

Town of Northumberland
Planning Board
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Planning Board Members Present: Brit Basinger, Melanie Eggleston, Mary Beth McGarrahan, Jeff King, Lisa Black, Holly Rippon – Butler and Chair Susan Martindale

Members Absent: Vice Chair James Heber

Town Employees Present: Dave Brennan, Town Counsel, Michael Terry, Code Enforcement Officer 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.

Continuation of Public Hearing for John Cornell, application #: 0018-21, 165 Beaver St, Site Plan Review / Special Use Permit. Chair Martindale asked if there was anything new at this time, Susan Nixon, Esq. of Lemery Greisler, representing the applicant addressed the Board and Public in attendance. Ms. Nixon; recap, there was an updated site plan submitted that includes the topography of the layout and asked if the Planning Board had any questions on the new submission, Chair Martindale stated this is a Public Hearing and asked if there were any comments from the public.

Stephanie Ferradino, Esq. of Ferradino Firm, LLC representing neighbors Dube – Forman, information sent via email and she also had copies for the Board, she reviewed the January meeting, she had requested that the Board require a compliant site plan that meets the Town regulations and from what she has reviewed of what they submitted it is still not compliant, they added topography, it is not compliant with the Town's 5' contour requirement it has 10' topo and it is approximate because it utilized a map that was done almost 100 years ago, 1929. That is not the typical way an Engineer would draw the plan and it doesn't satisfy the 5' requirement, nor does it satisfy the two things the Town require with topo is the existing and the proposed, so at the completion of the review you should be able to look at the topo and see where the contours are different. The applicant had his attorney submit a letter which is intended to satisfy some of the site plan requirements and she definitely did address lots of them but the problem is lawyers are advocates, they argue sides and see a lot of grey, there is rarely black and white especially in land cases, highlighting the differences between what a licensed professional that is required to do a site plan has to do and they deal with facts, engineering, math and specifics, when you ask an attorney to do something that an Engineer, Architect or Surveyor is suppose to do it is not what they are trained to do and they cannot make the certifications in letters that you would get when you get stamped plans from an Engineer. Somethings are fuzzy and different pointed out in her letter, there are stark differences describing the site where the applicant is saying it is steep, a significant drop, it is impossible going up the final hill but the letter says it is relatively flat, those are sharp contrast. The letter says there is no water needed to the new arena, and it says the project includes a wash stall, you use a wash stall to clean a horse and you do that with water so you need water at the site. It either has water or doesn't have water, if you had an Engineer draw up the plans there would be details on there for water because he would know they need it based on the use. That is why there is the requirement in the code for licensed professionals.

They saw a rendering, right before the last meeting they saw a gorgeous indoor arena, it had cupolas, second story windows it was beautiful, then the applicant came in and handed you plans that are a glorified pole barn with siding on a 150' building not anything close. The plan is hard to understand for even reviewing, Ms. Ferradino stated it is premature for them to be here because the zoning is correct yet and she has 3 letters and they all contain different areas where this plan is deficient in zoning, your Town Attorney can tell you that you cannot proceed to vote on anything that is not zoning compliant, zoning always comes first. Zoning is not just use, the barn is

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allowed in the area but that is one part of zoning the other part of zoning is dimensional, like frontage requirements, setbacks, principal use all of those are zoning issues and if they are not made right the project fails. It fails on it's face and you are wasting your time, those things always come first and the Zoning Board is always the first stop when you have a new application, because you have to make sure that numbers are right and use is right, absent that this Board can't vote on the project. It is great to review and it is great they are raising the issues and working through the problems but you are not able to vote, she is 198% sure anybody wearing a black robe on an Article 78 will agree with her, it is basic.

She stated the proper SEQRA process is not even initiated yet, because the Zoning Board is going to be involved and you will hear later that there are some other State agencies that will be involved, you need to initiate a coordinated review whether you or the Zoning Board but somebody needs to start the process. It hasn't been done yet and maybe it hasn't because a long form hasn't been submitted.

Ms. Ferrandino explained they are missing a bunch of documents; the necessary Zoning Application have not been made yet, there is a subdivision requirement you will see both in the agricultural protection district regulations that Ms. Nixon included in her letter, it does actually include a requirement for a specific type of subdivision, SEQRA long form, don't yet have a compliant site plan that complies with the Town Law. She stated she did her due diligence and pulled up the EAF Mapper and put in the address, she found out it is in an archeological area, now SHIPO is involved, you need to get a letter from SHIPO that says go or no go, which means they may have to do a phase I or phase II archeological study on the area. Information also demonstrates the information regarding water courses is incorrect in the applicants' materials, there are water courses on site, there are Federal waters, there are State wetlands and there is a class C and D stream on the property. That is something the applicant if they have a license professional or engineer would have known that. They are missing a bunch of procedural steps. The first one is a coordinated review initiated by someone who wants to be lead agency and a SEQRA determination all need to come in advance of this Boards vote.

Ms. Ferrandino stated she was happy to answer questions and she thinks her letter may have raised some. Chair Martindale asked if there were any other comments from the public, none were noted. Chair Martindale added by the questions Ms. Ferrandino brought up they will not be voting to close the public hearing at this time. To address some issues; Chair Martindale stated she did not know the topo have to be 5' instead of 10', she asked if that is standard for a topo map, 5' for the Town of Northumberland?

Mr. King asked if they could be clear they are done with the public hearing portion of the meeting and moving into the regular meeting? Chair Martindale agreed, she said the next application on the agenda was the Subdivision for James DeLessio and they are not attending tonight they will move to address Mr. Cornell's application.

Mr. King said the Town regulations do require 5' and he believes in the past it has been up to the Board's discretion if they feel they are close enough with the provided topo's. He asked Mr. Brennan if he had any input on if the Board needs the 5' topo or if they can accept the ones provided? Mr. Brennan responded the Board does have the discretion as to what is required under the site plan review what is necessary and as to 5 or 10' they will ask Mr. Baker what he feels is necessary due to the scope of this project. Mr. Baker said he has not seen this project prior to tonight, it would be hard for him to make a comment now, as far as topo goes 10' contours are pretty much typical, US GIS is usually acceptable in most cases, not knowing the specifics of this plan he would like to look at it closer before he makes a decision. Chair Martindale asked in what instances would you have to have a 5' topo, Mr. Baker said if there are concerns about drainage, how the site will drain and if there is any possibility the drainage might discharge onto the adjoining property in cases like that you may want more.

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Mr. King suggested they wait for Mr. Baker to review it and give them his opinion on it whether they need more defined topography. Mr. Brennan stated they said they were not going to close the public hearing, he said it seems every month there is a back and forth and he is not sure if there is much more to be said about, they don't like it, the application and the reasons. He stated he was not sure if they need more public hearing, they need more information and form their own opinion and decision, he said he was not sure if they need to hold it open for another month to get more written materials. Mr. King asked if they would be ok, time wise if they close the public hearing if they don't have material to deem it a complete application. Mr. Brennan stated the Board has 62 days to render a decision after the public hearing is closed unless it is extended by the applicant. The idea it is not a complete application would have been something addressed before they even scheduled the public hearing. He explained this is about the sufficiency of the site plan, the Board has the ability to require that information or to waive it and accept the 10' contours if you think it is appropriate after Mr. Baker looks at it, that is the Boards decision.

Mr. King said he wonders, the issue of Zoning was brought up, he stated he wasn't aware there was a potential change in Zoning, he asked if Mr. Brennan could comment on that, is there something the Board needs to be aware of? Mr. Brennan replied it is not a change in Zoning, there is an opinion the neighbors are saying that the project requires relief from the Zoning Board and he hasn't heard the Code Enforcement Office suggest that is necessary, the issue or one of the issues is that there is more than one principal use on the property and he does not know if that is what the Board considers a horse barn and a riding arena on the same property with the residence on the same property is accustom of what goes on in the agricultural district that somehow you can't have a house, a farm, a barn and an arena on the same property, it is consistent with the Town Code. He stated he did not know if he agreed with the neighbor's argument that a subdivision is required, the neighbors are saying they need to have a subdivision to put the barn or arena on one parcel and the house on another. Mr. Brennan added the last letter said there was an agreement that it is exempt from SEQRA and now the suggestion is there is another SEQRA process, he stated he is comfortable they are exempt from SEQRA, he doesn't believe there is a problem that the applicant has suggested they may want to build a house with road frontage in the future, he does not feel that is SEQRA segmentation. He reiterated that he is not necessarily agreeing with those legal arguments at this point, the Board has the matter of the placement of the facility, which is what this comes down to. The non-engineering, non-technical for why you should deny it because there are all these problems, the fact of the matter is it is an odd location, so whether this Board agrees or disagrees with that assertion that it is in the wrong spot, the rest of it is follow this or follow that, he does not necessarily agree with that, he would be happy to write those up, the issue becomes is this really an impact on the neighbors, is it inappropriate. It is fine if the Board is not ready to decide tonight there has been a lot of time spent on it and he is not rushing the decision he is just saying he believes they have heard everything for and against it at the public hearing. Mr. Basinger asked if they could make a motion to close the public hearing, Mr. Brennan replied if the Board is comfortable, he would be satisfied to close the public hearing and start the 62 days, there will have to be a decision on it and there are two very different sides. His typical thing is to have a discussion with the Board, get direction to write it up one way or the other after they go through the factors, he will write it up, discuss it with the Board and the Board will adopt that as their decision and then you will see who sues or doesn't sue. Mr. King stated that answers some of his questions, having Mr. Brennan's guidance on SEQRA that the Board is in a good spot. Mr. Brennan said he thinks it is a good idea to have Mr. Baker look at it, to see if anything catches his eye based upon technical comments, if he identifies anything they should be fixing it. For instance, the archeological instant that the neighbors are raising, that probably covers the entire Town, if you look at the DEC map everything that is not a wet land or steep slope shows up as possible archeological sensitive. Mr. Basinger asked if Mr. Brennan would do a review of it and the

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Zoning and help the Board determine, Mr. Brennan agreed, and said he will address the legal arguments and based on what he has seen he thinks the Board is ok to proceed. The determination is what this Board has to do, he will go through it and the Board can tell him what they think the answers are, he will then write it up, he will send it in advance, everybody can read it and if you want to adopt it or if you want changes it is the Boards decision.

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

Mr. Basinger made a motion to close the public hearing,

Ms. Eggleston 2nd the motion,

All in attendance unanimously agreed.

Mr. Brennan asked if they wanted to discuss or have a motion on Mr. Baker taking a look at. Mr. King said there could be other things they may want Mr. Baker to review. Mr. King said it's the question of Zoning, he did not think there was a question of Zoning and he was glad to hear his opinion that Mr. Baker didn't think so either. He added he thought there was a question out there that there could be an issue but that doesn't seem to be the case. Chair Martindale asked if there were any questions regarding Zoning, Mr. Bassinger stated it is his understanding Mr. Brennan is going to respond to the letter and review the Town Code for any Zoning discrepancies.

Mr. Brennan agreed and added he will advise the Board at the next meeting if he thinks there are discrepancies, at this point he does not think there are. It has been raised and should be looked at, discussed in the decision, some issues that were raised and why we disagree with them if we do. Mr. Basinger reiterated Mr. Baker will look at the application based on the Zoning technical requirements of the Zoning District and site plan submittal requirements. Mr. Baker stated he is going to look at the site plan but Zoning is more of yours. Chair Martindale asked if Mr. Baker was also going to look at any kind of water issues, Mr. Baker replied yes. Mr. Brennan added storm water. Mr. King asked about usage of water in any of the buildings, he didn't think there were rest rooms but there are wash stalls. Mr. Baker asked if there were a plan for the proposed building? Mr. Brennan said yes and the Clerk has it electronically.

Mr. Basinger made a motion for Legal Counsel and Engineer Counsel review the plan and documentation provided for the project for review at the next meeting,

Ms. Eggleston 2nd the motion

All in attendance unanimously agreed.

Chair Martindale stated next month they should have reviews back and be able to proceed. Mr. Brennan agreed and said they should have Mr. Bakers and his review and comments, the legal arguments and then he expects to go through the site plan and special use criteria and see where the Board falls on those, there is a long list for each they should talk about and then he stated he would expect a vote, and yes or no with direction for him to write it up consistent with the discussion. At the following meeting after considering, it and or changing it adopt it as the official decision and file it.

Mr. King recused himself for the next application for James O'Donnell, #0012-21, 1439 West River Rd.

Chair Martindale called the room to order and stated she had an opportunity to read what was submitted by email but is not sure if she understands it. She asked if anybody else had the opportunity to review information that was sent? Ms. Eggleston asked what it was pertaining to? Chair Martindale stated documentation to whether lot one could be subdivided. She added in the documentation was a letter from Pat Bryant who happened to be on the Planning Board at the time she indicated that at that time the Board agreed there would not be any subdivision of

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that particular parcel, that dated back to 2006. She asked Mr. Brennan if he had an opportunity to review, Mr. Brennan apologized he did not, it came in after he had left for vacation and he has just gotten back from vacation. Chair Martindale explained what was included in the packet; deeds and deed restrictions, there was information

about the meeting notes that were taken back in 2006, she asked if anybody else had time to review the information. She asked the applicant if they had anything to add.

Mr. Phillips, Counsel to the applicant stated he is the author of the letter and he can go through points of it. He stated he knew when he sent it he had missed Mr. Brennan because he was on vacation. He explained he wrote the letter after studying the subdivision map, he is new to the project because he was not here at the creation of the project back in 2006, at that time the developers were represented by Peter Coseo, He stated he has spoken with Mr. Coseo about it and review some of his correspondence, so looking at the intent of what was going on at the time. So now looking from the outside looking in, 1st he looked at the subdivision map that was filed and on the subdivision map there was a bold note that says area of the subdivision; the area of the subdivision was 253.56 acres, he knew there were 11 lots, he looked at the lots on the subdivision map and what the acreage of them was, he put in his letter on the 2nd page (see attached) a grid of those lots, he added them up and it came up to 253.54 acres, compared to the map that was filed said the area of the subdivision was 253.56 acres. That is almost a perfect match of what the map says and what the 11 lots add up to be, he feels that is significant as to how the Board and developer were viewing the subdivision at that time. He looked at the subdivision notes, there are 2 areas of notes on the subdivision map, on the top, note #10, said there would be no further subdivision without Planning Board approval, then down below there was a requirement that language be put in the deeds that would be conveyed by right from this subdivision map. He then looked at all the deeds, and they are in the packet, all 11 lots have a specific restriction on it that says there would be no further subdivision of lots 1-11 as shown on the subdivision map. He said he did not do the deeds, they were done by a different lawyer, but to him the deeds effectuated the intent of the subdivision. Mr. Phillips stated he thought the language is clear and unambiguous relative to the "other lands" of the subdivision at that time and the "other lands" is the 25 acres now before this Board, they were on the map as "other lands" of Stonybrook LLC. they were not numbered as a subdivision lot and they were not included in the area of the subdivision. There is the SHIPO issue, he wanted to see what SHIPO was thinking in 2006 when it was involved in this over all scheme of things. He found correspondence between Mr. Coseo and SHIPO as to what SHIPO was trying to protect at that time and it was clear they were looking at the house the architecture of the house but not looking at anything basically beyond the area of the house. Between Mr. Coseo and SHIPO they agreed on language that was attached when the "other lands" were sold, the last deed you have is the deed from the developer to Mr. O'Donnell and the SHIPO is confined to the house lot, he stated he also included a photo that is looked at as the historical resource by the State of NY, a blue and yellow sign on the property. He thought that limited what the SHIPO involvement was at the time, SHIPO could change between now and then but looking at the original intent he thinks it is for the house and not the whole 25 acres. He added he feels the intent of the subdivision was well revealed in terms of what the note said, what the deed said and what SHIPO says. The environmental part relates to the process before the Planning Board going forward, looking at this issue that has tripped them up from the beginning of getting into the planning process. He said there are environmental issues they have to look at, they have looked at a couple of the issues; they have delineated the wetlands, DEC has approved the wetland delineation and the wetlands are far removed from where the house sites would be so there would not be a problem with wetlands. They also did some soil work to see what kind of soils are there, MG Engineering went down over 7 feet and did not find any mottling which would indicate high groundwater in the test pit, they did not hit any ground water until they hit 7 feet. Those are things they will discuss in the planning process which they would like to get to, they are asking the Board to do is green light the project so they can move into the planning process and deal with issues raised by the Engineer and other legal

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issues. In terms of the property, if the property that Mr. O'Donnell purchased was going to be restricted from development as a matter of private property rights to him that would have to be clearly defined by the Planning Board in terms of what happened back in 2006. Contrary to that it is clear from his perspective that the Board was looking at a finite area of the subdivision of 11 lots and the match between the area of the subdivision expressly stated on the map and the acreage of the 11 lots are a perfect match he thinks that is what the Planning Board was thinking about at that time. Mr. Coseo if needed as the one that did all the legal work at that time would produce an affidavit for the Planning Board if you think that is necessary because he was present at the creation and Mr. Phillips was not. Mr. Phillips stated he did not want to get into the issue of regulatory takings or Constitutional issues and he doesn't want to get into the issues of legal interpretations in terms of common law, statutory construction. He thinks it is clear they don't have to go there. He then said he would be happy to answer any questions.

Chair Martindale stated she would like Mr. Brennan to give the Board an interpretation of what was just discussed. Mr. Brennan replied he will look at it and have it for the Board in advance of the next meeting so the Board can review and they can discuss at the next meeting. Mr. Brennan asked for a refresher regarding the portion of the map on the East side, "other lands of Stonybrook", at the time in 2006 when 253 acres was being subdivided, that was already a separate lot and a separate deed by Stonybrook? Mr. Phillips replied it was contiguous but not within the 253 acres of the subdivision. If those 25 acres was included it would have been over 300 acres. Mr. Brennan stated he understood that but he is asking if it were a separate parcel at that time in 2006 when you came to the Planning Board was there 2 parcels or 1 parcel? Mr. Phillips stated he thinks it was a contiguous ownership, Mr. Brennan reiterated in 2006 there were 2 parcels each with a deed, one with 253 acres and one with 25 acres? Mr. Phillips replied he did not think that was it, he deferred to Mr. Story for the answer and he said there was not a separate deed for the 25 acres, it was 15 or something, it was a different amount where the house is was a separate parcel. Mr. Brennan said he will go through it and see, he said he is trying to figure out you say it wasn't part of the subdivision, it was all one lot then it is part of the subdivision, but if it was separate and you have a deed for 253 acres and then one with 25 acres right next to it he could see how one would be part of the subdivision and one wouldn't but if it is all one parcel he loses track on how it is not part of the subdivision, he will look at it. Mr. Phillips stated they will look at the map title on them too to see what those deeds are.

Mr. Brennan said they also spent time discussing the various lot line revisions that went with that parcel and they are not necessarily covered in this letter. There was discussion on parcel zero to the East where there were various lot line revisions through the years and he asked where they ended up on that? Mr. Phillips said he didn't put that in the letter and he explained after the subdivision of the 11 lots there was a buyer that wanted to buy just the area where the house was, they didn't want the entire 25 acres he only wanted about 5 acres, to satisfy that buyer the developer Stonybrook came to the Planning Board and the Planning Board approved a subdivision of the 25 acres into a 5-acre lot and a 20-acre lot, that took place in the winter or late fall of 2006 or 2007. That buyer then walked away from the sale and that is when Mr. O'Donnell came on the scene and he said he didn't want to buy just lot 5 he wanted the whole thing, so the developer came back to the Planning Board and they reversed the approval they had relative to the 5 acres to put all the 25 acres back together again and Mr. O'Donnell bought the 25 acres. He added the Planning Board did subdivide that property, the property now before you, so that would indicate it is not covered by the no further development aspect of things. Even with that it says no further development without Planning Board approval so he does not interpret that as a prohibition against subdividing it. He said it is clear it only applied to the 11 lots, even if you say it does spill over to the "other lands" it did not say you can't do it. The point is the Planning Board did subdivide it before it was reversed by the application of the developer.

Chair Martindale asked the Clerk if it was possible to go through the minutes to find where the subdivision was

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reversed? The Clerk responded they have already done that, she added she didn't think it was a subdivision it was a lot line adjustment because it was added to the lot next to it and that map was never filed, we do have all the maps. Mr. Phillips said even though it was called a lot line adjustment it was a 5-acre lot that was subdivided out. He added there are 2 filed maps that reflect what happened back then. Mr. Brennan stated he knew the Clerk had gone through all of that but it has been 3 or 4 months now and he agreed it was a lot line adjustment adding in and

out of lot 1, he said he would go back through it and give the Board his thoughts about a week before the next meeting so they can come back in and have the discussion.

Mr. Basinger asked Mr. Baker where he was on this application, as he recalls it is in a floodplain and what did MJ say about the water table there, they couldn't do raised beds because they would be filling in the floodplain. Mr. Baker said they are waiting to do a detailed review when they see whether or not this is going forward. He added if they get to that point, they will be looking for a hydraulic study to see how the fill in the building lots will affect the 100-year floodplain. Mr. Brennan asked what was put in place with the Building Code regarding building in a floodplain, he thought something was put in place by the Building Code about what could or couldn't be done. Mr. Baker replied floors have to be 3 feet above a 100-year floodplain, Mr. Basinger interjected the whole site is in the floodplain, Chair Martindale agreed and added also a washback area for the canal, Mr. Basinger said anything that is put in there will be an impact to the floodplain, Mr. Baker agreed and said that is why it is required. Mr. Basinger said the septic has to work with the ground water, it can't be filled so they would have to dig holes in order not to volumetrically impact floodplain. Mr. Baker said no that is what the hydraulic study would show, it would show if the amount of fill proposed is acceptable or not. Mr. Basinger agreed and added it seems it may be difficult to achieve the goals even if they get past the interpretation, he asked if MJ gave them any idea on making this work technically within the floodplain? Mr. Phillips stated engineering questions are beyond his realm.

Mr. Brennan stated besides the Planning Board reviewing this it will also need a building department permit for the floodplain, it is the same analysis but it is a separate permit that goes on at the same time as the building permit, it is also in the protection shoreline overlay district, there are requirements there that have to be met.

Mr. Brennan stated if the Board wanted to they could make a motion to go in to executive session to seek legal counsel.

Mr. Basinger made a motion to go in to executive session to receive legal advice,

Ms. Black 2nd the motion,

All in attendance unanimously agreed, the room was vacated except for Board members and legal counsel.

Meeting resumed and no action was taken in executive session.

Ms. McGarrahan made a motion to adjourn the meeting at 8:18 pm,

Ms. Black 2nd the motion,

All in attendance unanimously agreed.

Respectfully Submitted,
Tia Kilburn
Planning Board Clerk