

PROPOSED HEINRICH ROAD SUBDIVISION

PRESENT: David Stringfellow, Chairman
Paul Ziarnowski, Vice Chairman
Jennifer Lucachik, Secretary
Mary Ann Rood

ABSENT: David Bowen
James Liegl
Mitchell Martin

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| ALSO | Michael Kobiolka | Town Attorney |
| PRESENT: | Andrew Romanowski | Applicant – 4727 Camp Road, Hamburg |
| | D. Cleveland | 7280 Heinrich Road |
| | Michael Zittel | 7235 Heinrich Road |
| | Allan Telaak | 7700 Feddick Road |
| | John Panek | 7411 Feddick Road |
| | Dave Panek | 7415 Feddick Road |
| | Susan Panek | 14 Sawgrass Ct., Hamburg |

A neighboring property owner came forward and hand delivered to Mr. Stringfellow with a petition of neighboring property owners opposed to the subdivision. Mr. Kobiolka left to make copies of the petition for each Board member. Secretary Faulring asked for the original petition.

Mr. Stringfellow opened the Public Hearing at 7:35 PM and asked for roll call of the members. Mr. Stringfellow introduced Mr. Kobiolka to those in attendance. (Attendance of members is noted above)

MINUTES

Mr. Stringfellow: Are there any additions or corrections to the draft minutes of the October 28, 2014 Meeting and Public Hearing?

Secretary Faulring: I have been advised of a couple of changes, just the difference of a name that made a motion.

Mr. Stringfellow: We will hold off on the October 28 until our next meeting.

Mr. Stringfellow: Our primary agenda item tonight is the approval of the Final Plat Plan for the Heinrich Road Subdivision.

Mr. Kobiolka: At this time we should probably have a motion to open the Public Hearing and read the Legal Notice.

Mr. Stringfellow: I will make a motion to open the Public Hearing.

Dr. Ziarnowski: I will second it.

All were in favor of the motion.

Mr. Stringfellow read the Environmental Impact Review:

- ...the proposed action will not have a significant adverse environmental impact and a Draft Impact Statement will not be prepared...
- SEQR Status: Unlisted
- Conditioned Negative Declaration: No

Mrs. Lucachik read the SEQR Negative Declaration and reasons supporting the declaration supporting the determination in its entirety.

Mr. Kobiolka: I've had a conversation with our Town Engineer and also with our Town Highway Superintendent. He indicated that Heinrich Road is only a 4-ton road, I'm not really sure what that means, but he was concerned that any development down along the road would cause some type of impact to Heinrich Road. Whatever this Board may do, just make it condition upon perhaps a bond be imposed...I've contacted the Highway Superintendent and today and asked for

further qualification in terms of what this Planning Board needs; it's only a 4-ton road, sometimes trucks themselves are 2-tons, plus bringing in additional fill; he's concerned that it may cause some destruction to Town roads. Whatever this Board does let's make it conditional upon a bond being posted if necessary; so the Town roads are not being impaired.

Mr. Stringfellow: We are at Final hearing. A bond for drainage has been talked about for more than a month; a bond for reads has been talked about for a couple of weeks; we have absolutely no amount on either.

Mr. Kobiolka: My conversation with the Town Engineer for the drainage is \$30,000.00 for the drainage bond; he figured with 6 lots that's approximately \$4,000.00 or \$5,000.00 per lot; I don't have a figure from the Highway Superintendent, but this Board could approve it based upon a final amount coming from the Highway Superintendent and/or the Town Engineer.

Mr. Stringfellow: Has the Town of Boston ever required a bond for potential damage to the highways for residential construction?

Mr. Kobiolka: I don't know that. I've only been here five years, perhaps in the past it's been required; I think the Highway Superintendent is being conservative because he's had some damage up on Chestnut Ridge Road which then becomes a Town road problem; so I think he doesn't' that coming out of the General Funds, whatever the developer wants to do that's fine, just be sure that you take care of whatever damage you do the Town and don't put that as a general burden upon the taxpayers.

Mr. Stringfellow: Is there a motion to accept the Negative Declaration?

Dr. Ziarnowski: I make a motion to accept the Negative Declaration.

Mrs. Lucachik: I second.

All were in favor of the motion.

Mrs. Lucachik read the Legal Notice.

CORRESPONDENCE

Mrs. Lucachik reported the following:

- SWPPP
 - signed by Supervisor Ballowe
 - sent to Planning Board members
- Full Environmental Assessment Form
 - Corrected Page 12, Section q
 - Received and filed
- Petition from surrounding property owners
 - Mrs. Lucachik read the letter
 - Received and filed
 - Dated November 4, 2014
 - add
 - 14 signatures
- Letter from John Panek
 - Received and filed
 - Mailed to members

Mr. Stringfellow asked Town Attorney Kobiolka to explain at what point the application is at.

Mr. Kobiolka: We're at the final phase for the subdivision of the Heinrich property. I want everybody to know that the applicant, as I understand it, is asking for a division of 5 separate lots; the Board has already approved the Preliminary Plot, there is no need for any further roads, there is no need for any extension of water lines; sewer lines, there is no sewer there but as far as water lines and utility lines the applicant would have the right to subdivide that property. Now the Planning Board after preliminary review has asked for a condition that there be a bond posted for the drainage and after my consultations with the Highway Superintendent a bond also be posted for the highway, the amount of which I am not sure; for the drainage it would be approximately \$30,000.00, the exact terms to be worked out with the developer. The Towns concern is that it's built on a slope, the whole body is on a slope that one person doesn't get the runoff from another person's property and that has been a primary concern ever since I've been in office; we want to be sure that problem presents a problem, of the developer, doesn't becomes the Town's problem, if this Board approves the subdivision problem, we don't want that problem to become the Town's problem. So we have a chance to look at it and yes we all know that water runs downhill but we want to have that be taken care of by the developer; if the developer wants to come in and put in 5,6 lots fine, but be sure that you take of the runoff, be sure that doesn't affect other people down the street and other buyers.

The other thing is that the Highway Superintendent tells me that Heinrich Road is only a 4-ton road, I'm not exactly sure what that means. Can Heinrich Road only haul 4 ton, is that a limit, or an excess limit. A lot of construction vehicles weigh 2-ton to begin with. After bringing in a load of stone or concrete, concrete has got to be a lot of it, and we don't want the roads to be harmed or injured and then the taxpayers pay for it. So we'd like to have the developer take care of that and if the roads fine, if nothing's done to the road that's good. We're at the final process and what I'd like to advise to the Board is that if Alliance Home wants to put in 5 lots, with the original lot 6, if Alliance Homes wanted to come in and put in 3 lots, 3 not 5 but 3 none of us would be here; because he doesn't have to come to this Board for approval. You've got one lot you divide it three times you're set, you can do whatever you want – you don't have to talk about drainage, you don't have to talk about roads, you don't have to talk about bonding, you don't have to talk about anything and because Alliance Homes wants to put 2 extra lots in, this is the Town of Boston's chance to say 'hey, comply with our law, talk to your neighbors, give them a chance to come in here and say what you want' so that this Board knows what to do and that's why we're here tonight. Mr. Chairman I don't think I have anything beyond that..

Mr. Stringfellow: At this point we will ask the applicant to address the Board and the Public with a description and whatever else you wish to say.

Andrew Romanowski from Alliance Homes, 4727 Camp Road , Hamburg:

- I won't repeat what we talked about previously regarding the lot layout
- I do have some real concerns about the bond posting for the road
 - The first notice I had of that was a couple of days ago in an e-mail correspondence
 - At a previous meeting I agreed to post a bond for the drainage
 - This is the first I've heard of the amount of the bond; frankly it's a little higher than I thought; I think it's higher than appropriate, but it's probably something that I can live with
 - With respect to the bond for the road – what you said earlier is very important,
 - Under the New York State Real Property Law I can do 3 splits every 4 years; think about how that works logistically on this particular piece of property; it means I could create 3 lots right now, I could walk in tomorrow and get Building Permits for those 3 lots and additionally I could perform work on the 4th lot that has the existing house on it
 - 3 years from now I could come back and do the same thing again; I get exactly the same amount of lots, I get exactly the same layout; it just takes me a little longer to do it
 - Under that situation I don't do any of the above – no bond for drainage, no bond for road, etc.
 - Here's something I'd like the Board to consider I'm agreeable to the bond for drainage, because that it something I can control
 - The bond for the road, here's the problem with that
 - The snowplow that goes there weighs 22 tone loaded with salt
 - Tomorrow, whether or not I apply for the subdivision I can run a dump truck down there, and I will, because the existing driveway is in very poor condition and needs to be repaired
 - Any of the neighbors on that street live on rural lots, they have land, it's not unlikely that they are going to bring a dump truck down, maybe even a cement truck, maybe they need a patio or driveway repair, those truck are heavy; I have no control over any of those things; I don't any control over agricultural equipment that gets run on the road; how are you going to quantify that?

Mr. Kobiolka: I'm just on the basis of what I got from the Highway Superintendent and he's

Mr. Romanowski: And that's the same Highway Superintendent that signed the Preliminary Plat Plan when I brought it to him; the Final Plat Plan does not vary one bit from the preliminary plan except that we added erosion control measures. So I find it curious that all of a sudden you want me post a bond for highway that I don't have complete control over, and frankly that's not acceptable, I won't do it.

Mr. Kobiolka: Let me talk to the Highway Superintendent, let me get some specifics on it and maybe that's not going to be a problem but this is what he told me last Wednesday at...

Mr. Romanowski: How do propose we proceed tonight without that knowledge?

Dr. Ziarnowski: Is this open for discussion and a vote by the Board?

Mr. Kobiolka: It's open, absolutely. It's an issue of the approval.

Mr. Romanowski: I understand property use rights very well. I'm a property owner, a conservationist, an active farmer I have a 72 acre fruit farm. I understand property rights. I respect the neighbor's property use rights at the same time I won't let my use rights be trampled. It's important for this Board to understand that we're not proposing we're not asking for one single variance from the Code, everything that we're proposing here in compliance with the Code and then some. The lots that we ranged from 1 lot at Code minimum to up to nearly 3 times Code minimum; we're not proposing suburbia here, we're proposing single family lots, very respectfully laid out with the minimal vegetation clearance, again that's not

completely in my control that's partially in control of the owners; we're not here to trample on anybody's property and we're not proposing

Mr. Kobiolka: I don't think the Board has any problem with your subdivision, by the way I do take exception to how you think you can subdivide.

Mr. Romanowski: How so?

Mr. Kobiolka: Because the State Law requires a 3 or 5 year...

Mr. Romanowski: 4 years.

Mr. Kobiolka: 4 year minimum, the Town Code doesn't, the Town Code trumps.

Mr. Romanowski: Is there a Town Code that...

Mr. Kobiolka: Yes, absolutely. We don't have a minimum in terms of time. Whatever the State says the State says and that's fine, but if our Town Code says something different...

Mr. Romanowski: Does it?

Mr. Kobiolka: It does, fifth one gets you.

Mr. Romanowski: That's forever?

Mr. Kobiolka: Yeah, yeah, yeah. So in terms of... so you just have an objection to the bond for the road is that it?

Mr. Romanowski: My only objection to everything that's been discussed is the bond for the road and my objection is based on this – I can't control what other people do; I can't control who runs a dump truck down that road, I can't control what the neighbors do, I can't control any damage that the Town plow possibly does. How are you going to quantify that?

Mr. Kobiolka: You're in the construction business, so what weight can that Town road hold? Do you know? I don't know.

Mr. Romanowski: I don't know exactly what the Highway Superintendent is referring to when he says it's a 4-ton road. Here's what I'd like you to consider. If I withdraw my application today and I come back and I build 3 houses, we're not proposing a major subdivision, I'm not doing infrastructure work, I'm not bringing in that type of heavy equipment that type of work would require, I'm bringing in the same kind of equipment that...

Mr. Kobiolka: No, no, no, you're going to have cement trucks coming in that weigh 20, 30 ton.

Mr. Stringfellow: Can I interrupt here. How many houses have been built on Heinrich Road? Every house had the same kind of trucks coming in that these 5 houses will have.

Mr. Romanowski: Exactly and whether I build 3 without subdivision approval or 5 with subdivision approval I'm going to bring in the exact same type of equipment and it happens to be the exact same type of equipment that anyone of the neighbors would be free to bring in if they were for example to construct a patio, build an addition, improve their driveway, any of those types of things. In addition to that there's agricultural use on the road with some pretty big equipment, in addition to that there's a snowplow that regularly plows on that road. I no control over what that does and I'm not proposing to bring in any equipment that's any larger or more intense than those uses.

Mr. Stringfellow: Do any Planning Board members have any questions of the applicant?

There were none at this time.

Mr. Stringfellow: At this time I will open the public comment portion of this Public Hearing (7:57 PM). Please be advised to limit whatever you say to no more than 3 minutes and avoid duplicating things that have been said before you. Does anyone wish to speak?

John Panek – 7411 Feddick

- I sent the letters to the attorney, the engineer, to the chairman and to the D.E.C. in reference to the environmental report that was done incorrectly and I was wondering if you read it and how you're going to request the builder to change the report?

Mr. Stringfellow: The report has been changed.

Allan Telaak – I live up on Feddick Road

- I was wondering what kind of erosion control plan he's got in place for down by the driveways, emptying on to Heinrich Road
- There's 3 or 4 of those driveways that are 700,800 feet long, there's going to be an awful lot of water in the spring of the year when the snow melts and it rains and everything else that comes down through there

Mr. Stringfellow: That would take the Town Engineer to answer that question and he is not here, sorry.

Mr. Kobiolka: It's my understanding, and the developer is right here, that the houses would not be built back that far.

Mr. Romanowski: It's at the discretion of the property owner where to build the house, I can't tell where to build. But common sense would dictate that good back lots; I don't see any driveways that would be anywhere near that length, simply because it doesn't make sense for someone to bear that expense to build all the way to the back of the property when

there are more suitable building sites closer to the road. Our engineer submitted to the Town Engineer and he approved a packet that had us creating a swale on both sides of the road, with check dams , sorry I meant driveway, both sides of the driveway, so we slightly crown the driveway, with a small swale, check dams and you come down the road and then at the end of the road there's a length rip-rap to control the erosion before it hits the road ditch on Heinrich.

Allan Telaak:

- But how long are these driveways supposed to be/
- According to the plans they were 700,800 feet.

Mr. Romanowski: Not driveways, those are some of the lengths of the lots. Two flag lots would certainly be longer lots but..

Mr. Telaak: I thought they showed 700,800 feet going back the flag lots. In the spring of the year when there's rain and snow that's an awful lot of water coming down through.

Mr. Romanowski pointed to a subdivision plan explaining

- That length is about 562
- So these 2 lots could be, these 2 driveways could be as long as 700 feet
- This one here would logically be more in the range of 300 feet
- This one here I don't see where that would exceed 100
- Same with this one
- Again swales both sides, check dam and erosion control

Mr. Telaak: Those check dams wouldn't make much difference in the spring when there's rain and snow, rip-rap might...

Mr. Romanowski: Check dams are there...

Mr. Telaak: And what is the Health Department requiring now for the septic system, do you have to have natural drainage for the sand filters to drain out into?

Mr. Romanowski: The current health department regulations require that there is an absorption trench without a dedicated drainage out the end of it, so if you're familiar with the systems were up until, I believe, around 2009 the health department changed their specifications so that the clean water no longer goes directly to the ditch but has to be absorbed into a topsoil mound basically.

Mr. Kobiolka: Mr. Telaak, would your property be effected at all by this development?

Mr. Telaak: Uh there's little bit, yeah we're uphill but there is probably 1 100, 200 foot of woods or stuff but I mean odor and stull in the summertime that's downwind from us...

Mr. Kobiolka: That's farming; that's farming.

Mr. Stringfellow: Any other comments from the public at this time? There were no more at this time.

Mr. Stringfellow: Then at this time I will close the Public Comment portion of this Public Hearing. (8:10 PM) Is there any Planning Board member that wished to make a motion on this Final Plat Plan?

Dr. Ziarnowski: I would like to make a motion on this final plat with the stipulation that is agreed upon the bond for drainage will be in effect but the bond for the driveway will not be in effect.

Mr. Stringfellow: I would second that.

Mr. Kobiolka: Would we like to set an amount for the drainage, like 30,000.00 as recommended by the Town Engineer?

Dr. Ziarnowski: Yes I agree with that from the Town Engineer for \$30,000.00 as part of the motion. Secretary Faulring would you like that over again?

Secretary Faulring: Did you make a motion to approve, you just made a motion, I don't if it's a motion to approve or deny...

Dr. Ziarnowski: Make a motion to approve the plat with the stipulation that the bond as expressed by the Town Attorney for drainage will be in effect but the bond for the highway improvement or destruction thereof will not be necessary.

Mrs. Lucachik: I second.

Mr. Stringfellow: is there any discussion on the motion. Secretary Faulring please take a roll call vote on that.

Secretary Faulring: The motion is to approve the Final Plat Plan with a drainage bond performance of \$30,000.00 and no bond for the highway.

- Mr. Bowen absent
- Mr. Liegl absent
- Mrs. Lucachik yes, I approve
- Mr. Martin absent
- Mrs. Rood I abstain
- Dr. Ziarnowski I approve
- Mr. Stringfellow I vote yes

Secretary Faulring: You do not have a majority.

Mr. Kobiolka: That's correct. The Final Plot Plan is not approved. We need four votes.

Mr. Stringfellow: Okay, that's where we stand.

Mr. Kobiolka: Does the Board want to reconsider or no?

Mr. Stringfellow: We took a vote that's the way it went. In that case I will make a motion that we adjourn the meeting.

Mr. Romanowski: I have a question. Where do we go from here.

Mr. Stringfellow: You're subdivision is not approved.

Mr. Romanowski: So, what's the next step?

Mr. Stringfellow: Mr. Kobiolka do we have any choice?

Mr. Kobiolka: Well the Board could re...

Dr. Ziarnowski: Can we table it?

Mr. Kobiolka: You move to table it, we already denied it...

Secretary Faulring: A motion was made and turned down.

Mr. Kobiolka: I know, I know...

Mr. Stringfellow: We did not approve, we did not move to deny it.

Dr. Ziarnowski: There's not enough members here.

Mr. Kobiolka: We moved to approve it so I'd have to do some research...

Mrs. Lucachik: Based on the number of membership present...

Mr. Kobiolka: Maybe what we could do is table this for further consideration at the next Board meeting which would be December...

Secretary Faulring: November 25...

Mr. Kobiolka: If the applicant asks us to place it back on the agenda he certainly has a right to do that and I'm sure you want to do that right?

Mr. Romanowski: I would like to do that?

Mr. Stringfellow: Then I will move that we table this motion until the next Planning Board meeting. Is there a second.

Mrs. Rood: I second.

Mr. Stringfellow: Motion and seconded, is there any discussion?

There was no further discussion.

Mr. Stringfellow: All in favor please say aye.

All were in favor of the motion.

Unidentified resident: If you voted on it and members that were here voted, basically didn't have enough votes to put it through, you're just going to 'round up another couple people and have another vote; I don't understand, is that legal to do that.

Mr. Stringfellow: I have no idea if it's legal or not, Mr. Kobiolka said...

Unidentified resident: We're certainly going to find out, but I'm just asking...

Mr. Kobiolka: Well the applicant can always come back; just because he got denied once time, he could file another petition next week and be back here same circumstances and the same gentlemen here who either oppose or favor, whatever, so yeah the issue has to be resolved one way or the other, somehow, someway.

Secretary Faulring: Do I have enough time to publish another notice?

Mr. Kobiolka: It's not a Public Hearing.

Mr. Stringfellow: We do not have to vote on at this meeting if we don't want to. We can hold the public Hearing and then poll the Planning Board to vote at a later meeting after we have more discussion, I think.

Mr. Kobiolka: The Board can always reconsider.

Mrs. Lucachik: But I thought that the rules stated that the members present, the quorum of the membership present, there are 4 of us, 3 out of the 4 voted yes, wouldn't that be a quorum?

Mr. Kobiolka: You need a quorum of 7.

Secretary Faulring: You need a quorum of the membership which is 7.

Mr. Kobiolka: We need 4 votes to pass

Mr. Stringfellow: This item is tabled until the next Planning Board meeting. At this time I will move that we adjourn the meeting, is there a second.

Dr. Ziarnowski: Second. All were in favor of the motion to adjourn

Respectfully submitted,

Thelma Faulring

Secretary to The Boards and Committees