

Town of Northumberland
Planning Board
Location; Town Hall
Accepted by the Planning Board
Monday, July 24, 2023
7:00 pm Page 1 of 5

Planning Board Members Present: Melanie Eggleston, Lisa Black, Holly Rippon-Butler, Vice Chair Heber, Jeff King,
Brit Bassinger, David Williams, Michael Haag and Chair Susan Martindale

Members Absent:

Town Employees Present: Dave Brennan, Town Counsel, Michael Terry, Code Enforcement and Tia Kilburn, Clerk

Chair Martindale opened the meeting and addressed all in attendance and asked them to stand and salute the flag at 7:00 pm. Quorum established.

Chair Martindale announced new business **application #: 0008-23, a 2 lot subdivision for William Rooper**, parcel located on Colebrook Road in the residential 3 acre zone containing approximately 6.6 acres. She invited Mr. Rooper to give the Board an overview of the proposed project.

Mr. Rooper explained originally in 1987 there was a map that had the 6.6 acres split, he purchased the property with an additional 3 acres next to it in 2005 he started building and realized the house they were building was on the wrong lot by the tax records, so he went to Walter Smead, Town Assessor to straighten it out. He continued at that time there were 3 total lots, 3 acres for his house, the 3.14 and 3.07 acres, he said he doesn't really know what happened, but apparently, he had requested a merger and he would like to reverse the merger.

Chair Martindale asked which property has the home on it, Mr. Rooper said the 3-acre lot and the map the Board is looking at does not show it, he showed the Board the map he had from 1987, showing his house lot.

Mr. Brennan said the map says property of Decker, Mr. Rooper stated his surrounds Deckers property, the Clerk showed a map with Decker owning a square property in the middle. Mr. Brennan clarified that property that surrounds Decker is the property to be subdivided and the house is on the property below that, the Clerk replied yes. Mr. Haag asked if the only property they were talking about was the 129.-1-95, the Clerk agreed.

Ms. Eggleston asked if Mr. Rooper would approach the Board and explain his map. Mr. Rooper approached the Board and discussed the property with his dwelling and the property to be subdivided. He said it was separate in 2005, he doesn't remember the merge but there is a copy of it with his signature on it from 15 years ago. Chair Martindale asked if he was looking to subdivide and have 3 lots, Mr. Rooper said yes but his house lot is not of subject today, it is separate from the other he wants to subdivide into 2 lots, he will have 3 lots total.

Vice Chair Heber reiterated it is in the residential 3-acre zone, Mr. Rooper replied yes and said both lots will have 200 + feet of road frontage. The Board reviewed the map.

Chair Martindale asked if the Board had any questions or comments to make on this proposal, Ms. Eggleston reiterated that it was separate, then it was merged into one and now he wants to put it back the way it was, Vice Chair Heber agreed. Mr. Williams asked if the line is the same as the original property line separating the two lots, Mr. Rooper said yes and he showed the original map from 1987 showing the same boundary footage.

Chair Martindale reviewed the map for deed notes or references, Mr. Rooper stated they are all deeded separately, he has the deeds if the Board would like to review them. Chair Martindale confirmed the measurements were all the same on both maps (original and the new proposal).

Vice Chair Heber stated it looked complete, Ms. Eggleston asked if they needed a public hearing, the Clerk replied

yes, Mr. Brennan agreed. Chair Martindale asked if it needed SEQRA, State Environmental Quality Review Form. Mr. Brennan replied yes, Vice Chair Heber interjected a short form, Chair Martindale asked if one has been submitted, the Clerk replied no, Vice Chair Heber explained he will need a short form SEQRA, and Mr. Rooper could get that online, the Clerk stated she would help him get it through DEC website, using the mapper. Vice Chair Heber asked if it had to go to County Planning, the Clerk replied yes, Ms. Eggleston asked if they needed the SEQRA before they send it to County and schedule the public hearing, the Clerk said not necessarily if he can get it in the office within the month, Mr. Rooper stated he is moving next Wednesday, cross country, he will not be able to attend next month's

Town of Northumberland
Planning Board
Location; Town Hall
Accepted by the Planning Board
Monday, July 24, 2023
7:00 pm Page 2 of 5

meeting. Vice Chair Heber asked if there would be somebody to represent him at the meeting because it will be another month at the minimum. Mr. Rooper asked what a SEQRA was, Chair Martindale replied State Environmental Quality Review Form, Ms. Eggleston added it is an environmental questioner. Chair Martindale asked if there were any endangered species, Mr. Rooper said there are wetlands back there he added they have been mapped. Vice Chair Heber stated it is on the map, the squiggly line in the back, Mr. Rooper said that is the creek, the dash line is the 100' from the wetlands.

Ms. Rippon Butler asked if he had a map that shows the elevation of the parcel, Mr. Rooper said no, Ms. Rippon Butler stated she was just wondering if the lot would have space for a house, septic and well opposed to creating a lot that is not buildable, she was curious if there is a big hill. Mr. Rooper replied he didn't think it would be a problem, he explained there was a mobile home at one point on that property by the creek and there is plenty of room in front for a house. Ms. Rippon Butler said she was trying to get a sense of the area for the setbacks, Mr. Haag said or if the wetlands would interfere with it.

Chair Martindale asked if there were any questions or comments, none were noted. She said they can go ahead and accept the application and schedule a public hearing contingent upon the SEQRA form being completed before the publication needs to go out.

Vice Chair Heber made a motion to accept the application and schedule a public hearing contingent upon the SEQRA short form being received,
Ms. Eggleston 2nd the motion
All in attendance unanimously agreed.

Chair Martindale said they can get the SEQRA and do the review, she asked if that has to be completed before they send it to Saratoga County. Mr. Brennan agreed they need the form in hand but it but this Board does not have to act on the SEQRA before sending to Saratoga County Planning. Vice Chair Heber suggested Mr. Rooper come in the office tomorrow and fill it out. The Clerk agreed.

Chair Martindale asked if with the changes with the Post Star Newspaper (they only publish a paper a few times a week) is that going to give them enough time to publish the notice for the public hearing, the Clerk replied that should be fine because they publish in both the Saratogian and the Post Star Newspapers. Mr. Williams asked if it was legal or could they get another newspaper, Mr. Brennan explained it is what the Town Board has set each year at the organizational meeting for public notices. Mr. Williams asked if they could get another, the Clerk stated they have both. Mr. Williams said his concern was that somebody that gets the Post Star says they didn't get the notice and somebody with the Saratogian gets the notice, is there a legal precedent? Mr. Brennan said no, as long as it is 5 days prior. Vice Chair Heber said they send the notice out to the neighbors.

Vice Chair Heber asked Mr. Rooper if there would be somebody to represent him, Mr. Rooper said he can get his realtor to come in. Chair Martindale asked if they needed a POA (Power of Attorney), Mr. Brennan said no, just a letter for representation. Mr. Rooper asked how he would be notified about the public hearing date; the Clerk said it will be the 28th of August as long as the SEQRA is submitted. Vice Chair Heber suggested Mr. Rooper come in the office tomorrow to get it done, Mr. Rooper agreed.

Chair Martindale said the only other thing on the agenda is the minutes for June,

Vice Chair Heber made a motion to approve the June Meeting Minutes,
Ms. Black 2nd the motion,
All in attendance unanimously agreed.

Mr. Brennan said he had a topic to discuss with the Board, he stated they still have pending litigation between **Angelo Rosse**, the Planning Board and the Town Board over denying his request for the mining and then he wanted to build a house on Virginia Place in Homestead Estates also denied. He explained Mr. Rosse applied for a building permit and Rich Colozza denied the application, it was for the large lot on the corner of Homestead and Virginia Pl. Vice Chair Heber said on the main plot it says that lot is undevelopable. Mr. Brennan said it is not that clear, it doesn't say undevelopable, there was never a conservation easement filed in the County Clerks office. They are proposing to settle it proposing one house and putting ½ the lot into a conservation easement. Ms. Black asked what property they are talking about, Mr. Brennan showed her on his laptop and said he is proposing a ranch style retirement home with room for a pool and garage and then around it conservation space.

Ms. Eggleston said she didn't really have a problem with it, Vice Chair Heber said he has a problem with it because it was a cluster subdivision, the minutes from the meetings have to say that. Mr. Brennan said it is in a publication Saratoga County put together where they talk about conservation subdivisions,

it is in as an example in the publication from 1995 or so, that it was the first conservation subdivision. Vice Chair Heber said that wasn't the first conservation subdivision, he added Lindsay Hill / Morgan Manor was.

Mr. Brennan said the Town has some exposure on the lawsuit that they may or may not win, if he wins, he can build on it. The lot itself is 7 acres so it is not big enough to have 2 houses on it (agriculture zone), it is 5-acre zoning there, the worst that can happen is he gets one house and conserved open space. Vice Chair Heber said then he can go down the road to the 20-acre piece, because it was never filed right and build houses down there, because it was all part of it.

Mr. Williams said he was confused, Mr. Brennan explained it was a cluster subdivision, it's a field on the corner of Virginia Place and Homestead Road, the owner Angelo Rosse built that subdivision, and he came to the Board about 3 years ago looking to mine it for sand. The neighbors did not like it, they have nice houses. Mr. Williams said he thinks Mr. Rosse owns the first house right there, Mr. Brennan said he sold that one and moved but he still lives in there. Mr. Brennan stated he wanted to do a sand mine and basically the Board told him no, that would not work. Ms. Black said for a year or so he trucked in waste from a horse farm, it was used hay and straw, it was horse stuff because you could smell it. She said he filled it and then he wanted to mine it back out. Mr. Brennan said he came in with the story it needs to be mined so it could be leveled out to better farmed. Vice Chair Heber said no, he wants to put a house on it now. Mr. Brennan agreed and said they had a court conference about a month ago, the idea that came out of that is the one house with conserved space all around it so nothing could be built there. He added it is not a bad thing because there is some downside to the litigation, but his thing is Mr. Rosse will never get a mine there, he doesn't think the downside risk is a mine, he thinks the downside risk is a house. Mr. Williams reiterated he is settling on a house now, Mr. Brennan agreed and said with a conservation easement around it, now without the conservation easement they are faced with whatever limitations are in the zoning code.

Mr. Brennan said before we got to this there were complaints from the neighbors in Virginia Place that the kids would go in and ride dirt bikes and snowmobiles on it and the Town would get noise complaints, one benefit of having a house on it, somebody owns it and it will be maintained. Ms. Eggleston said she didn't understand people complaining about their kids riding on somebody else's property, Chair Martindale said they built a cave into the side of the sand. Mr. Brennan explained the kids were digging in the sand mine and it collapsed on them, and the parents came in complaining about it being dangerous and it was their kids that were digging. He added there is some downside risk of the Court finding that there is not a valid conservation easement on this. The map that got signed by the Chair at that time and filed with the County Clerk is clear as it could be and typically there is a separate conservation easement that is recorded that says what you can and cannot do on the property and there isn't one. On the flip side some of Mr. Rosses claims the Town did not adopt the conservation subdivision rules the right way 25 years ago, there is no good answer to it.

Mr. Brennan said at the Town Board level, when he talked to the Supervisor, Willard Peck, nobody seems to want to give in and give this up, Chair Martindale interjected meaning allowing him to build a house, Mr. Brennan agreed and said everybody thinks this was done as a conservation subdivision. Discussion ensued on the original contractor that did the subdivision, father and son, Lanaro, they sold it to Mr. Rosse. Then Mr. Rosse sued them over grievances.

Vice Chair Heber reiterated that he was sure the plat says no further development. Mr. Brennan said it is not crystal clear, if it were he would not be having this discussion. He said the map in the County Clerks office says one thing and the one in the Building Department drawer says another. Vice Chair Heber asked how that could be. Mr. Brennan said because there are two sets of maps, they started using SY Kim the survey that is filed in the County Clerks office and there are CT Male drawings showing the septic's and engineering drawings that have different notes in them. Vice Chair Heber said the plans the Town has, someone brings in the plans and we stamp it and then they go do something tricky and file something different with the County? Mr. Brennan said no, those filed with the County would have been signed by the Planning Board Chairman, Mr. Williams reiterated the maps CT Male did, Mr. Brennan said no, SY Kim was the surveyor, that is the subdivision plot, and that is what the Planning Board saw and they also would have seen at some point the engineering drawings, 7 sheets that have the septic and well locations, things like that.

Mr. Brennan said Counselman George Hodgson was involved with it at one point and he is convinced it is suppose to be a conservation subdivision and that lot was suppose to be open space, all the other lots behind it were smaller and he got more of them with the trade off of keeping the front lot open. He added that Vice Chair Heber, has a great rendition you don't put the houses in and subdivide the farm fields, you put them in the woods, and the trade off at the time was he got to build in the woods and

Town of Northumberland
Planning Board
Location; Town Hall
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Monday, July 24, 2023
7:00 pm Page 4 of 5

build more lots and this was to be kept open for farming. Vice Chair Heber agreed and said he is firm on that. Mr. Brennan said when the other side proposes something during litigation, he is supposed to bring it in and let you know, he added he will litigate it. Ms. Eggleston asked when the last time was it was farmed? Vice Chair Heber said there is a big hole there because he dug dirt out. Ms. Eggleston said she was curious, the pros and cons and what are the chances you go litigate it and lose, he builds a house. Mr. Brennan said he builds one house, they never pursued the decision for the mine, that was getting through the process, and they pulled that off and said let's hold that up and ask for a house, Mr. Colozza said no, they went to the Zoning Board, and they agreed with Mr. Colozza and said no house. Mr. Brennan added his view is that the mine was never approved, and we are not going to approve it if it comes back, he said he thinks the downside risk is a house. Mr. Williams said that is a win for them and lose - lose for the Town, so why not go for it. Vice Chair Heber agreed. Mr. Brennan said the difference is he would get one house on the lot and he could do whatever he wants within Zoning and the other is along the edges into a conservation easement giving buffer space to the other homes. Mr. Haag said looking at the picture they are not offering that much. Mr. Brennan said it is a big lot, 7 acres, but its not that big, its probably 100 or 125' along the edges that would be conserved space. Mr. Haag reiterated the zoning is 5 acres there? Mr. Brennan responded yes. Mr. Brennan added if it turns into he can get a single family house on it, knowing what he knows he is surprised he doesn't go to the Zoning Board and ask for a variance to subdivide it. Vice Chair Heber said he isn't going to stop there, he is going to go down the street to the twenty acres and do it there, Mr. Brennan asked if he owned the 20 acres, Vice Chair Heber said he was unsure.

Mr. Brennan said he is not hearing everybody say this is a great idea, so he is going to, Ms. Rippon Butler interjected and asked if he is coming to the Board with this update or what is the decision? Mr. Brennan said the question is to continue litigating it or the other option is to settle it, so he would be asking for an agreement that this is the consensus of the Board that the Board wants to settle it so he would go back and try to settle it. Ms. Rippon Butler asked if this decision is in this Boards hands and not the Town Board? Mr. Brennan said it is both. Chair Martindale asked if the entire Town Board had a discussion on this, Mr. Brennan said it was more just with Supervisor Peck and he knows Counselman Hodgson is not in favor of it, he doesn't think any of them would be in favor of it.

Ms. Rippon Butler said the pros and cons for this Board are if you litigate it, and lose does that set a precedent? Vice Chair Heber said he gets a house. Mr. Williams asked if the neighbor down the street owns the 20 acres what is to prevent them from somehow loop holing the whole thing and everybody loses. Mr. Brennan said the precedent was they didn't want to step back and tell people who agreed to a conservation subdivision that they are not going to be enforcing those lots would not be built on. He added what he has heard from most people is you don't want to set the precedent by getting asked again and again by other people who planned a conservation subdivision as well. If something procedurally was done wrong years ago, we may have to live with the consequences of this one lot but that doesn't mean that we weren't holding firm on this is what we believe we did.

Ms. Eggleston said what about that 20-year plan with the agreement, Mr. Brennan explained when they bought the lots in the subdivision, they all had a deed restriction in them that basically expired in 2020, and when it expired, he came in and applied for the mining permit. Mr. Brennan said it should have been done as a permanent conservation easement in perpetuity not in individual deeds but in a separate document, that wasn't done. Vice Chair Heber reiterated he was pretty sure those maps said those lots are not to be subdivided or anything like that, Mr. Brennan said they can look at the map in the drawer and see. Vice Chair Heber said when he signs one, he looks at it and makes sure that everything that is supposed to be on this is.

Mr. Brennan stated he would proceed with the litigation; he will let the Town Board know as well. Chair Martindale said she would like the minutes of this meeting to reflect they did have this conversation. Mr. Brennan agreed and said this was an on the record discussion. Vice Chair Heber stated he was on the Board at that time, and it was definitely a cluster subdivision. Mr. Brennan said he may ask Vice Chair Heber to do an affidavit, because you were on the Board about what history is. Vice Chair Heber agreed.

Chair Martindale asked if there was a motion to close the meeting?

Vice Chair Heber made a motion to adjourn the meeting at 7:35 PM,
Ms. Eggleston 2nd the motion,
All in attendance unanimously agreed.

Respectfully submitted,
Tia Kilburn
Planning Board Clerk