



THE TOWN OF PEMBROKE PLANNING BOARD

1145 Main Rd., Pembroke, NY 14036

Minutes for the regular meeting held on September 25, 2013

ATTENDANCE:

- Chairman-Thomas Schneider
 - Vice Chairman-Michael Herec
 - Michael Bakos
 - Mr. Kutter
 - Linda Rindell
 - John Cima -Absent
 - David Knupfer
- Diane Denton-Acting Recording Secretary

PUBLIC PRESENT: Yes

MEETING called to order at 7:28 pm.

Chairman Schneider led the “Pledge of Allegiance”.

A MOTION TO APPROVE the Minutes from the August 28, 2013 Planning Board Meeting was made by Ms. Rindell, second to motion was made by Chairman Schneider.

ALL AYES—MOTION CARRIED.

Land Separation and Merger

Paul and Betty Miller

9060 Allegheny Rd., Town of Pembroke
(Tax Map# 23.-1.111; Zoning District AG/R)

- Millers would like to separate 14 acres from TM# 23.-1-1.111 to merge with 12.-1-12 and 12.-1-1.112 and to then separate into another two properties of 47 acres and 30 acres.
- Zoning Board of Appeals granted an area variance for 35 ft. frontage off Lovers Lane Rd., with stipulations that a 165 ft. x 35 ft. access across the front of the property is maintained for emergency vehicles and that the parcel is for farm use only.
- Their son has a building on 12.-1-12 and also owns vacant lot 12.-1-1.112.

On **MOTION** made by Chairman Schneider, and seconded by Mr. Bakos to make a **negative declaration on the SEQR short form.**

ROLL CALL VOTE Mr. Bakos-Aye; Ms. Rindell-Aye; Mr. Kutter-Aye; Mr. Herec-Aye; Mr. Knupfer Aye; Chairman Schneider-Aye.

ALL AYES-MOTION CARRIED

On **MOTION** made by Chairman Schneider, and seconded by Mr. Kutter to **APPROVE** the separation of two parcels from 23.-1-1.111; and approve the separation of the 47 acres and 14 acres with the stipulation

that the 14 acre parcel must be merged with 12.-1-12 and 12.-1-1.112, so that all three parcels are merged.

RESTRICTIONS: Intention to merge must be included in verbiage on deed.

ROLL CALL VOTE Mr. Bakos-Aye; Ms. Rindell-Aye; Mr. Kutter-Aye; Mr. Herec-Aye; Mr. Knupfer Aye; Chairman Schneider-Aye.

ALL AYES-MOTION CARRIED

PLANNING BOARD DECISION: APPROVAL WITH RESTRICTIONS

Public Hearing

American Paving & Excavating

797 Main Rd., Town of Pembroke

TM# 14.-2-28.2.

Zoning District Industrial

Request for a **SPECIAL USE PERMIT**

Required Genesee Country Recommendation

PUBLIC HEARING opened at 7:35pm. The Notice of Public Hearing appeared in the Batavia Daily News September 7, 2013, an Affidavit of Posting was posted on the Town's bulletin board and letters were sent to neighboring properties.

- The applicant, Guy Berberich, would like to create a contractor's yard at 797 Main Rd., which he leases from owner, Lou Visone. Mr. Berberich's application included a notarized letter from Mr. Visone, authorizing him to apply a Special Use Permit.
- American Paving and Excavating has been using the property for a while; Mr. Berberich wasn't aware that he needed to have a Special Use Permit. The only notice he received was when Mr. Visone sent his court summons to him.
- County denied the application, because it appears the driveway and a portion of the site is on NYS Thruway owned property. In addition, they decided that the site plan doesn't meet all of the requirements that apply as listed in Section 708 C 2, such as traffic circulation, parking and loading spaces, along with a description of the proposed use and anticipated hours of operation. County was looking for a site plan that would show what was going to be stored and where, etc.
- Tony Kutter, who owns the adjacent property, is appalled at its appearance, saying that there are trailers parked helter skelter and on the Thruway property (which they are allowed to use for access but not storage); a lot of debris. It appears very disorderly. He has no problem with American Paving and Lou Visone being there, but is frustrated with the appearance of the property and would like a resolution as this going on for years.
- Trailer backed up to road belongs to American Paving. Mr. Kutter said that about half of it is parked on Thruway property.
- Mr. Berberich said that he honestly doesn't know exactly where Thruway property is—the Thruway Authority has never said anything to him.
- American Paving leases one-third of the building in the middle and the yard around that building. He is willing to move the trailers and tidy up his part of the property, but that leaves the onus of cleaning up the rest of it on the owner, Mr. Visone, who was not present.
- Mr. Visone has been sent registered letters from the Zoning Administration regarding this violation for years.

- Chairman Schneider suggested the board needs to table this application to be in contact with Mr. Visone; they can't act on a Special Use Permit when the entire property is in violation.
- Mr. Kutter brought up the possibility that Lou Visone would need an area variance for the distance of the property from the Thruway property.
- Chairman Schneider suggested that, for next month's meeting, Mr. Berberich draw something showing that his equipment will be stored away from the front of the building. Then, hopefully, Mr. Visone will be present to address the board's other concerns.

PUBLIC PARTICIPATION—YES

On **MOTION** made by Mr. Knupfer, and seconded by Mr. Herec, the Public Hearing was CLOSED at 7:55 pm.

ALL AYES—MOTION CARRIED.

On **MOTION** made by Mr. Knupfer, and seconded by Ms. Rindell to table until the next Planning Board Meeting on 10/30/13.

VOICE VOTE: ALL AYES

MOTION CARRIED

PLANNING BOARD DECISION: TABLE FOR A MONTH.

Land Separation and Merger

Bonnie Schetinin

9025 Lake Rd., Town of Pembroke

(Tax Map#s 18.-2-31.11 & 22.-1-15.1; Zoning District AG/R)

- Bonnie Schetinin would like to separate 18.-2-31.11 and 22.-1-15.1 into three parcels; and, per map presented, merge A with D, B with E, and C with F, crossing tax maps.
- Ms. Schetinin was represented by her attorney, Thomas Williams. He said that Ms. Schetinin hoped she wouldn't be penalized for having her property situated at the bottom of a tax map.
- County doesn't allow merges across tax maps.
- The proposed separation and merger wouldn't create any landlocked parcels. The created parcels would be fronted on Cohocton Rd.
- Chairman Schneider stated that technically it would create a landlocked parcel as it is merged on the tax bill. Also, there is a creek that runs between A and B.
- Ms. Schetinin wants to sell A where there is a house currently. She has a contract to sell B & E to a neighbor for building. She intends to keep parcel C & D.
- Properties need to be merged in deed language.

On **MOTION** made by Mr. Kutter, and seconded by Mr. Herec to make a **negative declaration on the SEQR short form.**

ROLL CALL VOTE Mr. Bakos-Aye; Ms. Rindell-Aye; Mr. Kutter-Aye; Mr. Herec-Aye; Mr. Knupfer Aye; Chairman Schneider-Aye.

ALL AYES-MOTION CARRIED

On **MOTION** made by Chairman Schneider, and seconded by Mr. Kutter to **APPROVE** the separation and merger as follows: A & D are merged, B & E are merged and C & F are merged, with appropriate deed language to show that the three parcels are merged in perpetuity.

ROLL CALL VOTE Mr. Bakos-Aye; Ms. Rindell-Aye; Mr. Kutter-Aye; Mr. Herec-Aye; Mr. Knupfer Aye; Chairman Schneider-Aye.

ALL AYES-MOTION CARRIED

PLANNING BOARD DECISION: APPROVAL OF LAND SEPARATION AND MERGER.

Public Hearing

Genesee Gateway Local Development Corporation & Yancey's Fancy

Routes 5 and 77, Town of Pembroke

(Tax Map#s 19.-01-73.1, 19.-1-74, 19.-1-75, 19.-1-76.1 & 19.1.13; Zoning District Interchange)

Request for a **SPECIAL USE PERMIT**

PUBLIC HEARING opened at 8:12pm. The Notice of Public Hearing appeared in the Batavia Daily News September 11 and 12, 2013, an Affidavit of Posting was posted on the Town's bulletin board and letters were sent to neighboring properties.

- Jennifer Dougherty from Philips Lytle, Mark Masse from the GGLDC and Andrew Kosa from Clark Patterson Lee were present to make the case for the board to grant a Special Use Permit for an Industrial Park at TM#s listed above. All five lots are owned by the GGLDC.
- County recommended approval of the Special Use Permit.
- The Zoning Board of Appeals granted the variances needed for the Industrial Park and Yancey's Fancy's proposal at their meeting on September 18, 2013.
- GGLDC presented the concept plan for the Industrial Park. Ms. Dougherty pointed out the location at Routes 5 and 77 and existing roadway off of Route 5. She explained their zoning requests, so that the entire park would be zoned Interchange.
- GGLDC also presented the site plan for Yancey's Fancy of initial build-out and parking lot for a cheese manufacturing facility within the park.
- GGLDC is seeking a Special Use Permit for cheese manufacturing as well as other uses as tenants or buyers come in. They believe their proposal is in harmony with the neighborhood, that there wouldn't be any negative impact on it.
- New York State and Federal wetlands and buffers were knocked out for development. The GGLDC worked closely with the DEC to minimize any impact on them.
- The SEQR process is completed.
- The current proposal shows the *maximum* development for the industrial park. They are aware that anything beyond this plan would require a new SEQR.
- They believe the project fits in with the zoning of the area.
- Chairman Schneider mentioned the Town Board is considering a zone change that would affect the back parcel, which is currently Agricultural/Residential. They are highly likely to change to Interchange. He didn't think that the Planning Board can act on a Special Use Permit that includes that parcel. Once the zoning change takes place, at a later date, the Special Use Permit could be amended to include it.
- Mr. Knupfer suggested the board could put a condition on the Special Use Permit requiring the AG/R parcel to be rezoned before being included in it.
- The board agreed that it can act on site plan for Yancey's Fancy.

- Chairman Schneider wondered if the board wants to limit businesses as the application lists. Mr. Knupfer suggested it be limited to that list and if anything different comes in they could apply for an amendment.
- The GGLDC will come back to the board for each new site plan presented by each new tenant or buyer.
- They worked closely with the DOT, who said they were against an entrance off Rt. 77. In the spring they will be doing improvements to the entrance off Route 5, including widening and adding turning lanes.
- Andrew Kosa went through the specifics for the Yancey's Fancy's proposal and site plan.

PUBLIC PARTICIPATION—None

On **MOTION** made by Chairman Schneider, and seconded by Mr. Knupfer, the Public Hearing was CLOSED at 8:29pm.

ALL AYES—MOTION CARRIED.

On **MOTION** made by Chairman Schneider, and seconded by Mr. Knupfer to **APPROVE** the Special Use Permit for an Industrial Park and Site Plan as presented, with parcels 19.-1-76.1, 19.-1-73.1, 19.-1-74 and 19.-1-75 available immediately. Parcel 19.-1-13 is contingent upon the Town Board rezoning as Interchange.

ROLL CALL VOTE Mr. Bakos-Abstained; Ms. Rindell-Aye; Mr. Kutter-Aye; Mr. Herec-Aye; Mr. Knupfer Aye; Chairman Schneider-Aye.

FIVE AYES, ONE ABSTENTION -MOTION CARRIED

PLANNING BOARD DECISION: SPECIAL USE PERMIT FOR INDUSTRIAL PARK APPROVED

On **MOTION** made by Mr. Kutter, and seconded by Ms. Rindell to **APPROVE** the Site Plan for Yancey's Fancy.

RESTRICTIONS: None

ROLL CALL VOTE Mr. Bakos-Abstained; Ms. Rindell-Aye; Mr. Kutter-Aye; Mr. Herec-Aye; Mr. Knupfer Aye; Chairman Schneider-Aye.

FIVE AYES, ONE ABSTENTION -MOTION CARRIED

PLANNING BOARD DECISION: YANCEY'S FANCY SITE PLAN APPROVED

On **MOTION** made by Mr. Kutter, and seconded by Chairman to **RECOMMEND** zone change on TM# 19.-1-13 from AG/R to Interchange.

ROLL CALL VOTE Mr. Bakos-aye; Ms. Rindell-Aye; Mr. Kutter-Aye; Mr. Herec-Aye; Mr. Knupfer Aye; Chairman Schneider-Aye.

ALL AYES - MOTION CARRIED

PLANNING BOARD DECISION: RECOMMENDATION TO TOWN BOARD FOR ZONE CHANGE ON 19.-1-13 TO INTERCHANGE.

Public Hearing

RC Pulsers

13923 Knapp Rd., Town of Pembroke

(Zoning AG/R)

Review of **SPECIAL USE PERMIT**

PUBLIC HEARING opened at 8:40pm. The Notice of Public Hearing appeared in the Batavia Daily News September 13, 2013, an Affidavit of Posting was posted on the Town's bulletin board and letters were sent to neighboring properties.

- Chairman Schneider asked for comments from the neighbors, to be followed by a response by representatives of the RC Pulsers. He asked that each person keep their comments to 5 minutes.
- Neighbors comments were as follows:
 - In the beginning, there didn't seem to be a problem with the RC flying a few remote-control aircraft and doing some demonstrations for the Boy Scouts.
 - As time went on, the planes and helicopters became larger and noisier, flying seven days a week and all day long until dark, sometimes crashing on neighboring property, disruptive to the quiet country community. Often the aircraft were being flown outside the range of the 250 ft. x 600 ft. parcel of land for which the Special Use Permit was granted.
 - Neighbors began complaining about the noise and hours of flying, and also voiced concern about safety with some of the larger aircraft crashing—potentially to hit a child, car, house, or pet. When the planes fly out of range, their operators can lose control of what they will do.
 - Over the years, petitions were submitted to the Town.
 - Difficult for surrounding residents to enjoy being outside, inviting friends and family over, and even having their windows open while they are inside their houses.
 - A comment was made that there was less noise from the nearby Akron Airport than the RC Pulsers.
 - Some neighbors have documented with photographs, videos, and have kept a record of specific incidences that caused them aggravation and concern.
 - One neighbor present, who lives on Remsen Rd. and has no association with the RC Pulsers club, didn't think there was a problem, that the noise wasn't worse than some lawn mowers.
- Chairman Schneider read from a couple of letters received from neighbors that were disapproving, complaining about the noise from and hours of aircraft flying.
- There were no stipulations put in the RC Pulsers' Special Use Permit.
- Members of the Town Board have been out to the area and haven't seen any planes flying. Chairman Schneider said he has been out there at different times of day when he hasn't seen any (the RC Pulsers had no idea that he was checking). On the other hand, while on the Goldhawk's property, he has seen the yellow and black gasoline plane flying and it was very noisy.
- Frank Dalfonzo, who is the president of the RC Pulsers, said that 32 ½ percent off the days of the year are not conducive to flying. The average ages of the members are between 55 and 60; they all have different schedules. In regards to noise, the organization has a sound meter to test every plane to be no more than 90 decibals within so many feet.
- Chairman Schneider commented there isn't any noise ordinance in the Town of Pembroke, but he felt that with 80% of the neighbors complaining, the Planning Board needed to do something to address their concerns.
- There was a discussion about which kind of aircraft were the noisiest. The consensus was that the gasoline aircraft were noisier than the electric aircraft, and that the electric helicopter made noise comparable to that of the gasoline aircraft because of its electric rotor as it was often flown sideways and upside-down.

- Chairman Schneider said that, from a legal standpoint, the board first has to determine if there is a problem, and, if so, whether to reopen the Special Use Permit and add stipulations such as restricting the hours of flying the gasoline aircraft and helicopters.
- Frank Dalfonzo said that the club has a log book where the members sign in and out when they come to fly their aircraft. It doesn't show what kind of aircraft they were flying. He also said that it would be difficult to restrict the hours of flying, as there is no one member out at the field 24/7. But if they find that anyone is in violation, the club will act on that. He extended an invitation for any of the neighbors to visit the RC Pulsers' field at any time.

PUBLIC PARTICIPATION—Yes

On **MOTION** made by Mr. Kutter, and seconded by Mr. Herec, the Public Hearing was CLOSED at 9:50pm.

ALL AYES—MOTION CARRIED.

- Board continued to discuss what to do, including the flying range. There was a consensus that it would help to see the RC Pulsers' log, sound tests, and any evidence that the neighbors could offer: i.e. photographs, videos, documentation of specific incidences. It was decided that it would be best to table any determination until the Planning Board's October meeting, which would entail a discussion among the board members, *without* re-opening the public hearing.

On **MOTION** made by Chairman Schneider, and seconded by Mr. Kutter to table any determination until the Planning Board's October meeting, in order to review evidence provided by the RC Pulsers' and their neighbors, and before then arrange a special meeting for the board to go out to the field.

VOICE VOTE: ALL AYES
MOTION CARRIED

PLANNING BOARD DECISION: TABLE FOR A MONTH.

Land Separation

John Mroz

9092 Allegheny Rd., Town of Pembroke
 (Tax Map# 23.-1-3.11; Zoning District LC)

- Motion to approve never made by board to this land separation which was presented at the June 26, 2013 meeting.
- Mr. Mroz wants to go forward with his original Mylar.

On **MOTION** made by Mr. Rindell, and seconded by Mr. Herec to make a **negative declaration on the SEQR short form.**

ROLL CALL VOTE Mr. Bakos-aye; Ms. Rindell-Aye; Mr. Kutter-Aye; Mr. Herec-Aye; Mr. Knupfer Aye; Chairman Schneider-Aye.
ALL AYES - MOTION CARRIED

On **MOTION** made by Ms. Rindell, and seconded by Mr. Kutter to **APPROVE** land separation.

RESTRICTIONS:

ROLL CALL VOTE Mr. Bakos-aye; Ms. Rindell-Aye; Mr. Kutter-Aye; Mr. Herec-Aye; Mr. Knupfer Aye; Chairman Schneider-Aye.
ALL AYES - MOTION CARRIED

PLANNING BOARD DECISION: LAND SEPARATION APPROVED

PUBLIC DISCUSSION:

OLD BUSINESS: Text changes to Zoning board.

On **MOTION** made by Chairman Schneider and seconded by Mr. Herec to **RECOMMEND** approval of text changes to the Town of Pembroke Zoning Law.

ROLL CALL VOTE Mr. Bakos-aye; Ms. Rindell-Aye; Mr. Kutter-Aye; Mr. Herec-Aye; Mr. Knupfer Aye; Chairman Schneider-Aye.
ALL AYES - MOTION CARRIED

PLANNING BOARD DECISION: RECOMMENDATION OF ZONING LAW TEXT CHANGES

NEW BUSINESS:

A MOTION to adjourn the meeting was made by Mr. Bakos, and seconded by Mr. Knupfer.

ALL AYES—MOTION CARRIED
Meeting Closed at 10:20 pm.

Respectfully Submitted,
Diane M. Denton
Acting Recording Secretary
Thomas Schneider Chairman

These minutes were approved by the Town of Pembroke Planning Board 10/30/13.