

**RUSH PLANNING BOARD
REGULAR MEETING
MINUTES OF AUGUST 18, 2015**

A regular meeting of the Rush Planning Board was held on August 18, 2015 at the Rush Town Hall, 5977 East Henrietta Road and was called to order at 7:30 PM.

PRESENT: John Felsen, Chairman
John Morelli, Vice Chairman
Scott Strock, Member
Don Sweet, Member
Rick Wurzer, Member
Shivaun Featherman, Deputy Town Clerk

OTHERS PRESENT: Councilwoman Jillian Moore, Town Board Liaison
Gerry Kusse, Code Enforcement Officer (CEO)
Todd Ewell, Town Engineer
David Matt, Land Surveyor, Schultz Associates
Kelly & Sam Brunacini, Residents
Leslie Mauro, Esq., Harter, Secrest & Emery
Ben Sufrin, SunEdison
Laura Smith, SunEdison
Nick Montanaro, Land Surveyor
Stacy Phillips, Resident
Linda Phillips, Resident
Drew Lent, Tetra Tech

Chairman Felsen welcomed all to the August Planning Board meeting.

APPROVAL OF MINUTES:

The Minutes of May 19, 2015 were reviewed. Board Member Strock made a Motion to accept the Minutes of May 19, 2015 as written.

Board Member Sweet seconded the Motion and the Board polled:

Roll: Scott Strock aye
Don Sweet aye
Rick Wurzer aye
John Morelli abstained
John Felsen aye carried.

The Minutes of July 21, 2015 were reviewed. Vice Chairman Morelli made a Motion to accept the Minutes of July 21, 2015 as written.

Board Member Strock seconded the Motion and the Board polled:

Roll: Scott Strock aye
Don Sweet abstained
Rick Wurzer aye
John Morelli aye
John Felsen abstained carried.

PUBLIC HEARING:

Application 2015-11P by David Matt of Schultz Associates, agent for Yoruk Development, LLC, requesting Subdivision and Site Plan approval to subdivide an existing 19.9 acre parcel into 5 lots. A single family dwelling is proposed for each lot. Property is located on Rush Henrietta Town Line Road, 2033 feet west of Middle Road and is zoned Residential-30.

Mr. Matt explained that they are proposing to subdivide the parcel of 19.9 acres into 5 single family lots. Two smaller lots will be towards the road and the remaining 3 lots will sit back with acreage behind them. The lots will not be in wetlands. There will be individual septic systems for each lot, and Mr. Matt stated the perks were done in 2003 and are still good. The systems were designed accordingly and sent to the Monroe County Health Department for review. There will be a private road with a private road easement to cover lots 2, 3, 4 and 5. Lot 1 will have a road by itself. There is public water, gas and utilities in the area.

Mr. Matt stated that he received a comment from the New York State Department of Transportation (NYS DOT) yesterday afternoon. When I390 was installed, the state took a section from the front of the property and called it "without access." In talking with the state and reviewing the plan, Mr. Matt stated he will be moving the private road, but it will essentially have the same outcome as the original design, which is an access for the private road with 4 lots and an access for lot 1. Mr. Matt provided the Board with a rough sketch, as receiving the NYS DOT comment yesterday, he did not have time to prepare a formal drawing.

Board Member Strock pointed out that in Mr. Matt's report, the right-of-way was on lot 2 for lots 2-5 for the prior road. With the DOT's comment, does this mean that lot 1 would change, or that lot 1 would get a right-of-way put on it as well if the road is moved?

Mr. Matt replied that he believes the way the town code reads is that access easement has to be entirely on one lot. Mr. Matt stated the developer's attorney wrote an easement and submitted it for review. Town Engineer Ewell stated that may be a question for the town attorney; there may be some leniency on that.

Chairman Felsen inquired about the width for ingress and egress for emergency vehicles. Mr. Matt stated it's an 18' wide road with 3' shoulders and there is a 39' radius.

Chairman Felsen noted that the Monroe County Health Department would like the applicant to consider going to a sanitary sewer. Mr. Matt stated that he talked with Scott

Hallock of the Health Department and the cost to pump the lots across I390 and up to the corner of West Henrietta Road would be astronomical.

Town Engineer Ewell is concerned that the perks were done in 2003. Mr. Matt replied that perks for the Health Department are generally good for a long time unless the land is disturbed. Mr. Matt stated that he went through historical photos and the land has not changed.

Chairman Felsen read into the record that the Rush Board of Fire Commissioner's does not have any issues or concerns with this application, however, they recommend a sprinkler system for each home.

Mr. Matt stated that sprinkler systems throughout a home are cheaper to install when the house is built but either way they are very expensive. That would be for the individual home owner to decide as the Fire Commissioner Board is recommending, not requiring, sprinkler systems.

Chairman Felsen read into the record the Rush Conservation Board comments. The Conservation Board inquired if there is a drainage easement. Mr. Matt stated he believes they are asking about the easement on the west edge of the property. There is no easement there; the drainage is on I390. Before I390 was installed, the channel came through proposed lots 2 and 3, but after I390 was installed the state redid the drainage and kept it on their property until it reached the wetland, and then it continued on its natural path.

Chairman Felsen asked the applicant if the stream on the property is defined as a stream or wetland. Mr. Matt replied both and explained that it's a classified wetland that used to be a stream, and then it became I390 drainage and a stream again. NYS maps show it as a stream but it is not numbered or named. It is more of a drainage ditch. Chairman Felsen advised the applicant that it is a policy of the Town of Rush that if it's a classified stream, a drainage easement of 20' from top of bank on each side is required.

Chairman Felsen continued with the Conservation Board's comments. The Board inquired why the last project in this area was rejected. Chairman Felsen stated it was not rejected. The Planning Board approved Arnold Carmichael's Application 2004-08P on September 19, 2006, however, the plan was never filed.

The Conservation Board is concerned that the perc tests were performed in 2003. The Conservations Board's last concern is the possibility of storm runoff carrying chemicals that are used on lawns to the wetlands. Mr. Matt explained the drainage will either end up in the pond structure or the wet swale before reaching the wetlands.

Chairman Felsen read through the comments of Town Engineer Ewell and the Monroe County's Department of Planning and Development.

Vice Chairman Morelli stated that because the NYS DOT provided late additional information, the plan needs to be redesigned with the new restrictions, and resubmitted with documented responses for the concerns that were brought up by the Town

Engineer, the Conservation Board, Monroe County and the state. For example, in order to be in compliance, the turning radius for emergency vehicles must be increased by 1 foot, providing for the 40' requirement. Mr. Matt stated he believes that 28' is required for the radius and he has 30'. Vice Chairman Morelli advised that footage is for a standard drive. Being a private road and having additional homes, an additional radius is required. The minimum inside radius for two or more homes is 40'.

Vice Chairman Morelli added that Mr. Matt will need to document his plan for the nutrient mitigation retention with the protection of the wetlands, an issue raised by the Conservation Board. Mr. Matt stated that he has never received that comment before so it's not something normally designed in. Mr. Matt added that in his design, he is catching almost all the drainage.

Vice Chairman Morelli stated that the applicant will need to provide documentation that the percs of 2003 are still considered current by the Monroe County Health Department.

Board Member Sweet agreed that the Planning Board will need to see the redesign of the new entrance for the road and how emergency vehicles will be able to get in and out. Board Member Sweet stated that his major concern is how to prevent potential home owners from expanding their yard into dedicated wetland, whether posts or berms need to be installed. Fences are difficult because they need to be maintained. Mr. Matt stated that the Town of Henrietta approved posts. Chairman Felsen added that there will also be a deed restriction. Vice Chairman Morelli advised that according to the DEC, a deed only cannot be enforced.

Chairman Felsen opened the floor for public comments and asked anyone speaking to state their name and address for the record.

Resident Geri Stanton stated her property is adjacent to the proposed subdivision. There is a problem with beetles infecting ash trees and wiping out most of the woods that surround this property. She is concerned about the noise from the expressway and the loss of the ash trees as a sound barrier. Also, with the loss of trees, what will absorb the runoff, and how will it impact the water table?

Resident John Stanton stated both he and his wife are concerned with noise because they are both graduates of the University of Rochester and the National Technical Institute for the Deaf's Educational Specialist Program. Mr. Stanton stated that he took a decibel meter reading of the expressway after the rush hour and the sound level was 75 decibels, which is the sound of a vacuum cleaner running continuously. He has not measured the sound during the rush hour or when the highway is wet, but it would be considerably higher. He doesn't know if it's a concern of the Planning Board, but being in the presence of continuous noise all day long is not good for anyone. He is wondering if it is a wise thing for people to consider living there.

Chairman Felsen stated the Planning Board is concerned about the noise. On the plan, it is stated that all lots are subject to road noise from the adjacent expressway. Each potential home owner will get a copy of the plan with that note on it so they are forewarned. If the developer and his engineer meet all requirements and conditions, the

Planning Board cannot deny the application based on the noise from the expressway. This is not the first time this proposal has come before this Board. Noise was a factor of a previous application.

Resident Sam Brunacini's stated that his property is adjacent to the proposed subdivision. He is concerned about the runoff from the potential new road and what will happen in the corral between the new entrance road and his property.

Town Engineer Ewell stated that a swale is located on the plan which can be improved. Mr. Matt stated he is trying to stay out of the trees. He could put a swale between the trees and the proposed driveway.

With no further questions or comments, Chairman Felsen declared the Public Hearing closed.

Application 2015-12P by Vanguard Engineering, agent for Stacy Phillips, requesting Resubdivision and Site Plan approval to subdivide an existing 49 acre parcel into 2 lots. Proposed lot 1 is 44 acres and will contain an existing house and remaining lands. Proposed lot 2 will contain 5 acres with a proposed single family dwelling. Property is located at 349 Five Points Road and is zoned Residential-30.

Joe Ardieta of Vanguard Engineering explained that he represents applicant and property owner Stacy Phillips. Mr. Phillips is seeking approval to resubdivide his parcel of 49 acres into 2 lots. He is proposing to extract 4.6 acres from the northeast corner of his land to build a two bedroom home for his mother. This project does not meet certain thresholds that require New York State's Department of Conservation regulations for storm water management, which means they will have to control erosion and sediment transport off the site but they don't have to create facilities to retain water on site. The vast majority of the property will stay unchanged, so the drainage patterns will stay the same. Where there are changes, such as the proposed house, the roof and foundation drains will discharge to the existing pond which is on Mr. Phillips land. Mr. Ardieta stated he will add a private easement for the foundation drain that will cross over the property. The driveway drainage will sheet flow onto the grass and eventually to a roadside swale.

Mr. Ardieta stated there is a hydrant that is 870' from the front door; it's not shown on the drawing but he added a label to the plans. He has also added a turn around to the driveway that was not on the original submitted plans.

Mr. Ardieta stated perc tests were done. They were 6 minutes and 3 minutes. The Health Department granted 3 minutes, however, Mr. Ardieta decided to stay with the 6 minutes perc test to be conservative. The water service will come off an existing main that is on the west side of the road and it only requires a 1 1/2" diameter service. The water main encroaches on the easement boundary so Mr. Ardieta proposed to expand the easement to Monroe County Water Authority.

Chairman Felsen read through the comments of Town Engineer Ewell and the comments of Monroe County's Department of Planning and Development.

Chairman Felsen read into the record that the Rush Board of Fire Commissioner's does not have any issues or concerns with the application, however, they recommend a turn around. Chairman Felsen stated that a turnaround has been added to the plans.

Chairman Felsen read into the record the Rush Conservation Board had the comment that on page 2 of the SEQR form, question 14, the project area was identified as suburban.

Mr. Ardieta explained that he prefers bringing an application before the local municipalities to make sure they approve of where the driveway is installed. He then submits his application to the Department of Transportation, so he will address their comments after this meeting.

Vice Chairman Morelli asked if the gravel drive that runs east to west near the northern part of the property is actually located on the property? Mr. Ardieta stated according to his survey it's off the property. CEO Kusse confirmed it's a separate property; it's a flag property. The driveway runs along the north border.

Chairman Felsen opened the floor for public comments and asked anyone speaking to state their name and address for the record.

With no further comments or questions, Vice Chairman Morelli declared the Public Hearing closed.

INFORMAL:

Nick Montanaro, agent for Elizabeth Heisig, appeared to discuss a potential subdivision and a new single family home at property located at 1 and 4 Chapman Road. Proposed lot 1 will be 3 acres and contain the existing home. Proposed lot 2 will be 10.88 acres and will contain the proposed single family dwelling. Mr. Montanaro explained that Ms. Heisig's granddaughter will be building the proposed new home. Mr. Montanaro stated he has submitted a Subdivision Application for Public Hearing on September 15, 2015, but is before the Board informally tonight for direction and to see if the Board has any initial objections.

Mr. Montanaro pointed out on the site map the existing residence at the north end of Chapman Road, the septic system, the location of the proposed new home and the proposed driveway. Mr. Montanaro had the Health Department visit the property in June and the worst perc was 3 minutes. He has submitted plans to the Health Department for their review.

Board Member Sweet asked if the new lot will be extracted from the farmland. Mr. Montanaro stated yes. Mr. Montanaro stated that technically the remaining lands are not part of the subdivision. Town Engineer Ewell noted that the site map does not show all the remaining lands. Vice Chairman Morelli stated that lot 2 is being subdivided from the remaining lands, so it is part of the subdivision. Chairman Felsen advised Mr. Montanaro that all the remaining lands will need to be shown on the site map.

Chairman Felsen inquired as to the distance of the fire hydrant to the front door of the proposed new home. Town Engineer Ewell replied that it's 280'. Chairman Felsen explained that the reason he is inquiring is because the Rush Fire District Commissioners' advised there is a part of the state fire prevention code that requires a hydrant to be within 1000' of the front door of a proposed house, unless a variance from the department of state is obtained or a fire sprinkler system installed. Developer Lee Hankins, who is building two houses on Middle Road, has submitted variance requests to the department of state. CEO Kusse stated construction of the homes is proceeding and it is his opinion that it would be inappropriate to halt construction. Charlie Bliss, the Finger Lakes Regional Codes Engineer for New York State, is helping write the appeals. The appeal process goes through New York City or Albany, and they meet in September.

Ben Sufrin of SunEdison appeared with Leslie Mauro, Laura Smith, and Drew Lent . Mr. Sufrin explained that they design renewable energy projects throughout the state, country, and larger projects throughout the world. They are present to discuss solar energy projects through leasing properties within the Town of Rush.

Ms. Mauro explained that they hope to place solar installations at 920 Works Road and a property on East River Road. The installations themselves are about 10 acres in size. The rays are low glare, and the property would be completely fenced.

Both properties are zoned Residential. SunEdison is looking for a Town amendment to the Zoning Code allowing for solar rays to be installed as uses, pursuant to a special use permit, like a public utility. There is no monopoly in this situation.

Chairman Felsen clarified that the Town of Rush does not have special use permits; it has special permits.

Ms. Mauro explained that there are a lot of municipalities that are getting on board with solar energy. It's a big initiative in New York State and it is a clean, renewable source of energy with very little environmental impact. The acreage that would be encompassed has no use of any infrastructure that needs to be constructed or operated by the town. SunEdison comes in and builds the projects. Each installation generates about 2,000 kilowatts of AC power that ties into the grid and provides power for about 300 homes.

Ms. Mauro stated that in order for SunEdison to get a project up and running, it needs to get the property under contract through a lease option agreement with property owners, and SunEdison needs to obtain grant funds through the New York State Energy Research and Development Authority (NYSERDA). In order to do that, they need to provide NYSERDA with a municipality SEQR Notice of Intent. The Board would provide the Environmental Assessment Form (EAF) and all the information that is required so that the municipality can issue its Notice of Intent to either amend its zoning code or something that is already existing to get the project rolling under SEQR. In their situation, they won't know exactly which sites they are going with until they find out what they have received grant funding from. So they request that the municipality issue the notice of intent, and then they come back back in and amend the EAF to describe the

different locations that they are hoping to pursue. In addition, there is an interconnection agreement that SunEdison negotiates with National Grid. A common question they are asked by municipalities is why do we want to do this? The answer in part is that it's renewable energy with very little environmental impact and something that is for the betterment of the state.

Drew Lent of Tetra Tech explained that the energy goes into the grid locally and will be used in the Town of Rush and adjoining towns.

Vice Chairman Morelli asked if the NYSERDA solicitation that is closed now restricting SunEdison to these properties? Mr. Sufrin replied that there was a change in policy. Under the policy that they had initially scouted some properties under, they were grandfathered because they had their interconnection application in for a preliminary study by June 1st. They are restricted to the sites that they are currently looking at. There is a community solar program that the state is formalizing in which they can look at other properties, but for right now these properties are the immediate focus.

Ms. Mauro stated that she understands that previously the town had wondered about being able to provide energy to its own facilities. She believes the community solar program would be a mechanism for doing that. It's being formalized right now and a good thing about getting this project up and running is that the town would have a test run to see how it operates and functions within the town. Ms. Mauro invited the Planning Board Members to come to RIT where they had a solar installation that is now powering part of RIT's facilities. That would be the type of installation that SunEdison hopes to install in Rush.

Vice Chairman Morelli stated that the town has interest in SunEdison and it's capabilities with regard to a source of revenue for the town. The town owns some properties that may or may not be suitable in terms of location and orientation but the Board is interested in seeing it pursued in this vein, however, Vice Chairman Morelli noted that Mr. Sufrin did explain this solicitation is closed so it's not a valid focus.

Board Member Sweet stated that if SunEdison were granted a special permit, other than benefitting the property owner that is going to have a lease for 20 or 30 years, how will it benefit the town and other residents?

Mr. Sufrin stated there is a property tax exemption for solar that was put in at the state level for 15 years. Vice Chairman Morelli noted that would only benefit the person who is leasing their land.

Ms. Mauro stated the project would benefit farmers by giving them an additional revenue stream. If they have a bad year or bad crops, they still have income for reinvestment. SunEdison would not take the entire farm or take agricultural use out of the use, but would be facilitating a continuation of that use because there will be lease income coming in.

Board Member Strock inquired in SunEdison's experience, how does solar installation affect neighboring property values? Ms. Mauro replied that in terms of property values going down, she doesn't have any information on that.

Board Member Strock stated that he understands in 30 years essentially the panels will wear out and then a decision is made on either replacing them or tearing them down. How removable are they after 30 years?

Mr. Lent explained there are probes driven 6-8 feet into the ground and they can be dug up and pulled out. There are no large concrete foundations or footers. Under the decommissioning plan, the solar developer would have to be able to decommission and remove them. Mr. Sufirin added that if it's a 20 year project, Sun Edison will put decommissioning bonds into place in year 15. Ms. Mauro stated that for example, at the end of 30 years the decision is made that there is something better and its decommissioned and taken out, there is money to restore the land to its original condition.

Vice Chairman Morelli stated that the Town Board would have to make the decision to entertain rezoning.

DECISIONS:

Vice Chairman Morelli made a Motion to table **Application 2015-11P** by David Matt of Schultz Associates, agent for Yoruk Development, LLC, requesting Resubdivision and Site Plan approval to subdivide an existing 19.9 acre parcel into 5 lots.

The reason for tabling the application is that additional information is required from the applicant with regard to the redesign of the drive, and that the applicant address issues identified by various boards and letters that were read during the hearing including issues regarding the width of the private drive, the turning radius of the inside curve of the drive, the runoff management mitigation with regard to runoff into the wetland, verification that the perc tests done in 2003 are considered current, the DEC comments regarding the stream, the DEC comments regarding excluding wetlands from lots for the protection of the wetlands, and the need to address neighbors' concerns regarding drainage, trees, etc.

Board Member Wurzer seconded the Motion and the Board Members polled:

Roll: Scott Strock aye
Don Sweet aye
Rick Wurzer aye
John Morelli aye
John Felsen aye carried.

Chairman Felsen made a Motion **WHEREAS**; this Board has examined **Application 2015-12P** by Vanguard Engineering, agent for Stacy Phillips, requesting Resubdivision and Site Plan approval to resubdivide an existing 49 acre parcel into 2 lots. Proposed lot 1 is 44 acres and will contain an existing house and remaining lands. Proposed lot 2

will contain 5 acres with a proposed single family dwelling. Property is located at 349 Five Points Road and is zoned Residential-30 and the maps and other materials which were filed with the application, including the Short Environmental Assessment Form (Short EAF); and

WHEREAS, the proposed action is a Type II action under the State of New York SEQRA laws requiring no further action by this Board.

Board Member Sweet seconded the Motion and the Board Members polled:

Roll: Scott Strock aye
Don Sweet aye
Rick Wurzer aye
John Morelli aye
John Felsen aye carried.

Chairman Felsen made a Motion to grant preliminary approval of **Application 2015-12P** by Vanguard Engineering, agent for Stacy Phillips, requesting Resubdivision and Site Plan approval to resubdivide an existing 49 acre parcel into 2 lots conditioned upon:

1. The applicant meeting the requirements of the Town Engineer and the Monroe County Department of Planning and Development and the Monroe County Department of Health.
2. The applicant obtaining the approval of the Monroe County Water Authority.
3. The applicant obtaining the approval of the Monroe County Department of Transportation.

Vice Chairman Morelli seconded the Motion and the Board Members polled:

Roll: Scott Strock aye
Don Sweet aye
Rick Wurzer aye
John Morelli aye
John Felsen aye carried.

Chairman Felsen made Motion to waive the final Resubdivision hearing for **Application 2015-12P** by Vanguard Engineering, agent for Stacy Phillips, conditioned upon:

1. The applicant meeting the requirements of the preliminary Resubdivision approval.

Board Member Strock seconded the Motion and the Board polled:

Roll: Scott Strock aye
Don Sweet aye
Rick Wurzer aye

John Morelli aye
John Felsen aye carried.

Chairman Felsen stated that at the May 19, 2015 Planning Board meeting the Board passed the SEQR on granting Kyle Stevens a Special Permit to operate a farm stand (**Application 2015-03P**) but evidently never passed a resolution granting the Special Permit.

Chairman Felsen made a Motion to grant approval for **Application 2015-03P** by Kyle Stevens conditioned upon:

1. The farm stand being used to sell only agricultural products.
2. No landscape materials being sold from the farm stand.

Board Member Sweet seconded the Motion and the Board polled:

Roll: Scott Strock aye
Don Sweet aye
Rick Wurzer aye
John Morelli abstained
John Felsen aye carried.

With no further business, it was agreed by common consent that the meeting be adjourned at 10:15 PM.

Respectfully submitted,

Shivaun Featherman
Deputy Town Clerk