however, he would need to meet building code requirements and obtain a building permit which could be applied for through the Office of Code Enforcement. The Board thanked him for his inquiry. Ms. Kane stated his application for a variance request would be on next month's agenda to be heard by the Zoning Board of Appeals if everything was in order with the application submitted.

Chairman DeVinney entertained a motion to approve Draft Minutes from August 3 and September 7, 2016. Board Member Gilbert offered the motion which was seconded by Board Member Mincer. Motion so carried with all Board Members present voting in favor.

Discussion developed over the need for a mid-month meeting to accommodate applications pending late fall work prior to seasonal cold, and it was determined that this would not be productive as many Planning Board Members would be away. No mid-month meeting will be scheduled for October.

A motion to adjourn the meeting was offered by Board Member Lersch and seconded by Board Member St. Lawrence. The motion carried with all Board Members voting in favor.

Meeting adjourned at 9:40pm  
Draft Minutes submitted by L. Lersch/revisions to [lynn.lersch@gmail.com](mailto:lynn.lersch@gmail.com)

Minutes approved on January 4, 2017