

**Minutes of the  
TOWN OF JOHNSBURG  
PLANNING BOARD MEETING – April 22, 2013**

Minutes of the regular meeting of the Planning Board of the Town of Johnsburg held on Monday, April 22, 2013 at the Tannery Pond Community Center, North Creek, NY.

Meeting was called to order by Chairperson, Mr. Cork Nester at 7:00 p.m.

Roll call showed the following Board members present: Roger Smith, Cork Nester, Tim Record, and Curt Richards – Absent: Janet Konis, Bill Moos

Also present was attorney Mr. Mike Hill, for the planning board.

**NOTE:** All four of the Planning Board members present for the meeting visited the property which Leslie Clement is proposing to subdivide. As announced at the March 25<sup>th</sup> meeting, the members visited the site at 5:00 PM on April 22<sup>nd</sup> and walked the property on both sides of the road, to see the property and observe the conditions there.

**Guests Taken from the Sign in sheet (also attached):** Rob Simon, Susan Keats, Roy Keats, Annie Bulmer, Joe Brown, Reg Freebern Roxanna Freebern, Dale Monthony, Joyce Monthony, Susan Lenseth, Peter Lenseth, Leslie Clement, Phil Burdick

**Opened the Public Hearing for Subdivision Application #SUB-03-2013 for Heithaus Tax Map #178.4-1-17 Located on the Garnet Lake Road.** Cork Nestor Opened the Public Hearing even though Attorney Dan Smith representing the Heithaus could not make the meeting. Cork Nestor asked if there was anyone present that would like to discuss the Subdivision. No response. Tim Record made a motion to keep the public hearing open until the next meeting in May. Curt Richards Second. All in Favor.

Approval for the Minutes of March 25, 2013. Motion made by Roger Smith, Second by Curt Richards. All approved.

## **NEW BUSINESS**

**Resolution to move the May meeting from May 27<sup>th</sup> to May 20<sup>th</sup> – motion made by Tim Record second by Roger Smith. All in favor.**

## **OLD BUSINESS**

1. SUBDIVISION APPLICATION: #SUB-01-2013 Leslie Clement Tax Map #30.-1-68 & 30.1-69 for 4 Lots located on Shields Road, North River
2. SUBDIVISION APPLICATION: #SUB-02-2013 Leslie Clement Tax Map #30.-1-75 for 6 Lots located on Shields Road, North River

Leslie Clement presented updated maps with minor changes, including locations of wells, septic's, and the major change to the plan is where Warren County DPW would be getting (free of charge) approximately 4 acres on 13<sup>th</sup> Lake Road to have so have enough land to fix the road where in the past has washed out – Warren County is having a meeting on April 30<sup>th</sup> regarding this transaction. This lot would be conveyed to DPW and will not show a driveway and no perk test.

Tim Record - We still don't have real plans yet.

Rob Simon - attorney for Leslie Clement – this is how Jim Hutchins has done it and Zack is just following in his footsteps, the plans won't be stamped until the end.

Roger Smith - asked about the storm water how the run off of the proposed roads and roads under construction is going to be captured and treated.

Leslie Clement invited Phil Burdick who is an architect which Leslie has used in Massachusetts for other projects and they have storm water calculations and a concept drawing – Phil Burdick for the lower sub division with 4 lots there – building would be about 2000 square feet and the driveway area 10 feet wide by 200 feet long – Fairly typical run off calculation – the engineers plans and showing the cleared area where the building is and a small meadow – the meadow is going to be about ½ acre and the run off for a 50 year storm the runoff is going to be around 500 to 600 cubic feet over a 2 hour – 80 minute duration 2 inches per hour so it will be only about 1/3 of an inch so he feels if they ditch the lawn area it will retain that 3<sup>rd</sup> of an inch same and the driveways it comes down to a hundreds of an inch and if they go over a minimum of 2 acres the run off would be maybe four or five hundreds of an inch and this would show on the construction drawing and to how they are going to achieve – so they are only dealing with a minimal run off, this doesn't include normal run off, from the wooded area which there is a percentage.

Roger Smith - indicates he's trying to understand how all this comes together. Roger's training is that from he observed at Shield's Rd tonight there is already been a change with the runoff from the property with the cutting of the trees, the stumping, the redevelopment of the town road and the additional driveway yet the applicant doesn't seem to have a plan. Roger understands what Mr. Burdick is talking about but it is supposed to be on the plan. Roger sees the proposed houses but doesn't see anything about proposed storm water controls.

Leslie Clement – Roger here are some of the calculations that were done

Tim Record – last month you said you had plans for storm water prevention plan - where are the plans

Leslie Clements – I have 2 general permit notices of intent with DEC and a SWIFT plan in place.

Tim Record - asked where is that plan

Leslie Clement - it's not so much as a plan it is what they require during logging – hay bales on sight, silt fence – that you don't de stump at the wrong time of the year and you reseed at the right time of the year and you get a soil sample when done

Tim Record - that is a storm water prevention plan

Leslie Clement - said she has filed it with DEC

Tim Record - said but you can't supply us with a copy of it?

Leslie Clement – I will get a copy of the plan from DEC, but here are the calculations

Roger Smith said he has a couple issues. The first being the subdivision application filed as two when it is clearly one large project. Number two concern is what appears to be 4 or 5 acres of land disturbance for which a DEC General Stormwater Permit and SWPPP is required. Under the DEC General Permit, bales of hay, silt fence, temporary mulch is required and Roger does not see any evidence of any of this at Shields Rd. Roger indicated what he observed was ditches that are not graded properly, erosion issue and ongoing development without approval from the Town. Roger asks the question when does the SWPPP plan occur given Leslie's comment that town has un-posted the road and the applicant is ready to go (continue work) again. Roger indicates again it looks like a development underway without the required approvals.

Leslie Clement – it's an existing town road that she improved and she is doing what she has been told in Warrensburg by DEC people but if there is a different permit in which you guys are used to she will use that

Roger Smith said that he works in this field but not for the DEC but he will check with the DEC and inform the board. Roger indicates his thoughts are that if the applicant is operating under the DEC General Permit she must provide for the protection of the streams and Roger did not observe this tonight.

Cork Nestor – there is a lot of evidence of silt entering the water system and you have rolls of the Silt fencing sitting in the pull off, and not being used.

Leslie Clement – It's required to have extra ones on site

Cork Nestor – but there is none being used at all

Leslie Clement - well the hay bales along the left section where it hasn't been seeded – everything in the fall has been seeded and some of the culverts weren't her doing the first one and the last one is the way it looked when they got there and know the road is not posted they can finish putting in the cob rock and finish them

Cork Nestor – the improvements and what not that has been done so far where done basically without a plan that they are seeing, they don't know what is in the road but they don't know that - what is in the plan – Leslie is just telling them what is in the road but they don't know that - usually the plan comes in first then you take that plan to the construction person and tell them that that is the material they need to use – you used material in there from Barton Mines which is unstable material and used it as road base

Leslie Clement - said they just used that to see where the road was that they used between 8 to 12 inches of item 4

Cork Nestor – but the base is the weakest part - it is like an avalanche

Leslie Clement - well it packs down pretty good

Cork Nestor - agreed that yes it does but when it rains it all washes away

Leslie Clement - the only problem we have had, is from the preexisting lot

Cork Nestor – well we have not had any significant rains, yet this year - he is very worried what will occur up there right now if there is a significant rain storm - he doesn't feel the way the culverts were put in – the one culvert that was definitely put in by Leslie next to your pond - the earth is 6 to 8 inches above the height of the culvert

Leslie Clement – right we need to fill it up with Cob Rock

Cork Nestor – but those are things, which you don't wait to do

Leslie Clement – OK but we ran out of time because of the weather

Tim Record – asked Phil if he was familiar with the DEC SWPP permit

Phil Burdick - said yes the general process

Tim Record - so do you think that the project looks good on the erosion control

Phil Burdick - He didn't see the conditions before – he understands the questions of conditions up there and the concern but I can't say – my understanding was that is an existing road up to a certain point – she has done road maintenance that hasn't been done in the last 50 years and obviously that - my understanding she had a conversation with a contractor here and he is coming tomorrow to continue to work on it

Tim Record – but the old foundation on the downhill side - on the drainage thing there are no hay bales with stakes in them there is no silt fence and the erosion is from here to the middle of the creek out there – one thing to control the erosion which is probable on someone else's property

Phil Burdick – from my understanding is that this is on her property

Tim Record - what about the erosion control

Phil Burdick – There are hay bales

Tim Record - one spot with 15 hay bales and no stakes in them and 2 hay bales on the down ward side that washed away because there was no stakes

Phil Burdick - some decision is up to Leslie or the contractors that do the work that if that area has been seeded then if that has been stabilized or not -- hay bales - lower area looked like - concerns there

Tim Record - no matter who does the work - she is responsible

Phil Burdick – I understand that

Roger Smith – Contractor – I think the issues we saw tonight are on the table now and I don't know what the next step is – looking at article 10 of the Subdivision Law

Mike Hill – the board is looking for the element for the completed application and you don't have that – so in terms of the storm water prevention plan and any other items that are need for the completed application -- review by the towns engineer

Cork Nestor – one of the main things that we did not receive and we forgot to mention it to Leslie last time was that a site plan application does need to be done along with the sub division application. We still have not received a copy of the deed for lot 75

Leslie Clement - it is the same deed and she believes she brought one to Danae

Cork Nestor – Jo Ann doesn't have it

Leslie Clement – it is the same deed because the description is very poorly – but will get one

Cork Nestor – Do you have the 911 address yet

Leslie Clement - has been working with the town with Christian and Ann and there is some confusion as to --- she asked them for 911 address for every proposed lot - they said she only needs 911 address for the existing parcels

Cork Nestor – that is not correct – the county will give you 911 address for all of the lots

Leslie Clement - the county or the town

Leslie Clement – Per existing Lot ----- she has followed the application process with Ann and she assigned a number so Leslie is assuming that it is through the town of Johnsburg and not the County – So the County Assigns the 911 address

Tim Record – Yes

Cork Nestor – the plan of the cross sections of the road are they in the plans

Leslie Clement - no --- when I did the presentation last month I showed you guys a plan this is the shared driveway and that is incorrect the way the engineer did it – one side ----- so there is no engineer drawing of the road but the engineer said he pushed the button that took off the culverts so the culverts don't show

Cork Nestor - ok so we still need to see that

Rob Simon – so you want to see an engineer drawing of the road

Leslie Clement – there is no engineer drawing of the road

Cork Nestor – well then again this brings us back to you redid that road without an engineer drawing

Leslie Clement – She did it according to what Dan Hitchcock and the contractor Bobby LaVergne worked out as to what it should be and regards to the unfinished work that is up there I think the simplest thing is to wait another month and to come back for another site walk and by then it will be seeded and the cob rock will be in the gully's and if additional hay bales are needed they will put them in but --- time of year to get the seed growing and to finish the work

Roger Smith – I think that should be done under the care of a professional architect – engineer – water soil conservation district - something – Roger's concern is ongoing soil erosion and sedimentation impacting the streams that flow into 13<sup>th</sup> Lake Brook.

Rob Simon – they want to see the plan with drawings with the silk fence and the drawing where the hay bales go

Tim Record - we want to see the DEC

Tim Record – storm water pollution plan is required and they need the plan and DEC will go up and visit with Leslie and make sure that everything is ok.

Leslie Clement – is there one from a prevision project that she could look at

Tim Record - DEC in Warrensburg has lots of plans

Rob Simon – Zak has one

Leslie Clement – yes but I would like to see what typical is the way

Roger Smith - so the conclusion of or answer too is the application completed is no. So I suspect we table this until next month and wait on the storm water pollution plan and more information that has not been provided

Cork Nestor – there is still significant gaps in the completion of the application

Phil Burdick - asked if it would be possible to work on the conditions to improve them

Cork Nestor – will have to discuss with DEC at that time – doesn't want further damage done

Tim Record – you will be working the DEC and there people specific to do that

Phil Burdick – so we need to relay the information to you

Tim Record – you need to hand us Number 23 – this is a check list that Leslie had filled out – she said she has submitted all of these things and Number 23 is the Storm Water Prevention Plan she just needs to submit it to us

Mill Hill – we are in a catch 22 here because there is a lot of work that has gone on out at the site and there are conditions that's in a heavy rain storm that might be resulting in further erosion if they are not addressed. This is unlike any other sub division applications where the applicants had not done anything beforehand on the sight they come in and submit an application drawings proposed

plan etc and is submitted to the town engineer and if there are any revisions that need to be made they are made all before any work has been started – this is a much different situation because things have gone on out there work is in place and now the concern is the conditions and that things get completed – stuff has happened that the engineer hasn't been able to observe and usually the full review process happens before for first shovel of dirt is turned and when an approval is issued the town's Engineer would have the opportunity to be on the site and observe what goes on to make sure that it is done accordance with the plan – now there is work that has been done and assuming that the town engineer is going to have Leslie's engineer some kind of certification that to do testing etc to make sure that things were done to the town's spec's. There are conditions that apparently that need to be addresses – but there is no plan, this is a very unusual situation.

Roger Smith - having looked at the site and having not observed anything along the lines of mulch, seeds and stone rip-rap (understand that these are temporary erosion control measures that need to conformed to the SWPPP and DEC General permit conditions and these are the right thing to do) I think the applicant is looking at a pretty hefty fine which would result from water quality violations should it rain tonight and soil erode into 13<sup>th</sup> Lake Brook. There are DEC requirements to follow which would protect the resources here. Roger is reviewing Article 10 section 1030 of the Town Of Johnsbury subdivision law which he believes provides the Planning Board the authority to stop work on this project and order erosion control work to protect the natural resources. Roger suggests the matter be discussed under an executive session.

Cork Nestor - definitely agrees – his thought on it when he looked at it a while ago in the winter – work on this project which should have been under our jurisdiction as mentioned before – before the first shovel or the first tree was cut down – he understands on the preexisting lots that if you want to do things with those that she has the right to do that but the area on the lower side of the road right now is like kind of a war zone - as amazed at the infringement on the Daley lot and he would like to see in writing that they gave Leslie permission to do that

Leslie Clement – she talked with the guy on the phone and he gave her permission to do that – told him that she was putting a road in and he said fine he didn't care - 100 years she had asked a number of times if he would sell the lot

Curt Richards – asked about getting something in writing

Leslie Clement – said she has asked him a number of times if they wanted to sell the lot

Cork Nestor – wanted to read a letter Peter and Susan Lenseth that have a camp at the end of the road (Letter will be scanned in and inserted here)

Rob Simon – they have their right to protect their water – absolutely Not sure how the town of Johnsbury would – he doesn't see how the planning board – if this was not a sub division if she was just doing it on her lot and these people where downhill from her they can do a lot of stuff to protect their rights – they have the right to do that and they should do that – Rob's not sure if the Planning Board has jurisdiction to do anything

Mike Hill – there is a proposed sub division here and there is a lot of issues – and Mike thinks this board can refer and will be referring all of the plans to the town's Engineer

Rob Simon – Oh I agree

Mike Hill – if the town engineer thinks that if any of these actives constitute a potential threat to a water supply then the Engineer will let the board know and the board will come back and be talking the Leslie about it ---- comes under the jurisdiction review of this board he is not saying that the board – neighbor but a whole different level of relationships between neighbors – sub division application that is pending and the planning board is looking at --

Cork Nestor - asked if anyone had any comments

Peter Lenseth – lives at the end of Shields Road – concern about the road across his property – the road is very rough across there he is able to get in and out with his truck but he would like to know what will be the maintenance and clean up for the whole seasons and water rights up there - in his deed it states he has rights to the road - sometimes he gets a call don't bother come up this weekend the road is blocked – this is bull that doesn't go – I have rights to that house if there has to be a detour put around it he had put a tree across the road and went out and got it chopped up to get the road going again he would say oh don't come up this week end the road is closed he has come up before with tractors in the middle of the road and can't get around them to use his property – the road is in rough shape – it's been excavated a little bight further but it stops in front of his property – and if he is not mistaken the road signs are still up for heavy equipment – the posted signs – the part that gets him the most is crossing his easement and talking about and putting a -- my pipe underground – what happens if the well doesn't provide water anymore because of the construction work and then he is wondering where he will be getting his water from – and this is something he holds tight he is a plumber by trade and you got to have water and I have a good system that works very good he doesn't believe that building roads around the well easement will be beneficial to him – that is his concerns

Roger Smith - asked if he provided a copy of his deed

3 people responded yes

Peter Lenseth - said it states in the dead – on the area around it necessary but that he does have dual rights he thinks that building around it he is afraid that it is going to silt up on him and right now it has been a very good provider for 2 years

Roxanna Freebern – her concern is that all this work was done with no permits in place – if it had been her she would have had to have all in place before it was touched – she also has a concern about water – because anything up there – could change her water supply – it is under ground and anything could change it and she could not have water as well – and really concerned about the erosion it just so much of it and when they lost 13<sup>th</sup> lake road for 5 to 6 months It was just ridiculous and doesn't want to see that happen again.

Tim Record - asked Chairman would like to asked Clough Harbor if they can except preliminary plans not for construction

Cork Nestor - could do that

Tim Record – has 11 years in or something and has never seen them so

Rob Simon – the first time he dealt with Jim had had the same reactions as Tim has what good is this – it is always the way he done it and he is not saying it's not right but he knows that it has been submitted to the board before

Tim Record - said they will need to submit a detailed pipe crossing in the driveway –

Cork Nestor - said that they talked with Zack about the possibility of bring that in on the other side so that it doesn't have to cross the water

Leslie Clement - asked if she should proceed with the county on the 4 acres

Board said yes that is a good plan

Mike Hill – Just because the board is saying yes about going to the county on the 4 acres is not approving this subdivision or that there will be an approval for the subdivision and that the board is not requesting Leslie to go to the county about the 4 acres this is something that Leslie is just doing – the board is not any way giving advance approval of the sub division

Phil Burdick – Need engineering plans for the roadway – what is there – what needs to be addressed and the length of it

This Application has been tabled waiting for additional information Roger Smith made a motion and Tim Record second – All in Favor

Motion to go into an executive session by Tim Record and second by Roger Smith – All in Favor

Opening of regular meeting again

Motion made by Roger Smith under 1030 to issue a C & D order except for erosion control as required by the DEC.

After having completed a site visit, the board has determined an existence of an apparent violation under section 1000 and the board will exercise its power under 103. The Board will write a letter informing the applicant to stop all further work except implementation of erosion and sediment control as required by the DEC. No Further work is permitted until the Subdivision SUB-02-2013 and SUB-03-2013 has been approved.

Roger Smith made a motion and Tim Record second, All in favor.

Motion to adjourn Roger Smith made the motion and Tim Record second, All in favor.

***Next Planning Board Meeting –Monday, May 20, 2013  
at the Tannery Pond Community Center – 7 p.m.***