

**TOWN OF NORTH EAST PLANNING BOARD
MINUTES
July 27, 2022**

The regular meeting of the Town of North East Planning Board ("PB") took place on Wednesday, July 27, 2022 in the North East Town Hall located at 19 North Maple Avenue, Millerton, New York at 7:30PM. Board members Chairman Culver, Charles Barrett, Evelyn Garzetta, Bill Kish, Bill McGhee and Dan Sternberg. Also in attendance were Chris Kennan, Chris Langlois, Ralph Fedele. Rob Cooper, Betty Dobrowdo, Wesley Chase, Edie Greenwood, Bob Russo, Kayan Tehranchi, Rich Stalzer, Svend Lindebaek, David Sheehan, Jeff Ezzo and Deb Phillips, secretary to the planning board.

Mary Dohne/Robert Russo

Public Hearing for Application for Minor Subdivision/Lot Line Alteration @ 7:40PM

151 Gun Club Road and 77 Gun Club Road

Parcel ID #133889-7171-00-906182 & 133889-7171-00-851129

Robert Cooper/Suburban Propane LP

Preliminary Discussion/Lot Line Alteration

Route 22 and 6180 Route 22

Parcel ID#133889-7272-00-063335 & 133889-7272-00-057307

Chairman Culver requested a motion to open the meeting at 7:30PM.

Kish made a motion to open the meeting. Motion was seconded by Sternberg and passed unanimously.

Minutes

Chairman Culver requested a motion to approve the July 13, 2022 minutes.

Kish made a motion to approve the July 13, 2022 minutes. Motion was seconded by Garzetta and passed unanimously.

General Business (part A)

Chairman Culver said he spoke to the PB attorney about training possibilities and inviting other boards.

Kish asked about the June 29, 2022 minutes regarding the Harney application. Chairman Culver said he didn't have clarification and he would need to follow up with Langlois again.

Mary Dohne/Robert Russo

Public Hearing for Application for Minor Subdivision/Lot Line Alteration @ 7:40PM

151 Gun Club Road and 77 Gun Club Road

Parcel ID #133889-7171-00-906182 & 133889-7171-00-851129

Chairman Culver requested a motion to open the public hearing for Mary Dohne/Robert Russo minor subdivision/lot line adjustment.

Barrett made a motion to open the public for Mary Dohne/Robert Russo minor subdivision/lot line adjustment. Motion was seconded by Garzetta and passed unanimously.

Wesley Chase gave a review of the application for the minor subdivision/lot line alteration. He said Russo currently owns 24.6 acres and Mary Dohne owns 9.74 acres. The purpose is to take 7.24 acres from Russo parcel and add to Dohne parcel; resulting in Dohne with 16.98 acres and Russo with 17.4 acres. The acreage being transferred is behind Izzos. He suggested anyone attending to look at the map.

Chairman Culver asked if the lot line adjustment affects any other parcels.

Chase said it doesn't affect any other parcels but there is a barn that encroaches on the parcel and that it is noted on the map. He said Attorney Langlois has no problem with the language on the map.

McGhee asked Chase if he had any contact with Bob Trotta.

Chase said he spoke to Trotta and the adjoining property was transferred to Chris Kay.

McGhee said he had spoken to Trotta and that he would like to do a lot line adjustment with Russo.

Chase said Dohne and Russo are in contract and has to close by a certain date. Chase said after the closing, negotiations with Dohne and Kay will take place to address the encroachment. Chase said any prior non-conformities with the application don't apply; they are pre-existing.

Langlois said he looked at the application and he is aware of the possible encroachment and that it doesn't prevent a lot line adjustment based on the application. The lot line adjustment isn't creating the encroachment; it is pre-existing and will be there afterwards. He said there is a note on the map so that future parties would be aware of the encroachment. He said the PB can grant the pending application for a lot line adjustment regardless of that encroachment and leave it to the neighboring property owners to work it out.

McGhee said Kay would like to swap land that he owns now with Russo before the lot line adjustment is approved.

Chairman Culver said Trotta spoke to Kay and has involvement with Russo. Trotta expressed that Kay wanted to get it worked out and he knew about the application but didn't know if there was anything that could be done in the meantime. He said Langlois said the PB can't do anything to prevent this due to the encroachment; the encroachment is listed and notated on the map. He said the PB has done everything to make it obvious. Dohne has acknowledged that the problem exists and wishes to work it out. He said the application as it sits is a legal application. The PB has it in the minutes and on the map. He asked if Langlois had anything to add.

Langlois said what Chairman Culver said is consistent with his thinking.

Chairman Culver asked if anyone in the audience would like to look at the map and ask any questions.

Dave Sheehan asked if the Russo property would become one or two parcels after purchased by Dohne; Chase said it would be one parcel.

Chairman Culver asked for a motion to close the Dohne/Russo public hearing.

Garzetta made a motion to close the Dohne/Russo public hearing. Motion was seconded by Sternberg and passed unanimously with the exception of McGhee voting no.

Chairman Culver said the escrow balance will be returned after the final bill is paid.

Chairman Culver requested a motion for a negative declaration for the SEQR review.

Kish made a motion for a negative declaration for the SEQR review. Motion was seconded by Barrett and passed unanimously.

Chairman Culver asked for a motion to approve the Dohne/Russo lot line adjustment.

Garzetta made a motion to approve the Dohne/Russo lot line adjustment. Motion was seconded by Sternberg and passed unanimously with the exception of McGhee voting no.

**Robert Cooper/Suburban Propane LP
Preliminary Discussion/Lot Line Alteration
Route 22 and 6180 Route 22
Parcel ID#133889-7272-00-063335 & 133889-7272-00-057307**

Rob Cooper appeared before the PB for preliminary discussion of his plans for the property he is purchasing property from Suburban Propane located at 6180 Route 22. He said they want to do a lot line adjustment and Suburban Propane will keep one acre where the propane tanks are because they are still used for storage. He said the building has a showroom, warehouse and office space. He said it would be a perfect place for a (cannabis) dispensary; it's away from the Town, has no neighbors and is the required 4,000 square feet.

Chairman Culver said the PB doesn't know what the regulations are for a dispensary. He has been informed by the State Dormitory Authority that the state is going to get 150 sites that they will either buy or lease and renovate and furnish all 150 sites.

Chairman Culver said his concern with Cooper's interest in using the site if it has been in continuous use and that it is grandfathered in for commercial use.

Kish said the Town has drafted a law to opt in for a dispensary but it hasn't reached the public hearing phase. He said if that law passes, the zoning will have to be revised to permit it. He said the Zoning Enforcement Office would have to sign off that the building has been in continuous operation.

Chairman Culver said Cooper should first contact the Building Inspector to get him to say yes or no that it's been in operation as an office and showroom. If the Building Inspector says it has been in operation, this would start a paper trail that would allow Cooper to engage in renting it to someone for a similar use. The PB can't help or hinder the issue; it appears that the state will make that decision.

Kennan said the Town has not yet opted in for a dispensary but there has been discussion. A law has not been passed yet.

Sternberg has Cooper if knew what Suburban Propane's long-term plans are for the south end parcel. Cooper said Suburban Propane wants to use the large tanks for storage.

Chairman Culver suggested that if the sale goes through, have Cooper ask Suburban Propane to take better stewardship of their parcel that remains.

Langlois reiterated Culver's concern of questions for use and get a letter from Code Enforcement Office that indicates what is permitted and what is not permitted on the property. If the applicant disagrees with that, they are not granted a grandfathered use that they think they are entitled to. They will have the opportunity to appeal with the ZBA; the PB is not in a position to answer.

Cooper said he will follow up with the Building Inspector.

Chairman Culver said there should be a paper trail for the PB to know what is appropriate according to the Building Inspector and the paper trail will protect the PB and Cooper. He said that if the property is left inoperable for over a year, the owner loses the grandfathered use because it is in a non-zoned zone. He said the clock starts when the property changes hands.

Cooper said he plans to close on the property in two weeks.

Chairman Culver recommended to Cooper to get a letter from the Building Inspector. If Cooper plans to do any site work, then come to the PB. He asked Cooper if he and Suburban Propane were planning on a lot line alteration before or after the closing of the property sale. Cooper said he has to do it before the closing.

Chairman Culver said legally the PB couldn't do the lot line alteration in less than a month

He suggested Cooper to submit an application to the PB soon along with the letter from the Building Inspector. The PB would then review it and set a hearing.

General Business (part B)

Kish said while reviewing the Zoning Code, he came across an addition from 2011. He was curious about what it means and how the PB can use it. His interpretation is that two approvals are needed for a site plan. The first approval is when the PB approves the application. Then the project will be built, the Building Dept. will come back to the PB, say it is complete and ask if the PB willing to sign the final approval. The PB will review what was built or take the Building Department's word. When the second approval is signed, the Certificate of Occupancy can be granted. He said if this is the case, that gives the PB much more leeway in assuring that the project gets built as intended. He asked Chairman Culver if he was interpreting it correctly.

Langlois said he looked at that section that was added in 2011. He said there was a similar addition, Chapter 150.27 subdivision of land, that was added at the same time. He said it basically says the PB has two choices. With respect to required infrastructure and improvements, option one is to withhold final site plan approval or subdivision approval until those improvements have been completed. Alternatively, the PB's option is to require the applicant to post financial security in the form of a bond or letter of credit that will ensure the performance of those required infrastructure improvements. If the applicant doesn't take care of it, there is a financial resource for the Town to draw upon and do it itself. What he doesn't think this is about is the PB coercing the applicants to being faithful to their site plan application. This section already provides that applicants will not get a Certificate of Occupancy until there has been a post-construction section in confirmation that the as-built conforms with what was indicated and approved on the site plan of for whatever reason the applicant hasn't done what the PB approved and wouldn't get a Certificate of Occupancy from the Building Department without either prepping it or getting some relief from the approved site plan.

Chairman Culver said his recollection is that Mts. Edge provoked some of these changes with the inability of emergency service providers to access thru-roads and driveways that were constructed. He said one of the lot owners sued the developer. There was a buyer purchasing a parcel that had no access to the road because the HOA was never executed with the state relative to that piece of land that was behind and the land swap to allow the useful agricultural land to be kept open. That was supposed to create an access that was to be granted by an easement but it was never executed. The land swap created a land-locked parcel that the PB had no intention of creating. Since there were two separate pieces that were added at the same time, (here you ask Chris) would it be consistent with creating the ability for accesses, etc. to be done, no matter who has the property afterwards.

Langlois said it's not of question ownership. The point is to make sure there is access provided, regardless of who ends up owning the property.

Kish asked for clarification of commercial site plan. He asked if the PB could require that a sidewalk be installed and if the PB could bond for that. If the construction is finished and the sidewalk isn't put in, it could be done by the Town at the applicant's expense.

Langlois said yes, that's the purpose of the bond. It's not a simple thing for applicants to get bonds. You need to weigh the benefit of having the bond in place to the risks that the PB is taking. There are still ways to enforce the site plan approval.

Sternberg asked if it is within the power of the PB of any application to make a decision that there is something in the application that is important enough that the PB create the post-completion review.

Langlois said his problem with the language that it talks about required infrastructure and improvements.

Chairman Culver asked if it is just another tool for the PB to work towards getting the larger pieces of applications finished. There was a local law passed in 2012 that says if the applicant has a current violation in Town, the PB can elect to take no further action until that violation is taken care of. We utilized that once on an applicant.

Langlois said that violations need to be documented.

Chairman Culver asked if the PB could make a site visit with the Code Enforcement Officer if the PB knows there are violations,

Langlois said the PB is within their rights to make a site visit but it's less important that the PB goes to the site.

Kish said the PB could recommend that the Code Enforcement Office make a site visit.

Barrett asked if the PB doesn't require a bond, could the PB extend the escrow.

Langlois said the three forms of security are a bond, letter of credit or a cash deposit.

Chairman Culver requested a motion to adjourn the meeting.

Kish made a motion to adjourn the meeting. Motion was seconded by Sternberg and passed unanimously.

Respectfully Submitted,

Deb Phillips
Planning Board Secretary

APPROVED September 14, 2022