

Town of Hamilton  
Planning Board Meeting  
Tuesday, November 15, 2016  
7:00 PM  
Hamilton Public Library  
13 Broad Street, Hamilton

**Present:** Chairman Darrell Griff, Elaine Hughes, Bill Nolan, Town Attorney Steve Jones, Deputy Clerk Elisa Robertson

**Others Present:** Sue Reymers, Jesse Magrath, Dana Wratten

Mary Galvez has been excused from attending this meeting. Bettyann Miller will be late.

Chairman Griff calls meeting to order: 7:00 p.m.

7:22 pm: Bettyann Miller arrives late due to a delayed flight.

**Resolution 2016-52: Approval of Minutes from October 4, 2016.**

Two changes: removal of sentence about the Deputy Clerk and page 6; clarification: Attorney Jones tried to return Attorney Chatfield's phone call but he had already left for the day.

Motion: Elaine Hughes

Second: Bill Nolan

Vote: Aye: 3 Nay: 0

ADOPTED

**Jesse Magrath: Mary Jane Miner, Earlville Road, Earlville, NY; Tax Map # 199.12-1-19, Subdivision Public Hearing**

**Resolution 2016-53: Begin Public Hearing regarding the Miner Minor Subdivision (parcel 199.12-1-19).**

Motion: Bill Nolan

Second: Elaine Hughes

Vote: Aye: 3 Nay: 0

ADOPTED

Town Attorney Steve Jones reads on to the record an email he received from Attorney Christopher Kendall regarding this subdivision. Please see Addendum #1.

Chairman Griff opens the hearing for public comment. There is no comment from the audience.

There is nothing new to be submitted on to the record.

**Resolution 2016-54: Close Public Hearing regarding the Miner Minor Subdivision (parcel 199.-12-1-19).**

Motion: Bill Nolan

Second: Elaine Hughes

Vote: Aye: 3 Nay: 0

ADOPTED

Madison County has returned their opinion regarding the Miner Subdivision. Please see Addendum #2. They comment that it seems to be a logical subdivision and there is the benefit of increased lot sizes. It also recognizes the lot line adjustment between the two Miner properties.

The Board reviews the map that is brought by surveyor Jesse Magrath.

This subdivision is a little different because the board is insisting that the approval be contingent on the properties being merged. The Board may require that there be some proof to them that these conveyances have taken place after they have been filed at the County. The Assessor will notify the Deputy Clerk when these properties are updated in her system, therefore proving that the transaction was completed. The Board wishes to set a time limit on the contingency. There is discussion of the next tax year and the date of March 1, which is in four months, being a reasonable time. The property transfers are as follows:

**199.-12-1- 28** (Nancy Miner) to **27** (Mary Jane Miner) small parcel in the front of the property  
**19** (Mary Jane Miner) to **28** (Nancy Miner) large parcel in back  
**19** (Mary Jane Miner) to **27** (Mary Jane Miner)  
**19** (Mary Jane Miner) to **25** (Kurt & Sue Reymers)  
**19** (Mary Jane Miner) to **20** (Dana Wratten)

**Resolution 2016-55: Subdivision of parcel 199.-12-1-19 is approved so long as the parcels being transferred are merged with the current parcels of the new respective owners, and so long as the transfer of a portion of Nancy Miner's lot (parcel 28) to Mary Jane Miner's lot (parcel 27) is also accomplished, and that proof of the recording of the deeds is filed with the Planning Board before March 1, 2017.**

Motion: Bill Nolan

Second: Bettyann Miller

Vote: Aye: 4 Nay: 0

ADOPTED

Chairman Griff Signs the mylar map to be sent to Madison County. Jesse Magrath will bring another map into the Town Office to be signed by the chair and filed.

**Jesse Magrath: Tony Roberts, Horton Road, Hamilton, NY; Tax Map# 183-1-17, Subdivision Pre-application Review**

Property owner would like to separate out a 3 acre lot with the option to also parcel out 16 acres as an option. There is discussion of who the surrounding landowners are. Mr. Magrath states that the tax mappers have plotted this property incorrectly. He has surveyed this property. There are two interior land locked lots. These lots have been put in place for taxation purposes because of where the school district boundaries are. Though it may appear, number-wise to have been subdivided in the past, the current owners have always owned that property. It was numbered as such for taxation purposes. On the three acre piece (proposed subdivision) there is 150 feet of road frontage. It is in the agricultural/residential district which means the lot must be at least an acre, 5 for a farm. There are no buildings on the property at this time; however, if they decide to build they must follow Town Law regarding setbacks. The applicant would like to create 3 lots but not do to a major subdivision. The objective is to make one lot to

be 3 acres, one to be 16 acres and the rest to remain its own lot. They would like to streamline the process and not take another month. Mr. Magrath doesn't want to make a potential buyer wait an extra month to buy the plot. He is hoping to get approval of the sketch plan. However, no application has been made as of yet. Town Attorney Steve Jones reads Section 320 of the Town of Hamilton Subdivision Regulations into the record:

**Section 320 Pre-Application Procedures**

Prior to the preparation of and the submission of a plat for approval, the subdivider should proceed to gather the necessary information and data on the existing conditions at the site. The subdivider should study the site suitability and opportunities for development; presumably he will discuss financing, planning and marketing with the lending institutions. The subdivider should develop a preliminary layout in sketch form which in turn should be submitted to the Planning Board for advice and assistance and should include a preliminary environmental assessment (EAF Short Form, Appendix A). The sketch plan should include the information identified in Articles 4 and 5. It is recommended that this sketch plan be prepared in consultation with a licensed land surveyor.

Mr. Magrath states that in order to keep the process moving, he will bring in an application for a 3 lot subdivision. He may want to bring the application in and have the board put it on hold. The board is confused as to why he is there due to the fact that there is no definite plan and that circumstances may change what the landowner wants to do. Mr. Magrath is just hoping to expedite the process and gain four weeks time. The Chairman enquires about the rush and why there is a need to save 4 weeks. An application needs to be filed before a sketch plan can be approved.

The Board's consensus is that there really would not problem with the 3 acre subdivision; it meets all the criteria, as well as the 2 other plots that are proposed. He is not gaining anything coming in now. Mr. Magrath is going to move forward as if there will be a buyer in the next two weeks. He asks about a time frame. There is discussion whether this would require a review by Madison County. It does not seem to require County review.

Mr. Magrath asks a question for general knowledge he would like to know: If someone is buying a piece of property, does the Board require a survey of the entire piece of property or just the piece being conveyed? The answer given by one member of the Board is that just the conveyed piece needs to be surveyed. However, the Chairman disagrees; it needs to show that the lot left behind is conforming. If there is already a survey on record that shows the whole lot then it is a moot point; no need to survey the remaining lot if there is one already on record. This property is right on the line between the Towns of Hamilton and Lebanon.

Attorney Jones reads and references Section 8.3-5 on page 57 of Town of Hamilton Zoning Law.

**8.3-5 Referral to County Planning Board**

A. Upon receipt of application materials it deems to be complete, the Planning Board shall refer to the Madison County Planning Department or Board any application for a Special Permit affecting real property within 500 feet of the boundary of the Town of

Hamilton, the boundary of any existing or proposed County or State park or other recreational area, the boundary of any existing or proposed County or State roadway, the boundary of any existing or proposed right-of-way for a stream or drainage channel owned by the County 58 for which the County has established channel lines, the boundary of any existing or proposed County or State owned land on which a public building or institution is situated, or the boundary of a farm operation within an agricultural district as defined in Article 25AA of the Agriculture and Markets Law, pursuant to General Municipal Law, Article 12-B, Sections 239l and 239m, as amended.

This is for Special permits however, and not subdivisions. Attorney Jones then references General Municipal Law (GML) 239 that indicates which applications have to go for a County review. Nothing is specifically mentioned about subdivisions. This should be investigated further. There is discussion about the Town Line and that the actual plot is more than 1000 feet away from that line. No decision needs to be made on this until there is an actual application is submitted. The County will not deal with this if it is only a "maybe" situation, they would just send it back to this Board. Mr. Magrath can always put in an application, but it will not speed up the process at all. The question is presented if there is a time limitation from receipt of application until the board has to take some action. Town Attorney Jones states that once the application is complete there is a time limit. An application could remain on file, yet not be deemed complete.

Attorney Jones reads an excerpt into the record Subdivision Regulation Section 370.1 (page 12) as follows:

**370.1- Review of Subdivision**

Following the review of the Preliminary Plat and supplemental material submitted for conformity to these regulations, and following negotiations with the subdivider on the changes deemed advisable and the kind and extent of improvements to be made to be made by the subdivider, the Planning Board shall hold a public hearing. This hearing shall be held within forty-five (45) days of the official submission date of the plat.

No action needs to be taken at this time.

There is new business to come before the board, a last minute application.

**Colgate University, Hamilton Street, Hamilton, NY; Tax Map # 169-1-6 and 169.13-1-14; Pre-Application Conference for a Subdivision**

Town Clerk Reymers explains this project; she is handling the negotiations for the Town. She explains that; Colgate University purchased the property a few years ago and wants to annex a portion of it into the Village of Hamilton. The County, the Town Attorney, and the Town Board have all been consulted. The petition asks to annex a portion of 169.13-1-6 which consists of three parts. However, it appears that lot number 4 is already in the village. Joe Bello (Colgate University's representative) believes it is not in the village. Jesse Magrath is available to help with some clarification. He goes on to explain that at some point an incorrect survey was used to depict the Village line and that someone used that survey to create the tax parcels. He believes that is what occurred. There is some speculation about the University's future plans

for that area. The question is if that portion needs to be subdivided out before it can be annexed by the Village. Clerk Reymers believes that that is the case, for tax purposes it will need a tax map number that is a unique identifier. You cannot annex a part of a property. It is Steve Jones as well as the Planning Boards opinion that that portion does need to be subdivided before it can be annexed. There is ongoing conversation about where the Village line is located. Jesse Magrath uses two maps to compare where the Village boundary is actually located. There is a discrepancy between the two maps (one with the Corporate Village line and one is the (GIS) tax map; that is why they are asking for a portion that already appears to be in the village. They really need the subdivision of lot #6. An application needs to be filed. It is zoned agricultural/residential.

### **Old Business:**

Town Attorney Steve Jones reads a letter from Attorney Scott Chatfield regarding the Poolville Country Store/Strong-Collins subdivision which was received Monday, November 14, 2016. The letter is dated November 10, 2016 (Please see Addendum #3). Mr. Jones did call Mr. Chatfield to clarify a few items this morning. The following areas were discussed beyond the letter.

Assumption #1: Mr. Chatfield's letter refers to Section 3.5 of the Hamilton Zoning Law (page 10), which discusses nonconforming lots. It says that if you have a lot that is smaller than what is called for; it is ok as long as it existed before the zoning law went into effect and you do not expand your use of it.

Assumption #2: The sale did reduce the property to a substandard lot. Her lot very narrowly met the minimum requirements before the sale.

Paragraph 5: Here he is talking about the current restaurant and the proposed wedding location; they could be treated as one site.

Mr. Jones states that, after clarification on the phone, Mr. Chatfield seems to be saying that the illegal transfer does not prohibit them from pursuing their Special Permit Application, they may merge those lots. It does still leave the Strong- Collins property as nonconforming.

Chairman Griff asks about the mortgage holder, because he signed off on it, is the mortgage holder responsible for that sale? Is the lien holder also culpable?

Attorney Jones replies that he released the lien on the property she sold and now holds a lien only on the property she has left. The PCS (Poolville Country Store) is free and clear of his lien. The biggest issue is that she will have problems selling that lot and therefore if the lien holder wanted to foreclose, it would make it less saleable for him as well.

Chairman Griff reviews the different opinions that this Board has received thus far.

Chairman brings up the issue of map and transfer of property filing at the county level, such documents being recorded and filed without any follow up or verification.

Attorney Jones states that there is a form to fill out when you record your deed as to whether or not board approval was required or not. We could look at those forms to see if they were filled out correctly.

The Chairman asks about the filing of maps?

Mr. Jesse Magrath (Land Surveyor) states that the County Clerk's Office looks at the title of the map, if the word subdivision is not in the title of the map they will file it. If it is, they will ask you to get approval from the Planning Board.

Previous to this meeting the Chairman states that this is not in accordance with what is on their website or what the state requires, it is violating the law.

The Deputy Clerk went to the County Clerk's Office to look at this deed to see if there was a map and to look at the signatures. The only map that was there was the map handed in with the deed. She inquired as to whether there is a form to fill out when filing, and was told that there is not. She then asked how they know whether it is a subdivision or not and was told, "we normally ask, and if they don't tell us that it is a subdivision then we don't know, our job is to just take it and file it".

Chairman Griff asked the Deputy Clerk to go back in the minutes and see how many subdivisions have come before the Planning Board since 2011. There were eleven. He then contacted the assessor to see how many were recorded. There were 28. Only 1 of those 28 is also a nonconforming lot; that was recorded last year.

There is discussion among the board about the previous Town Subdivision Regulations allowing 2 lot subdivisions and also about the way things are recorded. There do not seem to be any checks and balances.

The Deputy Clerk has been doing some research regarding this issue.

Chairman Griff asks, regardless of our regulations, if these subdivisions are being done at the County (creating substandard lots) without our approval. Are we still bound to honor that? Can we say they cannot move forward and say this was an illegal Subdivision, the county filed it illegally?

Town Attorney Jones says do have a leg to stand on.

There is more discussion about the recording process at the County level.

Town Attorney Jones comments that this subdivision issue has been a problem from the very beginning and that the Board really wanted it cleared up. The real issue is that if we are taken to court over this issue, are we going to win or lose? His opinion is that the subdivision law says that 2 lot subdivisions are exempt. He thinks that a judge would support that. Mr. Chatfield's opinion is that the SALE is what is critical here. We can make many different arguments about the issues that have faced this project from square one. We can still tell them they need to clean this up. There are other avenues to explore, was the paperwork filed properly? Was it filled out correctly? Was there fraud? Was there over reaching? Probably not, but she did not have an attorney; they did, but she did not know what she was doing. Could we set aside the deed? Why we would want to go through the expense? They haven't been able to get the property separately taxed because we have told them that we are not accepting this at this point as a subdivision so they are still stuck with one tax parcel between the two of them at this point.

Chairman Griff asks if we do move forward we still have the one nonconforming lot, how do we rectify that? The only way he sees to do that is to go back to the sale. Attorney Jones agrees, however, is it our job to rectify her situation?

Chairman Griff replies that it is still part of the Town. How will the Town deal with that nonconforming lot in the future?

Attorney Jones states that what needs to be weighed is; what is the harm to the Town if she has a smaller lot, versus what do we have to gain by setting aside the whole thing.

Board member Hughes states that there are other nonconforming lots in Poolville that are “grandfathered” in.

Deputy Clerk Robertson notifies the Board that Madison County is not the only County that is struggling with these property transfer issues. It is mentioned in the Chenango County Planning Department Meetings that they are also facing the same issue. She has discussed this with the Town Supervisor.

Jesse Magrath has experience working with different counties and he states that there are different procedures for each county.

Town Attorney Jones finds the form (RP 52-17) that is to be filled out by a Clerk at the County. (Please See Addendum #4) with special attention to numbers 4A, 4B, 4C, brought to the Boards attention.

There needs to be more education on the part of Clerks, Deputy Clerks, about what needs to be filled out and reviewed by them.

Town Attorney Jones will get the form to check about how it is filled out.

The Board will have to be ready to make a decision soon.

Town Attorney Jones asks the Board how they feel about retaining Attorney Scott Chatfield as special counsel on this project. There are a lot of other things that would need to be looked at, especially if this goes forward. That is his recommendation.

The Town Board would have to be consulted. Attorney Jones has already talked with the Town Supervisor about this possibility.

**Resolution 2016-56: Make request of the Town Board to ask for special counsel from Attorney Scott Chatfield regarding the Poolville Country Store and Penny Strong-Collins Subdivision matter.**

Motion: Elaine Hughes

Second: Bettyann Miller

Vote: Aye: 4 Nay: 0

ADOPTED

Clerk Reymers asks what information should be passed on to the Poolville Country Store considering they call weekly for updates. The letter was addressed to the Board and therefore they will not be sent a copy. The outcome of the meeting is that the Planning Board is going to ask the Town Board to retain Special Counsel.

The next meeting will be held on December 13<sup>th</sup> 2016 with location to be determined, possibly the Hamilton Public Library.

**Resolution 2016-57: Adjourn meeting**

Motion: Bill Nolan

Second: Bettyann Miller

Vote: Aye: 4 Nay: 0

ADOPTED

Chairman Griff remembers an issue he wanted to bring up about getting an alternate Board Member for absences or recusals.

**Resolution 2016-58: Reopen meeting to discuss procedure and possibility of alternate Board Member(s)**

Motion: Bill Nolan

Second: Bettyann Miller

Vote: Aye: 4 Nay: 0

ADOPTED

Town Attorney Jones reads from New York State Town Law:

**Section 271** - A Town Board may by Local law or ordinance, or as part of the local law or ordinance creating the Planning Board establish alternate planning board member positions for purposes as substituting for a member in the event as such member is unable to participate because of a conflict of interest. Alternate members of the Planning Board should be appointed by a resolution of the Town Board with terms to be established by the Board.

That says that there is a limited provision only for conflict of interest, but he believes that under the Municipal Home Rule Law we can go even further than that. He checks Hamilton Zoning Law for an already established law. This needs to be investigated further. Chairman will talk with the Town Supervisor and Clerk Reymers will investigate further.

**Resolution 2016-59: Adjourn meeting**

Motion: Bettyann Miller

Second: Elaine Hughes

Vote: Aye: 4 Nay: 0

ADOPTED

Next meeting scheduled for December 13, 2016 at 7:00 pm at the Hamilton Public Library.

Respectfully submitted by  
Elisa E. Robertson  
Deputy Clerk