

**TOWN OF ESOPUS
PLANNING BOARD MEETING
AUGUST 14, 2013**

PRESENT: Roxanne Pecora, Chairperson
 Michael Manicone
 Fred Zimmer
 Michael Minor
 Darin Dekoskie

EXCUSED: Rich Williams
 Margaret Yost

ALSO PRESENT: Myles Putman, M.L. Putman Consulting

Chairperson Pecora called the meeting of the Town of Esopus Planning Board to order at 7:05 P.M. beginning with the Pledge of Allegiance to the Flag. Roxanne advised the public of the building's fire exits and roll call was taken.

Michael Minor informed the Board that he will not be able to do the pre-submission meeting nor attend the Planning Board Meeting in September.

MINUTES: Board members were asked if there were any changes or corrections to the minutes of the July 10, 2013 meeting. Margaret Yost made corrections prior to the meeting. Fred made a correction to Page 15 under Ferguson, 2nd paragraph after escrow account should read for legal fees.

MICHAEL MINOR MADE A MOTION TO APPROVE THE MINUTES OF JULY 10, 2013 AS AMENDED SECONDED BY FRED. ALL MEMBERS WERE IN FAVOR. MOTION PASSED WITH A VOTE OF 5-0. VOTE WAS AS FOLLOWS:

Fred.....yes
Michael Manicone.....yes
Michael Minor.....yes
Darin.....yes
Roxanne.....yes

VOUCHERS:

M.L.Putman Consulting (Month of July 2013)..... \$1,750.00
April Oneto (secretarial services).....73 1/2 hours

MICHAEL MINOR MADE A MOTION TO APPROVE THE VOUCHERS AS READ, SECONDED BY FRED. ALL MEMBERS WERE IN FAVOR. MOTION PASSED WITH A VOTE OF 5-0.

OLD BUSINESS:

ESOPUS FARMS: Case #2012-17 & 2012-27 – Special Use Permit/Site Plan/ Lot Line Adjustment – 1398 & 1466 Route 9W, Ulster Park; SBL: 71.004-4-26 & 31.11

Joseph Pisani, Esq. was present to represent the applicant.

Chairperson Pecora explained that the Board needs to recall the decision made last month regarding Esopus Farms due to a procedural error made by not referring this application to the Waterfront Advisory Board. This means that this is a jurisdictional issue meaning that a proceeding can be brought at anytime. It does not fall under an Article 78 action. This would leave our decision at risk forever. We need to do this to protect the record for the applicant. We need to recall our decision from July 10, 2013 and refer this to the Waterfront Advisory Board.

MICHAEL MINOR MADE A MOTION TO RECALL THE DECISION MADE ON JULY 10, 2013 ON ESOPUS FARMS, CASE #2012-17 & 2012-27, SPECIAL USE PERMIT/SITE PLAN/LOT LINE ADJUSTMENT AND TO REFER THIS PROJECT TO THE WATERFRONT ADVISORY BOARD SECONDED BY FRED. ALL MEMBERS WERE IN FAVOR. MOTION PASSED WITH A VOTE OF 5-0. VOTE WAS AS FOLLOWS:

Michael Manicone.....yes
Fred.....yes
Darin.....yes
Michael Minor.....yes
Roxanne.....yes

Roxanne informed the Board that next month following comments from the Waterfront Advisory Board we will need to read the Resolution and confirm SEQR.

BOYLAN & MAUCERI: Case #2013-06 – Lot Line Adjustment – 127 & 129 New Salem Rd. (County Rd. 57); SBL: 56.018-2-35 & 36

Chris Zell, Brinnier & Larios, was present to represent the applicants.

Myles reviewed M.L. Putman Consulting Review dated 8/8/13, copy given to the applicant and copy placed in the file.

Myles pointed a minor map change to reflect the county as Ulster.

Roxanne stated that we received a letter from the Waterfront Advisory Board dated 7/22/13 which she read and it became a part of the record. They did not find any issues with this application.

FRED MADE A MOTION TO WAIVE THE PUBLIC HEARING FOR BOYLAN & MAUCERI, CASE #2013-06, LOT LINE ADJUSTMENT, AS PER SECTION 107.16.A OF OUR CODE, SECONDED BY MICHAEL MINOR. ALL MEMBERS WERE IN FAVOR. MOTION PASSED WITH A VOTE OF 5-0. VOTE WAS AS FOLLOWS:

Michael Manicone.....yes
Fred.....yes
Darin.....yes
Michael Minor.....yes
Roxanne.....yes

FRED MADE A MOTION TO DECLARE A NEGATIVE DECLARATION PURSUANT TO SEQR FOR BOYLAN & MAUCERI, CASE #2013-06, LOT LINE ADJUSTMENT, SECONDED BY ROXANNE. ALL MEMBERS WERE IN FAVOR. MOTION PASSED WITH A VOTE OF 5-0. VOTE WAS AS FOLLOWS:

Michael Manicone.....yes
Fred.....yes
Darin.....yes
Michael Minor.....yes
Roxanne.....yes

MICHAEL MINOR MADE A MOTION TO GRANT CONDITIONAL FINAL APPROVAL FOR BOYLAN & MAUCERI, CASE #2013-06, LOT LINE ADJUSTMENT CONDITIONED UPON RECEIPT OF 6 PAPER MAPS AND ONE REPRODUCIBLE MASTER WITH THE CORRECTION REQUESTED AND ALL MAPS SIGNED BY OWNERS, SECONDED BY ROXANNE. ALL MEMBERS WERE IN FAVOR. MOTION PASSED WITH A VOTE OF 5-0. VOTE WAS AS FOLLOWS:

Michael Manicone.....yes
Fred.....yes
Darin.....yes
Michael Minor.....yes
Roxanne.....yes

VENDITTI PROPERTIES LLC: Case #2013-05 – Site Plan Review – 832
Broadway (US Route 9W) Ulster Park;
SBL: 72.001-1-12.1

Myles reviewed M.L. Putman Consulting Report dated 6/6/13, copy given to applicant and copy placed in file. (Applicant was rescheduled from the June 12, 2013 meeting per his request.) Myles stated that the Site Plan does not require a Public Hearing.

Lou Venditti was present for this application.

Michael Minor asked the Planning Board secretary if we were asked to comment on the variances for this application prior to the ZBA approval. Michael was told that we were not asked to comment prior to the approval but did receive a copy of the referral after approval was granted.

Michael Minor stated that he is concerned because when the Planning Board made a mistake regarding the last applicant and in order to protect the applicant as well as the Board we had to undo our action and correct the mistake. He is concerned that there are rules regarding the ZBA needing to do the same thing.

Mr. Venditti stated that he met with Myles at a Pre-submission Meeting and was sent to ZBA. Following the ZBA decision they sent him to the Planning Board for parking. It was explained to Mr. Venditti that there was not anything that he did wrong but this issue may be something that could present a problem for him in the future and we are trying to avoid this.

Discussion took place regarding the legalities of ZBA not referring this to the Planning Board prior to their decision. Roxanne felt that we requested a legal opinion on this many years back. Legal file was reviewed and this opinion was not in that file. Myles reviewed NYS Town Law 267 and Town Code 123.44.C.

Fred requested that Michael Vetere's license be removed from the map and a note can be placed on there referencing this survey. Fred stated that there is an addition penciled in on the map that needs to be removed. Fred stated that at this time the building is rented as a business. He questioned Mr. Venditti that if this is approved will the business be changed. Mr. Venditti stated that he has one year between the time this is approved and he obtains his building permit. Fred questioned if it will still be able to be used as commercial. Myles stated that once that building goes to residential that is it. If he wants to change the occupancy again to a mixed use – commercial/residential – he will be here for a Special Use Permit.

Fred asked Michael Minor if his concerns will be resolved if this is granted. Michael stated that his issue has to do with our internal process and inconsistencies. Michael feels that if we do not correct these issues it puts the

applicant in jeopardy. Discussion continued regarding this issue. Following further investigation into the NYS Law and Town Code it is felt that this is a jurisdictional issue and needs to be corrected. Roxanne will look for her copy of the legal opinion from years back and will speak with Joseph Guido, Acting Chairperson for the Zoning Board of Appeals.

Myles obtained NYS Town Law Book 267 and read through some of the Court case and felt that it was clear that the Town ZBA shall defer taking final action on an area variance until referral to the Planning Board. This was specific to an area variance but in 267 A of NYS Town Law it does say that you have to do required referrals to County agencies. The State Law is not clear regarding the Town Boards but this might be a local law. It was clear that this issue needs to be resolved. Roxanne will find her copy of this decision from years back or she will place a call to the Planning Board attorney from that timeframe.

It was explained to Mr. Venditti that this Board is sorry for holding him up but this Board believes that he will need to go back to the ZBA so that they can recall their decision, refer it to this Board and then redo their decision. This will not cost the applicant any additional money but it will cause a delay in this Board being able to make a decision. In the meantime, Mr. Venditti can make the requested changes to his maps and submit them. Mr. Vetere's signature should be removed, reference to his survey should be placed on the map, box in the corner referred to by Fred should be removed, the proposed addition can be removed and the parking can be left in assuming that the variance is okay.

Myles stated that after reviewing the Town Code the Planning Board referral is clearly in this Code 123.44.C.1. This becomes a jurisdictional error. Roxanne stated that it is the same problem that we had with the previous application and what was explained to her by our attorney was this is not an Article 78 situation but it is a jurisdictional situation. This means that anytime anyone could challenge the applicant's ability to do what was agreed to and they can challenge this Board's decision until this decision is corrected. It is jurisdictional. The ZBA is in the same position as this Board was with the prior applicant on the agenda this evening and it needs to be corrected.

Roxanne will speak with the attorney if necessary and she will speak with Joe Guido, Acting Chairperson for the Zoning Board of Appeals. The applicant was informed that unfortunately he will lose a couple of months because of this process.

Applicant was told that the earliest he would be able to receive a decision from this Board would be November because after Zoning Board of Appeals completes their process and refers it back to us we will then have to refer it to the Ulster County Planning Board and await their decision because this property is within 500 feet of a State road.

NEW BUSINESS:

J & T LANDI AND REFORMED CHURCH OF ST. REMY: Case #2012-09 – Lot Line Adjustment – 530, 532 Main Street, 115 Decker St., St. Remy; SBL: 63.006-1.4, 7 & 8.1

Joe Landi, applicant, was present along with Chris Zell, Brinnier & Larios, to represent this application.

Myles reviewed M.L. Putman Consulting Report dated 8/8/13, copy given to applicant and copy placed in file. Myles stated that applicant is proposing to reduce the size of an undersized lot even further. Chris stated that all the lots in that area are undersized at this point. Myles stated that to make them even smaller they will need a variance from the ZBA. Myles stated that the principal has been established in State Law that you cannot shrink those lots any smaller unless you get an area variance.

Discussion took place among the Board members and applicant and it is the feeling of the Board that they need to go to the Zoning Board of Appeals for an area variance. Myles informed the applicant that when a church sells off a piece of property in order to get the deed it has to go through the Attorney General's Office which can be a long process. Myles asked if there is any shared use on the driveway. Joe stated that there is nothing in writing. As long as he lives there, everything will remain the same with the use of the driveway.

CHRISTIAN BROTHERS INSTITUTE: Case #2012-10 – Minor Subdivision – 1835 & 1850 Broadway, West Park; SBL: 80.001-4-5

Applicant is represented in this action by Chris Zell, Brinnier & Larios. Myles reviewed M.L. Putman Consulting Report dated 5/20/09 revised 8/2/13. Copy placed in file and copy given to applicant.

The site in question and the lands across the street are both served by the sewage plant. The question is whether this is an easement or a separate parcel. Once the easement is established and then there is the question of creating a transportation corporation that will own and maintain the common sewage facility for both parcels.

Chris stated that this has been before this Board once before and it lapsed. They are trying to legalize a natural subdivision (Route 9W subdivides the property) and they want to be able to sell the easterly half (river side). There is nothing planned for this half. They simply want to have the ability to sell it. They realize the problem with the septic system and will have to come up with a solution to it. Chris stated that the railroad already bisects the one parcel but it is not a subdivision. They will hook them together on the map.

MICHAEL MINOR MADE A MOTION TO LIST CHRISTIAN BROTHERS INSTITUTE, CASE #2013-10, AS A NEGATIVE DECLARATION PURSUANT TO SEQR SECONDED BY FRED. ALL MEMBERS WERE IN FAVOR. MOTION PASSED WITH A VOTE OF 5-0. VOTE WAS AS FOLLOWS:

Michael Manicone.....yes
Fred.....yes
Darin.....yes
Michael Minor.....yes
Roxanne.....yes

MICHAEL MINOR MADE A MOTION TO GRANT SKETCH PLAN APPROVAL FOR CHRISTIAN BROTHERS INSTITUTE, CASE #2013-10, MINOR SUBDIVISION, SECONDED BY FRED. ALL MEMEBERS WERE IN FAVOR. MOTION PASSED WITH A VOTE OF 5-0. VOTE WAS AS FOLLOWS:

Michael Manicone.....yes
Fred.....yes
Darin.....yes
Michael Minor.....yes
Roxanne.....yes

JAMES REIKER: Case #2013-11 – Lot Line Adjustment – 511, 550 Millbrook Drive, Connelly/Port Ewen; SBL: 56.015-1-1.115 & 56.067-1-2.11

Chris Zell, Brinnier & Larios, is present representing the applicant. Myles reviewed M.L. Putman Consulting Report dated 8/9/13. Copy placed in file and copy was given to applicant.

Chris stated that the reason for the lot line revision is because the O'Brien's own the little piece of property that has no access and whose road runs across this piece of property and will buy this if this revision goes through. They will eventually combine the two pieces of property and make one large piece of property. They have to purchase the property from Mr. Reiker first and then they will come back to the Board to merge them.

MICHAEL MINOR MADE A MOTION TO DECLARE JAMES REIKER, CASE #2013-11, LOT LINE ADJUSTMENT, AS A NEGATIVE DECLARATION PURSUANT TO SEQR SECONDED BY DARIN. ALL MEMBERS WERE IN FAVOR. MOTION PASSED WITH A VOTE OF 5-0. VOTE WAS AS FOLLOWS:

Michael Manicone.....yes
Fred.....yes

Darin.....yes
Michael Minor.....yes
Roxanne.....yes

MICHAEL MINOR MADE A MOTION TO WAIVE THE PUBLIC HEARING AS PER SECTION 107.16.A FOR JAMES REIKER, CASE #2013-11, LOT LINE ADJUSTMENT, SECONDED BY DARIN. ALL MEMBERS WERE IN FAVOR. MOTION PASSED WITH A VOTE OF 5-0. VOTE WAS AS FOLLOWS:

Michael Manicone.....yes
Fred.....yes
Darin.....yes
Michael Minor.....yes
Roxanne.....yes

MICHAEL MINOR MADE A MOTION TO GRANT SKETCH PLAN APPROVAL FOR JAMES REIKER, CASE #2013-11, LOT LINE ADJUSTMENT, SUBJECT TO INSERT ADDED TO SHOW THE SOUTH PROPERTY SECONDED BY ROXANNE. ALL MEMBERS WERE IN FAVOR. MOTION PASSED WITH A VOTE OF 5-0. VOTE WAS AS FOLLOWS:

Michael Manicone.....yes
Fred.....yes
Darin.....yes
Michael Minor.....yes
Roxanne.....yes

JOHN MARCHESE, et al.: Case #2013-12 – Lot Line Adjustment/Minor Subdivision, 145 Loughran Lane/Old Post Rd., West Esopus; SBL: 71.004-1-3.12, 22.1, 24 & 26

Nick Marchese and John Marchese were present to represent this application. Myles reviewed M.L. Putman Consulting Report dated 8/8/13. Copy of report given to applicants and copy placed in file.

Nick stated that he and his brother purchased this property a number of years ago and now that they are both married they would like to separate the property so that he can put a house up on his side and his brother can live in a house on the other side.

Myles stated that what the Board has in front of them is one application and it is really two separate actions. The first action is for lot line adjustments and the second action is a minor subdivision.

Applicant needs to submit a letter requesting that the scale be adjusted to 200 feet to the inch. Michael Minor explained to the applicants that they could hold

on to the 10 acres and in the future one of the neighbors would want to buy that piece of land and connect it to their land and it would be a lot line adjustment not a subdivision. Following further discussion the applicants decided to do a lot line adjustments (3) and wait to do the subdivision. Applicants will need to submit a check for \$300.00 made out to the Town Clerk for the additional lot line adjustments. Fred worked with the applicants drawing the lots on the maps they submitted. They will need to go back to the surveyor and have the maps changed. Applicants need to go to the Ulster County Department of Public Works for a curb cut.

Applicant was informed that the next deadline will be August 28th for the September 11th meeting.

ZBA REFERRALS:

None

MISCELLANEOUS:

Fred brought up the new form from Real Property allowing property owners to combine lots for tax purpose. Fred felt that someone needs to speak with Dennis Doyle to discuss this form. Roxanne stated that she has already had this discussion with Peter Graham, Esq. on the phone and spoke with Dan Terpening, Assessor, and all that form allows one to do is to combine (listing all properties) for tax purposes on one bill. It has nothing to do with the Planning Board. Fred stated that this is very confusing. Roxanne stated that the form came out from the County. Darin said that when this form is completed for a long period of time it can then be viewed as multiple lots or one lot. Roxanne stated that it does not eliminate the actions and responsibilities of the Planning Board. Fred said that once your roll things in together they are not separate lots any longer. Roxanne stated that this is only for billing. Michael Minor stated that this can be misinterpreted by the land owner. They will think it is one lot because of the tax bill. Roxanne stated that the purpose of the form is to allow them to send one tax bill instead of multiple tax bills. Roxanne stated that this is a County Form and it came from the Real Property Offices. They report to the County Executive's Office.

Roxanne read Myles review dated 7/31/13 response to Jacobowitz & Gubits regarding the combining of a number of lots for Reeves/Zelnik. Roxanne read the letter from Mr. Lennon requesting to be placed on the Planning Board Agenda. Roxanne stated that he was told that he will have to come to Pre-submission Meeting to discuss this issue. It was felt that as long as we can keep the Assessor on board and list all separate lots on the tax bill with a total amount for all lots but making it clear that they are all different lots that this form from the County may work as intended.

Gloria wanted to know what happened with VanVelson. She was informed that this Board can not act until we receive a decision from the ZBA. Fred stated that he spoke with John Coutant today and it was decided that as long as they did not advertise and put up their sign they could rent a room in their home. If they advertise it has to be after September 11, 2013. Myles stated that this is an existing one family home and anyone owning a one family house could conceivably rent the house. It is when they want to start renting rooms to different transients that it becomes a problem.

Gloria questioned if we had a Pre-submission on August 7th for a Ray Yannone. She wanted to know what this was about. Myles stated that he has property that is mostly in the Rondout Creek and he wants to do personal private dock or commercial dock. He claims that he has a right-of-way off of Emerson Street. He was referred to the Army Corp of Engineers and DEC. Fred stated that if he wants to put docks in and they are not commercial docks the Planning Board has nothing to do with it.

PLANNING BOARD ATTENDANCE:

Michael Minor and Michael Manicone will not be present at the September Planning Board Meeting. Michael Minor will not be present at the next Pre-submission Meeting in September.

**DARIN MADE A MOTION TO ADJOURN THE MEEETING AT 9:30 PM
SECONDED BY MICHAEL MINOR. ALL MEMBERS WERE IN AGREEMENT.**

NEXT MONTHLY MEETING: SEPTEMBER 11, 2013

DEADLINE DATE: AUGUST 28, 2013

NEXT PRE-SUBMISSION: SEPTEMBER 4, 2013

Respectfully submitted:

April Oneto
Planning Board Secretary