

Town of Northumberland  
Planning Board  
Location; Gansevoort Volunteer Fire House  
Subject to Correction by the Planning Board  
Monday, May 10, 2021  
7:00 pm  
Page 1 of 11

**Planning Board Members Present:** Melanie Eggleston, Lisa Black, Jeff King, Brit Basinger Chad Reinemann, Holly Rippon-Butler, Vice Chair James Heber and Mary Beth McGarrahan

**Members Absent:** Chair Susan Martindale

**Town Employees Present:** Dave Brennan, Town Counsel, Charles Baker, Town Engineer, Richard Colozza, Code Enforcement Officer and Tia Kilburn, Clerk

Vice Chair Heber opened the meeting and addressed all in attendance and asked them to stand and salute the flag at 7:00 pm. he stated due to Covid-19 meetings are being conducted differently, social distancing, mandatory masks and limited number of people at one time physically in attendance. The meeting was in compliance.

Quorum established.

New Business, application # 0009-21, George Christian Jr. not present

Vice Chair Heber introduced the next item on the agenda, Application #0010-20, Major Subdivision Stephen Spencer.

Mr. Spencer explained they have a new design, he introduced himself and Wade Newman, Engineer. Mr. Newman explained they were before the Board a couple months prior that had access coming into 2 areas (cal de sac's) that were not to the Town Standard for diameter, he added they received the comments took them into consideration, he explained the new plan and said it is still a conservation subdivision but now they are proposing 19 lots, there will still be access off of frontage on Colebrook Road and Mr. Baker had a comment about a site distance analysis and they do intend to do that, they wanted the Board to take a look one more time to see if you are liking this revised direction more and if so they will do it as part of their preliminary. Vice Chair Heber asked Mr. Baker if he went over the conventional plan to see how many lots and this is the number, Mr. Baker replied yes, comment #3 under the conventional subdivision he had a question about lot number 5 because they are showing a driveway across another lot, he wasn't sure how the Town felt about the driveway across adjacent lots, so he questions if that is a viable building lot under the conventional plan. Mr. Newman stated that is not on this plan they are showing, it is on the conventional plan he believes it is lot 6, Mr. Baker agreed and corrected himself. Mr. Newman explained on the conventional plan they are proposing access to lot 6 via an easement on lot 5 to avoid steep slopes, Mr. Spencer interjected they want to maintain those slopes. Mr. Baker said the conventional plan shows 20 buildable lots and if the Board decided to eliminate that lot because of the access they would be down to 19 which is what they are proposing in the cluster subdivision, but to answer the question he is in general agreement with the number of lots.

Mr. Spencer said regarding the first comment, sight distance for the entrance to the lot they have done their own analysis and it should pass. He discussed preserving the majority of the wetlands for the conservation areas, he explained the location and size of the different wetlands based on the delineation. He stated the 2 comments that warrant the most discussion is how they are proposing to handle the conservation areas, ownership and maintenance of them. They are proposing the conservation areas will be enforced by easements on each individual lot and each individual owner will maintain the areas, they are not proposing a Home Owners Association. Ms. Eggleston asked where the easements would be, Mr. Newman replied essentially all of the green area on the maps, Mr. Spencer interjected where the white is on the maps is where they can develop, the green is protected and they can't do anything. Ms. Eggleston asked what would they do to maintain it, what is being maintained, Mr. Newman

Town of Northumberland  
Planning Board  
Location; Gansevoort Volunteer Fire House  
Subject to Correction by the Planning Board  
Monday, May 10, 2021  
7:00 pm  
Page 2 of 11

responded not really anything, Vice Chair Heber stated basically not touching it. Ms. Rippon-Butler asked who is responsible for enforcement. Mr. Newman explained it would basically be enforced by the lot owners, Ms. Rippon-Butler said the point of conservation areas are so they will be left alone, for future owners who makes sure they don't go and cut a bunch of trees or build? Vice Chair Heber stated it would be a deed restriction, Mr. Newman agreed, Mr. Spencer stated it would be similar to how Brampton Woods is deed restricted. Mr. Basinger said it would ultimately be the Town, Mr. Brennan explained it will probably be set up that it is enforced by the Town or the grantor or residents, there are several different options. He added sometimes there is a conservation inventory of existing conditions so if there are any changes, they have something to look at. Ms. McGarrahan asked whose responsibility it would be for submitting that, Mr. Brennan said the applicant and then Mr. Baker would review.

Ms. Eggleston asked who would be responsible for maintaining the center area, Mr. Newman explained the conservation area is in green but there is also stormwater management that will have a separate easement covering it to allow the Town to maintain the stormwater management area. He added they are proposing to dedicate the Roads to the Town after they are built to the Town's specs and also dedicate the stormwater area to the Town. Mr. Brennan asked Mr. Colozza what is the current position of the Town accepting dedicated stormwater management areas, Mr. Colozza replied that Brampton went to the Homeowners association. Vice Chair Heber interjected the Town wants to maintain as little as possible. Mr. Newman asked if there were other examples in Town he asked about Stafford Way, Mr. Colozza said Stafford is maintained by the Town, he said Brampton went with the Homeowners Association and all the storm stuff is done by them. Vice Chair Heber said he believed the others belong to homeowners and have easements for the Town, that might be a better idea because it is owned by somebody else for liability, the Town doesn't want the liability for property, the Town will prefer an easement to be able to clean it out and keep the stormwater drainage working. Mr. Newman asked if what they were discussing was different than what they are showing on the maps, Vice Chair Heber replied Mr. Newman stated they were going to deed it over to the Town, Mr. Newman said he meant the maintenance of it. Discussion ensued on the location and maintenance of the wetland areas. Ms. Eggleston asked if the areas would be open to the public, Mr. Newman said no. Mr. Basinger asked about sidewalks, Mr. Newman said no. Mr. Basinger said it looked like the site distance was the biggest issue, Mr. Baker stated he felt it was the biggest issue, if they cannot demonstrate they can meet the minimum requirements for the entrance intersection, as Town Engineers, their recommendation would be not to approve a road there. He said Mr. Brennan could explain the legal issues there if there were an accident and someone found it did not meet the criteria the Town would be in a difficult position to defend it. Mr. Newman said based on how this meeting went with this plan they would engage a 3<sup>rd</sup> party traffic engineer to evaluate it and provide the information with future submissions.

Mr. Basinger asked Mr. Baker if there were any other outstanding items from his letter they are not addressing, Mr. Baker said he had a comment about calling it a cluster development because of the way they are treating the open space, typically with the cluster each of the owners has access to enjoy the open space and in this it is not the case, so the questions is it really a cluster they are applying for, but that is up to the Board. Mr. Basinger said it was a different design but if he understands they can only achieve 19 acres to begin with, so they are reconfiguring it to show all the environmental areas with private owners, he asked the Board if they agreed. Mr. King stated the intent of the cluster development is the preservation of open space and not equal dividing up of the lots, he is not sure about this one but in the past, it has been used for an advantage to the developer than it has been gaining anything of any significance for the Town, he added he felt they should think about that with all projects, what is the Town gaining. Mr. Spencer said one thing they are gaining with this cluster development is 1500' less of road. Mr. Basinger said what he is hearing is this isn't a cluster subdivision. Mr. Newman disagreed, he stated it is a cluster in the sense that 50% of the land is preserved and as Mr. Spencer said there is significantly less amount of

Town of Northumberland  
Planning Board  
Location; Gansevoort Volunteer Fire House  
Subject to Correction by the Planning Board  
Monday, May 10, 2021  
7:00 pm  
Page 3 of 11

road. He added preserving land long term is a benefit. Mr. King asked how it conserves land, you have all the wetland that nobody can do anything with. Mr. Newman stated they are conserving a lot of land that is not wetland and the specific intent of the conservation is preserve the most important sensitive land, part of the process is to identify areas that are environmentally significant or susceptible to development and avoid those areas. Discussion ensued on the two plans and land preserved. Mr. Reinemann said he felt he liked this plan better than the previous version, so his personal opinion is to continue with this plan. Mr. Brennan stated the Board can decide what they like better, less roads and the overall layout. Vice Chair Heber stated as the Town owning the road, less road is better for the Town and not having to own any of the conservation area the liability is off the Town. Discussion ensued on the changes to this plan.

Mr. Newman stated the paper street to Brampton as previously shown was an option, but it didn't really help the design and it added about 800' of road. He stated they couldn't get in agreement with the Town for the cal de sacs. They moved away from cal de sacs now it is a loop, better esthetics and the lot count works with the concept of a conventional design. Ms. Rippon-Butler stated she liked the new plan better but it could be better if there was a conservation area not interrupted by roads for wildlife purposes and she agreed with the Town not owning it but access would be a nice component, Mr. Basinger interjected they cannot access any other property except their own.

Ms. McGarrahan stated she had a note from the last meeting where the Board requested a 75' buffer on the conventional, Mr. Newman said he believed that was from the houses on Colebrook Road for additional separation he said what is shown is 50' but it is something they can still do. Mr. Reinemann interjected his concern at that time was the subdivision had multiple houses sharing a backyard with the single lot out front, however on this layout it is like a single house lot behind a single house lot so that alleviates that concern of his.

Vice Chair Heber asked if there were any other comments, Mr. King asked Mr. Baker if he had a comment about keyhole lots, Mr. Baker said yes, the proposed conservation plan 3 lots being created as keyhole lots, 4, 5 & 6, the purpose of his comment was because some Towns are particular where they want to see keyhole lots and where they don't, it is a subdivision tool used more for properties that are landlocked or have access issues, he understands they are trying to avoid steep slopes he added he did not have an issue with it in this case he just wanted to point it out to the Board so they could discuss. Mr. Basinger said the ones approved in the past were just 25' corridors into lots, Mr. Colozza said having 3 in a row are the issue with following the code because usually it is a keyhole lot, a normal lot and a keyhole lot that breaks it up for road maintenance, there is a lot of snow removal that will be dumped into those keys. Mr. King said in the past they have had keyhole lots but they tend to be shorter, he said one on this plan is long and narrow, he is not opposing it but they should consider as they move forward with subdivisions how far do they want to go with them. Vice Chair Heber asked how long they were and said there is still the 800' rule even for a driveway, Mr. Newman said he didn't know but they are over 500' that's why there are turnouts and the hammerhead turn around but he didn't think they were 800'. Discussion ensued on the width and length of the keyhole driveways. Mr. Newman asked if the Board would allow a driveway to go through part of the 50' buffer, Vice Chair Heber asked what was on the other side of the buffer, Mr. Colozza said it was Randy Countermin's business. Mr. Basinger said the biggest concern for him is where the 3 keyhole lots come off the street, Mr. Reinemann agreed and said he would like to see them spaced out more.

Mr. Brennan asked if there were a way to put limitations on the clearing of the forest, particularly on the back of lot 7 with steep slopes make restrictions to keep some trees on the lot. Mr. Spencer said there is a lot of white pine and it is not heavily forested on the slope, Mr. Basinger stated they could put a buffer of 50' on 6, 7 & 8, Mr. Brennan said he was wondering if there were any other tools to help preserve the forest as the Board expressed

Town of Northumberland  
Planning Board  
Location; Gansevoort Volunteer Fire House  
Subject to Correction by the Planning Board  
Monday, May 10, 2021  
7:00 pm  
Page 4 of 11

concern about. Discussion ensued on preserving the forest and moving around conservation lines.

Vice Chair Heber asked if the Board liked this plan and wanted to move forward with it, he added they will have to work out some details, Ms. Rippon-Butler stated she wouldn't say no, but she has reservations and would like to see public access and concerned about the forest being chopped up, Vice Chair Heber stated they will move forward with this plan and onto the traffic study for the next step and look at the driveways more. Mr. Newman asked if this was a concept approval or a conditional concept approval, Mr. Basinger replied encouragement to do the traffic study.

Vice Chair Heber announced the next item application #0006-21, Sky Solar, the Clerk stated they were not present. Vice Chair Heber moved on to application #0001-21, Centerline Communications LLC, AT & T cell tower.

Ms. Blask-Lewis representative for the application stated she submitted a packet that addressed all the questions in the recent letter dated March 8, 2021 and in the May 5<sup>th</sup> letter there are attachments to it, the Board reviewed the exhibits with her regarding the balloon fly and view shed maps. Mr. Reinemann asked if they would share the access road with the existing Verizon Tower, Ms. Blask-Lewis replied yes, less disturbance. It was determined the most visible place was the property owner's view. Mr. Reinemann asked what would happen if Verizon wanted to move over to this taller tower, what would happen to their tower, Mr. Brennan responded the code says in 6 – 9 months of non-use it would have to be removed. Vice Chair Heber asked about the collapse zone, does it meet the code? Ms. Blask-Lewis said yes, it is shown on the site plan, if it falls it wont hit anything it is away from the horse barn and the house. She added it is closer to the Verizon Tower but this is a self-support tower and the way they are designed on a mono-pole and its not going to tip over, Mr. Brennan asked if it were to break off at the base and fall would it hit the Verizon tower, Ms. Blask-Lewis replied no, it should not. Discussion ensued on the distance between towers, Mr. Brennan suggested moving it over more. He stated somewhere in the application there is a little part that says because of the proximity to a small airport there may need to be a light on this tower, that is new information the Board wasn't looking at previously. He then discussed the FAA rules for towers in different situations, different types and colors of lights. Ms. Eggleston asked if they are at the height they need a light, she asked if they need to do a visual impact to see how it looks at night. Ms. Blask-Lewis said what she found out earlier was they would be looking at a medium light, white during the day and red at night, Mr. Brennan explained a dual light is a white during the day and a strobe every 3 seconds or so and at night it is red, Mr. Reinemann asked what the height was that triggers the need for a light, Ms. Blask-Lewis said 150' – 350', Mr. Brennan interjected that is not the height to trigger the lighting it is the height from 150 – 350 that has this type of lighting, he added the question is the Verizon tower at 120' doesn't have a light and at 199' it should not require a light but for the presence of an airport, anything up to 200' does not require a light unless the study shows it is close enough to an airport to trigger it. Ms. Blask-Lewis stated they have to file with the FAA to get the information of what height requires the light, Mr. Brennan said there are companies that study this type of stuff, Ms. Blask-Lewis said that's Site Safe and that is what they told them, they have to file first and it takes 45 days to get a determination back, they won't know exactly what is required until they look at it. Mr. Reinemann stated that was the reason they selected the height they did was because it was under the light requirement. Mr. Brennan said now the new information is the trade off if they approve it at 199' and send it to the Town Board you are guaranteed, based on the information Ms. Blask-Lewis submitted is to get the light, if you dig deeper, you may find out the light is required at 125' up to 200' or at 190 it triggered the light, you could put it at 180 and save the light. Ms. Blask-Lewis stated AT & T will submit it internally to the FAA to determine the height for the light. Vice Chair Heber said there should be some presidence out there to determine, Mr. Brennan explained they do a study of vertical and horizontal surfaces to see if the tower is in the flight path, he said there use to be companies

Town of Northumberland  
Planning Board  
Location; Gansevoort Volunteer Fire House  
Subject to Correction by the Planning Board  
Monday, May 10, 2021  
7:00 pm  
Page 5 of 11

that would do that. Discussion ensued on the desired height before a light is required and the airport. Mr. Brennan asked who owned the airport, Vice Chair Heber stated he did and he discussed the flight patterns and said the FAA looks at it different. Mr. Basinger asked if they were willing to approve it with a light, Ms. Eggleston said she does not want a light, Vice Chair Heber said it depends on how many people would see it. Ms. Rippon-Butler said the visibility map with the orange and yellow, is it new, Ms. Blask-Lewis stated it is the view shed analysis and the coverage and she explained the color coding. Ms. Rippon-Butler said the balloon study showed it was not that visible and this map makes it look like it is more visible. Ms. Blask-Lewis explained the first 4 pages are the photo sims that show it, on the Owners property and the rest are the other areas. Discussion ensued on the coverage area and visibility. Mr. Basinger stated the sims show a “leaf off” condition.

Mr. King asked if they were in agreement that there is no way of determining whether there is a need for a light until it is filed with FAA, he asked what would happen if they filed the application and got a determination and then come back, Mr. Basinger said they can go through the process where she tells them what height the light needs to be at then they can come back and discuss it. Mr. Reinemann stated they said 199’ was a tower height they didn’t need a light and now we don’t know what height they need a light. Mr. Brennan explained there is a standard that there is no light needed below 200’ normally, but if you are close enough to an airport you get into an area you need a study or submit it to the FAA, there are tools on the FAA website to be used to determine if it needs to be filed with the FAA to determine the height for a light, he added they are finding out that they are close enough to an airport that at this height they will need a light, Mr. Reinemann asked how far from an airport does that get triggered, Mr. Brennan stated it is not a straight linear thing, Vice Chair Heber interjected it deals with elevations, Mr. Brennan discussed the flight path and discussion ensued on the 3<sup>rd</sup> party “Site Safe” that takes a look at it and recommends what the FAA may require.

Mr. Brennan stated the process for the Planning Board is to do the recommendation to the Town Board, the Town Board has to issue the special permit, essentially a Zoning change by the Town Board, the question is at what point do you move it from the Planning Board to the Town Board, are you ready to do that, you can say you are ready but you need to evaluate the height for the light. He advised that although AT&T has not gotten upset by the process yet, but there is a Federal Shot Block on how long you are supposed to take to process these, at some point they will depending on when their plan is to build. He asked Ms. Blask-Lewis to find out the cutoff height for the light.

Ms. Blask-Lewis asked if the Board wanted her to continue addressing other parts of Mr. Bakers letter, Vice Chair Heber asked what other comments Mr. Baker had? Mr. Baker replied he thinks everything was addressed. Mr. Brennan stated he thinks they are down to the light is the issue, he asked Ms. Blask-Lewis to let the Clerk know when they get an answer and they will continue to carry it on the agenda.

Vice Chair Heber announced application # 0002-21, Mining Permit for Angelo Rosse, Mr. Basinger asked if they had homework on this one, Mr. Brennan stated they last time they met they discussed what was allowed on the lot and there was a letter from the neighbors asking a question about something from Donald Zee’s office (applicants attorney) talking about restrictive covenants that were imposed 20 years ago that expired December 2020 and are no longer in force or effect, he said he did agree with that, they did expire, the majority of the residents didn’t get together while they were in force to extend them so now that they have expired there is no way to go back unless everybody agrees. He added he did not see anything there with the restrictive covenants.

Mr. Brennan then said the next step was a question about the original subdivision approval and the information that the Mr. Colozza and the Clerk were able to find says that the filed subdivision map says that the allowed uses

Town of Northumberland  
Planning Board  
Location; Gansevoort Volunteer Fire House  
Subject to Correction by the Planning Board  
Monday, May 10, 2021  
7:00 pm  
Page 6 of 11

on the lot are those allowed in the AG district under the 1977 Zoning Ordinance, if you look at the 1977 Zoning Ordinance it says agriculture and single-family homes and not anything else. The sticking point is that the original filed subdivision map for this approved subdivision says those are the allowed uses for this lot along and the one for the Solar Farm across the road are limited to those uses as permitted uses of right for the zoning district of 1977. Vice Chair Heber said it is the same as saying he wants to go in and mine the conservation area, it is a cluster subdivision and he did not realize that lot was part of the conservation area for the subdivision, it is undevelopable that is what a cluster subdivision does. It sets aside conservation areas and he said they want to set a precedence, it is like him saying he would take the development rights off his golf course and still have a golf course, he added he did not know lot 1 was part of the conservation.

Mr. Rosse stated it is not prohibited of having it mined it only says this one is used for agricultural pursuits, he said it is the language and they can't say because it doesn't say something it exempts everything because it doesn't include it and that is what you are saying. He added it wasn't not allowed, it is an allowed use, and if he was farming it he could level the whole field right up to the property line, that is even in the Zoning Book on page 53 and 54. Mr. Rosse explained they were allowed to do this for 15 years through the Town and DEC with no issues at all. He said he has approval from the Town and DEC with letters. Mr. King asked what he was allowed to do? Mr. Rosse replied remove the soil, Vice Chair Heber asked if on lot #1, Mr. Rosse said yes, he has been removing it since 2002 and he has letters from 2005 that provided an exemption through Mr. Colozza because there was an issue last year and he got the letter back from DEC, he stated the Town was aware of him taking the dirt since 2002 with authorization from the Town along with DEC. Vice Chair Heber asked what authorization did the Town give, Mr. Colozza interjected it was the remediation work for Tanager Woods, they allowed him to use the sand material to re-do the septic systems in Tanager Woods. Mr. Rosse stated they took over 10,000 yards without going through this discussion, that was actually 2001 or 2002 it allowed him to get the exemption through DEC with the Town and no issues, he said this should not be any different. Mr. Basinger explained the cluster subdivision regulations expired, Vice Chair Heber disagreed and said they don't expire, the conservation easements are on the lots. Mr. Rosse stated that is what they were looking for when Mr. Brennan asked Mr. Colozza to look at the file, there is nothing in the file that would dictate him being prohibited from doing what he would like to do. He said they provided them with the final approval with the deed restrictions on the CT Male map, it just says no storage of equipment, no debris and that is it for lots 1 – 6, it actually has it on the final map what they can't do, it doesn't say he can't remove the soil and that is the filed map. Mr. Basinger asked if they didn't use the word expired, Mr. Brennan said that was for the restrictive covenants, Mr. Rosse stated he put that on there. Mr. Brennan said he has never seen one that had a 20 year period, it says up to December, 2020 unless extended by a majority vote of the people within the subdivision these terms and conditions shall expire, normally they go on in perpetuity, but in this case what was adopted by the developer of the subdivision it went for 20 years, it is not sure what the theory is but they did not extend them, he is not surprised because it would be odd for people to be up to date on them, that is the way it played out and he has no issue with it. Mr. Reinemann said that wasn't filed with the Town what was filed with the Town, Mr. Brennan explained the original subdivision map that Mr. Colozza and the Clerk sent to him has deed notes and it says on the subdivision that this Board at that time approved, it says land use of said parcels of Homestead Estates, phase 1 lots 1 & 2 is limited to uses permitted by right within an agricultural district in the Town of Northumberland taken from the Zoning Ordinance of the Town of Northumberland 1977, no future subdivision of these lots is permitted following final approval of Homestead Estates phase 1 and phase 2 by the Town of Northumberland. He added he got a copy of the 1977 Zoning Ordinance from Mr. Colozza and the Clerk and he looked at the uses permitted by right in the agricultural district, residential and farming, Mr. Rosse interjected agricultural pursuits, Mr. Brennan reiterated it says uses permitted by right; single family residences, agricultural pursuits and any accessory buildings associated with the agricultural use which may include no more than 5 residences for farm employees, home occupations and professional offices

Town of Northumberland  
Planning Board  
Location; Gansevoort Volunteer Fire House  
Subject to Correction by the Planning Board  
Monday, May 10, 2021  
7:00 pm  
Page 7 of 11

as part of ones residences when clearly incidental to the residential use, he said that is what you can put on this lot with a building permit from Mr. Colozza's office. Mr. Rosse disagreed, he said you cannot put anything on this particular lot, lot 1 it is not applicable because on lot 1 there is a deed restriction no buildings for agricultural use only, there are no homes allowed on this lot, it is agricultural use only and mining is under the agricultural use under the DEC's law and guidelines, can't have 5 houses. Look on the CT Male map it is where it says three things; no debris, no storage of equipment and no subdivisions and lots 1-6 had a line and it is stamped agricultural use only and that is why it is only assessed at \$4,200.00 because it is zoned agricultural use only, no buildings. Mr. Reinemann asked if in 1977 mining was defined in the zoning code? Mr. Rosse said no, Mr. Colozza said no, Vice Chair Heber stated mining was not allowed, Mr. Reinemann asked again if it was defined what it is? Mr. Rosse interjected it wasn't that it wasn't allowed, it wasn't even spoken of, and he asked how can you say that if it wasn't spoken of? Vice Chair Heber stated it isn't that it is spoke of, it is that it is not allowed. Mr. Reinemann said mining would be a defined term and agricultural pursuits is defined, potentially they would not overlap one another. Mr. Newman said they have farming and grading plans and they are in between mining and grading, they get mining permits for the grading of agricultural to cover their bases. Ms. Rippon-Butler asked if he was a farmer? Mr. Rosse replied no. Ms. Eggleston stated the agricultural use is separate from mining, if it is mining in relation to the agricultural use of the land there is more leeway it wouldn't be considered mining it would be part of the agricultural. Mr. Rosse interjected they are not mining a lot they are in conjunction; the Carr family has already started tilling it and in conjunction with the farming they need to level the field, they are not just mining, that is completely different from the 1977 codes Mr. Brennan has mentioned. Ms. Eggleston reiterated it is currently farmable, Mr. Rosse agreed and said the farmer has spent 3 weeks tilling it, Ms. Rippon-Butler asked if the grading was necessary? Mr. Rosse replied where they are yes, it is, he has only farmed the last 2/3 of the lot, he can't farm where 90% of the property is because there is a big hill. Vice Chair Heber stated the intent of the cluster subdivision if you give him permission to mine you have severed the cluster subdivision, at the point and time the Board gave the approval the only thing he could do was agricultural. Mr. Rosse said they can remove the dirt because they did it for the remediation, they did it for 19 years with approval from the Town. Vice Chair Heber stated the Town gave approval due to the remediation plan. Mr. Colozza interjected the letter came from DEC, under the Attorney General's rule. Mr. Reinemann asked if it came in front of the Planning Board, Mr. Colozza said no. Mr. Rosse stated there have been other situations in the subdivision where there are clearing limits on lots that was approved with the subdivision in 1992 clearly defined clearing limits and that's been waived, Mr. Reinemann reiterated he has been mining for 19 years what triggered this? Mr. Rosse explained last year he had an excavator, who he fired the day he found out, was working for a builder in the subdivision he was taking dirt and moving it off site and then was moving it to lot 8, that person thought it was ok to drive his track hoe on the road to lot 8 2,000 feet away, his neighbor on the other side complained to the Town and DEC, he said he met with DEC and Mr. Colozza and they said stop until they get the process going. There were no issues with getting the process started so he hired Mr. Norensky to get a permit to avoid problems. Mr. Reinemann asked if this was the first time it has been brought as a mining operation, Mr. Rosse replied they have doing the mining in conjunction with agricultural, not just so he can get a mining permit. The cluster subdivision is not applicable because it is not waiving the cluster subdivision so it won't exist anymore, it will still exist because this is a separate identity. Mr. Reinemann said what the point is, would they have approved a cluster subdivision if they knew this lot would be mined. Vice Chair Heber said no, Mr. Rosse stated it wasn't discussed so how could they say no. Vice Chair Heber explained it wasn't discussed and the intent of any cluster subdivision is you are giving the developer a trade away, where you cannot develop the rest of the land. Mr. Rosse said lot 1 is 7.96 acres and has nothing to do with the cluster, they wanted a tree line and didn't want a house in the front. Vice Chair Heber said the intent of the cluster is it is undevelopable so if the Board wants to undo that, Mr. Rosse said it won't be developed by mining. Ms. Rippon-Butler said she had a question about the agricultural aspect, what about it is the grading requires the sand to be removed, she stated her Dad is a farmer and he has graded plenty of fields the dirt is just moved not removed.

Town of Northumberland  
Planning Board  
Location; Gansevoort Volunteer Fire House  
Subject to Correction by the Planning Board  
Monday, May 10, 2021  
7:00 pm  
Page 8 of 11

Mr. Rosse said it is ascetically disgusting the way it was and since they had been doing it so long, they wanted to continue leveling it. Ms. Rippon-Butler stated she understood what he is saying, he is trying to say this is a continuation of agricultural activity but she is not convinced that removing the soil from the property, which is putting them into the whole mining conversation isn't necessarily agricultural activity for the grading. Vice Chair Heber interjected it is the same as saying let the solar farm go in, it is not developable. Mr. Rosse said they are separate issues; you are inserting things into an approval. Mr. Brennan asked if they agree that the map note says that parcel is supposed to be limited to current uses permitted in the agricultural district of 1977, Mr. Rosse said this is part of it but you are denying a property owner of use of what is available in conjunction with agricultural use because it clearly says. Mr. Reinemann stated his opinion is is; the activity he is proposing on this lot is a mining operation. Mr. Rosse disagreed and said agricultural pursuits. Mr. Brennan stated he did not think a commercial mine where he takes soil for 5 years is an agricultural pursuit, he agreed with the Vice Chair Heber and said the Board can undo this if that is their opinion, Vice Chair Heber said yes, that is what their opinion is but then they are going to affect every cluster subdivision in the future. Mr. Rosse said a year and a half ago they extended other lots in there for the clearing limits, they were expanded and the Board voted to approve it, that was not allowed based on the original subdivision, he added on lot 12 this Board allowed them to move the septic and well. Mr. Brennan said they are two different things. Mr. Basinger asked Mr. Brennan if he was saying in 1977 mining wasn't permitted, Mr. Brennan replied the 1977 Ordinance says a permitted use is residential and agricultural pursuits and from what he reads it does not allow mining at this level to run a commercial mine to level it off and then go back to agricultural. Mr. Basinger said the reason it is a problem is because it is a cluster subdivision. Mr. Brennan agreed and said this was part of the give and take of the original subdivision approval that Nick Lanaro did that the note was imposed on the map that says what that lot is limited to, that was the Planning Board Approval and this is the Planning Board, you can amend that approval, he explained if they go that way, they will have a public hearing and hear from the neighbors and they have already pointed out the covenants and restrictions that have expired. Mr. Reinemann said he didn't know what the 1977 code states but agricultural pursuits are defined in the zoning and mining is defined separate. Mr. Brennan said he sent an email to Chair Martindale that said he could prepare a letter with his reasoning behind this to share with the Board and applicant and part of it he agrees completely with is there are defined terms and as Vice Chair Heber is saying, what is an allowed use, not allowed use or not mentioned, it does make a difference and give the Board his analysis of it , however right now what is being proposed is limited by the note on the approved map, he added there is a range of opinions. Right now, he was asked if this is something that would be allowed and his answer is, it doesn't look like it to him but it is a Planning Board Decision. Vice Chair Heber said to think about it, it matters to him if you change it then you set a precedence that this Planning Board wanted this cluster subdivision to do this for what they think is forever and then 10 years from now the Planning Board says no we don't want that. Mr. Reinemann said he felt this was a Zoning Board of Appeals situation. Vice Chair Heber replied they don't have jurisdiction over something the Planning Board did. Mr. Brennan agreed and said right now he doesn't think it is a Zoning Board question, it is a Code Enforcement Officer question, he explained the process of Mr. Colozza reviewing it and normally the Board asking him and Mr. Brennan to write a letter asking if this application for a mining permit is an allowed use under the current zoning, the answer is yes, however, subject to the map notes it is his and Mr. Colozza's opinion that it is not allowed for these reasons, he stated he can write that letter, if it comes from Mr. Colozza, in theory it can be appealed to the Zoning Board, appealing his interpretation or it can be appealed by application to this Board to amend the prior approval. He suggested he write the analysis with what was approved, here is what the 1977 Zoning Ordinance says and as a result it appears the Planning Board of 1992 says only residential homes or agricultural pursuits and then the question would be, do you think mining at this level is an agricultural pursuit, he said the code does split out mining vs. agricultural pursuits and they are two different things. Mr. Rosse said post remediation, that only lasted about one year, they have taken it for approximately 19 years. Vice Chair Heber stated he has been taking it for 19 years illegally, Mr. Rosse expressed it was not illegal it was with the Town's



Town of Northumberland  
Planning Board  
Location; Gansevoort Volunteer Fire House  
Subject to Correction by the Planning Board  
Monday, May 10, 2021  
7:00 pm  
Page 9 of 11

permission. Vice Chair Heber asked when did they give him permission for 19 years, Mr. Rosse said with the consent and understanding and with Mr. Colozza being around for 20+ years, letters from DEC going to Mr. Colozza in 2005 and delivered again last year he was allowed through emails and letters. Mr. Basinger interjected based on what Mr. Brennan discovered it doesn't sound like it should have been allowed. Mr. Brennan said he doesn't know the history of that but explained "estoppel", if the Government makes a mistake and issues a permit erroneously, someone cannot say we got one over on you and continue, the law says when it is discovered it is stopped. Mr. Rosse said when lot 11 came to the Planning Board and the Planning Board allowed them to extend the clearing limits over 200' specifically on the map, so you can't just pick and choose. Discussion ensued on a previous application to change clearing limits on a lot owned by someone else. Mr. Brennan stated he is not contesting that someone can come to the Board 20 or 30 years later and ask the Board to change the map. They can apply with an application and this Board can vote in favor of it. Vice Chair Heber said he knows there is a specific amount of dirt you can remove from your land. Mr. Brennan said it is a 1,000 yards or tons or whatever, before you have to go to DEC, there are 2 different mining provisions in the code right now, one is a small scale they will call a farmer mine where you can do a borrow pit up to 1,000 a year then the 1,000 triggers the DEC for a mining permit. Mr. Basinger agreed and said a certain acreage that can be used and disturbed, he asked what is the next step? Mr. Brennan said he can put together the formal analysis but they should still hear Mr. Rosses update he prepared and he can ask the Board to consider it and move forward with his plan. At some point you have to be ready and defined enough to move it forward and send it to County, Mr. Rosse asked why it had to go to County, Mr. Brennan said because it is a site plan for a special permit, Mr. Reinemann added it is in the ag district. Mr. Brennan said at some point they have to schedule a public hearing, he asked what they had for an update since the last meeting.

Mr. Norensky said he brought a response to Mr. Baker's comments, the first is he had said it would be a 20-year period, that is an over estimate, it will be approximately 5 years for the duration of the mine in operation. He said they added screening, there are trees between 15 and 17 feet in height and there is a topographic rise of 20' to be safe, to shield the properties. He said the rise will block the noise and visual effects. He discussed the beepers on the equipment, they are new and more like white noise so unless you are in a certain area or just coming in you shouldn't hear it. He said they will use the entrance on Virginia Pl vs. the entrance on Homestead because they all agree the line of site and higher speeds on Homestead would make it dangerous. The 3<sup>rd</sup> comment mentions storage of equipment and the zoning issue that was discussed; one loader will be parked at the site temporary for the season and it will be parked in the most hidden shielded area, haul trucks will come and go. Mr. Baker mentions reclamation and he left that to the farmer so he wrote a letter of how he will cultivate hay; letter is attached to his. #4 is as-built, Mr. Baker said features should be listed on the reclamation plat map, everything that will be left when it is done, he will show them. One comment talked about stormwater and SWPP or pollution prevention plan and he said they agree they will include that and other items like drainage. Last 2 items are hours of operation, M – F, 7 – 4:30 pm is common for a mine, there will be none on Sunday or Holidays because it is not allowed and 8 – 2 pm on Saturday intermittent if somebody needs some. Talks about trespassers and what they can do about it, Mr. Rosse is going to set up a surveillance system so he can monitor it the whole time, signage and he knows some Board members didn't like that as a visual, but they can use inconspicuous small signs "no trespassing", that is not a significant point. He said they are not disagreeing with anything.

Mr. Basinger asked if for their next step if they would wait for the legal response, Vice Chair Heber agreed. Mr. Basinger said then they can move forward from there and decided if they need a public hearing or not, Mr. Brennan said they have new information they just got today so the Board can look at it and he and Mr. Baker will look at it and he will write a letter and get it out 2 weeks before the next meeting to Mr. Rosse and Mr. Norensky, we can look at the revisions and see if the Board is ready to schedule a public hearing. Mr. Basinger agreed. Ms.

Town of Northumberland  
Planning Board  
Location; Gansevoort Volunteer Fire House  
Subject to Correction by the Planning Board  
Monday, May 10, 2021  
7:00 pm  
Page 10 of 11

Eggleston asked how many cubic yards do you plan on removing, Mr. Rosse replied and said on the application they provided, he believes it says 110,000 plus or minus. Mr. Norensky stated the average mine does about 90,000 yards.

Vice Chair Heber asked if they wanted to vote on what to do or wait until they get the information from Mr. Brennan? Discussion and the Board decided to wait for Mr. Brennan.

Mr. King asked if they could go back to the subdivision from earlier, he knows the applicant left but he has a question. The Colebrook Rd subdivision, it appears there is conserved land all around and he asked if it requires 50% conservation? He said there is a certain goal the developer has to get and there is a 50' strip all the way around and he is not sure what they are accomplishing by giving a 50' strip. Mr. Basinger said he didn't think it was really a cluster subdivision, Mr. King agreed and said the intent of a cluster and what they are allowing is making it easier for the applicant to maximum number of lots and less expense with shorter roads, Mr. Basinger agreed. Mr. King added you can say it is cheaper for the Town too, but he feels they should evaluate that, it is his opinion and make sure they are utilizing the intent of the cluster conservation law. Vice Chair Heber stated he wished it was in the book, Mr. Basinger said he agreed and didn't know what they were conserving other than the 50' setback. Mr. Brennan agreed and said conservation subdivision but he is not building on the land he can't build on anyway, he suggested asking Mr. Baker to review it and make an analysis of whether it complies and qualifies for the conservation subdivision. Mr. Reinemann stated personally he likes the buffer; he agrees the buffer helps him with the numbers but he prefers the buffer. Mr. King agreed and said he understood not backing up tight to the other neighbors, but they are accomplishing a minimum standard running the strip all around and they made the point of what are you conserving it for and he is not sure they want public access, he does think they want ownership of the land by the individuals. Mr. Reinemann asked what would be the other option besides a conventional subdivision, Mr. King replied fewer lots, he said he didn't think they need to maximize number of lots for the developer. Vice Chair Heber said he didn't maximize lots, Mr. King said no, but they are making it easier. Ms. Eggleston mentioned the 3 keyhole lots side by side. Mr. Basinger said he did not have a problem with the development, he doesn't think this is a cluster it is just a subdivision. Mr. Reinemann said if they look at the conventional, he doesn't like it as much as this one. The Board agreed they would like less road and no cal de sac.

Discussion ensued on conservation vs. conventional subdivisions.

Mr. King asked Mr. Baker if this qualifies, Mr. Baker stated he felt in fairness because the applicant has left the meeting and they thought they had conceptual approval so this conversation should not be taking place. Mr. Brennan agreed. Mr. Basinger said they did not give conceptual approval he just told them to go and do the traffic study. Mr. Brennan said they can ask Mr. Baker to look and see if it does or doesn't comply and leave the discussion and deliberation and any conclusions for the next meeting. Vice Chair Heber asked the Board to read the Subdivision Book for conservation and conventional and he remembers the old cluster subdivisions and it's not cluster anymore it is conservation design subdivision it is different. Mr. Basinger asked if Mr. Baker and Mr. Brennan could give them a summary of how this meets or doesn't meet conservation subdivision regulations. Mr. Reinemann asked if the question was if this meets the conservation subdivision standard or does the conservation subdivision meet the conventional, because he feels it meets the conventional standard except that one lot. Mr. Baker said he did agree and he said that in his letter that is how he developed his number of lots for the conservation is to prove he could build a conventional subdivision and meet all the requirements for areas and frontages and those lots could be approved as a conventional subdivision and that is what they did with their 1<sup>st</sup> plan and they documented 20 lots and he questioned one of the 20 lots because of the driveway access. Mr. Baker said it doesn't matter because they are only asking for 19 lots in conservation, either way they demonstrated they

Town of Northumberland  
Planning Board  
Location; Gansevoort Volunteer Fire House  
Subject to Correction by the Planning Board  
Monday, May 10, 2021  
7:00 pm  
Page 11 of 11

could build a conventional subdivision and obtain up to 20 lots. Mr. Reinemann stated what they could do is make that one lot an acre and say it is a conventional subdivision, Mr. Brennan interjected and said it may be and that is what they are going to look at, Vice Chair Heber reiterated that he thinks everyone should look at it in the subdivision regulations because it has changed it is not the same cluster it use to be.

Mr. Basinger made a motion to adjourn the meeting at 9:02 pm  
Mr. Reinemann 2<sup>nd</sup> the motion,  
All in attendance unanimously agreed.

Respectfully Submitted,  
Tia Kilburn, Planning Board Clerk