

**Town Of Hamilton Planning Board Meeting  
Tuesday, September 6, 2016 at 7:00 pm  
Held at Town Office, 16 Broad Street, Hamilton, NY**

**Board Members Present:** Darrell Griff- Chairperson, Bill Nolan, Bettyann Miller, Elaine Hughes. Mary Galvez is absent. Also in Attendance: Deputy Clerk- Elisa Robertson, Codes Enforcement Officer Don Forth, Town Attorney Steve Jones

Others Present: Brian Chapin, Roger Foster, Charles Wilburn, Jesse McGrath

Chairman Darrell Griff calls the meeting to order at 7:04 pm.

**RESOLUTION 2016-35: To approve minutes from Planning Board Meeting August 2, 2016.**

Motion: Elaine Hughes

Second: Bettyann Miller

Vote: Aye – 4          Nay – 0

ADOPTED

**Camp Fiver, 7464 Mill Street, Poolville, NY; Tax Map # 199.-1-31, Special Use Permit review- Pending**

Deputy Clerk Robertson asks that the board consider tabling this until after the Town Office moves at the end of September. The Town has been able to arrange a move date more quickly than anticipated. The new location for meetings will be the Town/Village of Hamilton Courthouse.

**RESOLUTION 2016-36: To table the review of Camp Fivers Special use Permit until the October 4, 2016 Planning Board Meeting.**

Motion: Bill Nolan

Second: Elaine Hughes

Vote: Aye – 4          Nay – 0

ADOPTED

**Brian Chapin: Thomas and Jane Furner, 7336 Chappel Road; Hamilton, NY: Tax Map # 170.00-1-7&10, Application for Subdivision**

Mr. Chapin states that nothing has changed since the pre-application conference. The application is to separate 4.6 acres out, with the existing house. The Board consults the map and plot plan. The application is complete except for payment. The Board consults part 2 for the SEQRA form and addresses each of the criteria. The Board answers each of the questions.

**RESOLUTION 2016-37: Town of Hamilton Planning Board is the lead agency on this project, has conducted the SEQRA review, directing the Chairman to sign Part 2 of the SEQRA review:**

Motion: Bettyann Miller

Second: Bill Nolan

Vote: Aye – 4            Nay – 0

ADOPTED

Chairman Griff signs Part 2 of the SEQRA form.

Town Attorney Steve Jones has some questions about the dates on the forms that were provided. Neither, the Agricultural Data Statement or the Application for Subdivision have signatures that are properly dated. The tax map has been submitted. Mr. Chapin is the agent for the Furners, he will add the dates and initial them. There is discussion about the agricultural data sheet and the parameters thereof. There are not any neighbors to notify.

**RESOLUTION 2016-38: Town of Hamilton Planning Board approves the subdivision for Thomas and Jane Furner, 7336 Chappel Road; Hamilton, NY: Tax Map # 170.00-1-7&10**

Motion: Bettyann Miller

Second: Bill Nolan

Vote: Aye – 4            Nay – 0

ADOPTED

CEO Forth consults with Town Attorney Steve Jones about whether or not the Board should put it in the official record when a subdivision is declared major or minor. His concern is to make it very clear on the record what the Board's determination is without any ambiguity. Mr. Jones agrees that this is a good idea. Chairman Griff and the Board agree to add the determination as a matter of record.

As a matter of record, the Furner subdivision is a minor subdivision.

**Jesse McGrath: Mary Jane Miner, Earlville Road, Earlville, NY; Tax Map # 199.12-1-19, Subdivision Pre-application review.**

This item was added after the board was sent the agenda via e-mail.

Mr. McGrath presents that he has met with CEO Forth to discuss this subdivision, what he is calling, a lot realignment. The plan is to make the current lots more conforming. There are a few outstanding questions:

1. Is this a minor or major subdivision? The number of lots will remain the same; no additional lots will be created.

Mary Jane Minor owns lot 19. She would like to take pieces out of lot 19 and merge them with lots 28, 27, 25, and 20 to make them larger. The purpose for doing this is to make the .5 acre lots more conforming to the current Subdivision Law. She is concerned about the size of these lots and would like to make it so that if there is a failing septic system, you can legally fit a new septic system and a well on to these lots. Town Attorney Steve Jones asks if all the neighbors have agreed to buy the land. Mr. McGrath states that Ms. Miner has spoken with all of the

parties involved, and they would all like to pursue this. She will be giving each property enough to make them conforming and not much more. The lots still have conforming road frontage. Mary Jane Miner owns lot 27 and lot 19.

Chairman Griff reads the following definitions from the Town of Hamilton Subdivision Regulations:

Subdivision, Minor	A subdivision containing three (3) or four (4) lots fronting on an existing road.
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Town Attorney Steve Jones reminds Chairman Griff of the recent amendment to the Town Subdivision Regulations that include 2 lots as a minor subdivision as well. It is just a reminder for the board. Though it would be five pieces of property they are not changing any road frontage and are just increasing the size of already existing lots. Attorney Jones refers to Subdivision Regulation Section 320:

### **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.

Chairman Griff asks that the Board turn to Section 330 Sketch Plan Conference, page 8 of the Subdivision Regulations.

### **Section 330 Sketch Plan Conference**

The subdivider should request an appointment with the Planning Board for the purpose of reviewing the sketch plan. The Planning Board Clerk will notify the subdivider of the time, date, and the place that the Planning Board will meet to consider and review such sketch plan and the subdivider's intentions as they relate to the General Plan for the Town of Hamilton, design standards, and improvement requirements. This meeting is intended to assist the subdivider in the planning and preparation of the preliminary or final plat to save both time and money in preparing maps and plans.

This step does not require formal application, fee, or filing with the Planning Board.

### 330.1 Subdivision Classification

The plan will be classified as a minor or major subdivision by the Planning Board as defined by these regulations. Subdivisions classified as minor may proceed directly to preparation of a final plat without submission and approval of a preliminary plat which shall be required for a major subdivision.

The Planning Board does make the decision regarding minor or major status of a subdivision. The board needs the SEQRA before the process can go on. Mr. McGrath has two questions that he cannot answer on the form. One is regarding codes and the other regarding the comprehensive plan. The Town does have a comprehensive plan; it is in revision right now but has not yet been changed. The land use is not being changed.

Chairman Griff asks if there is to be a lot line change between lots 27 and 28 at this time as well? Along the side? The building on lot 27 is right in the property line, she wanted to gain some footage off of lot 28?

Mr. McGrath states that is correct.

The hope was that it could be done at the same time. That will change the road frontage but it will still be conforming. It will be a change of 16-17 feet and will meet setbacks. Twenty feet is the set back from the sides and rear.

Chairman Griff asks the rest of the Board if they feel comfortable calling this the Sketch Plan Conference? According to procedure, the Board must have the SEQRA form completed, and the preliminary meeting before this can be a Sketch Plan Conference, those criteria have been met. This is the second time that this has come before them. The rest of the Board is in agreement that they can make a determination on the type of subdivision on this application tonight.

There is some concern that these pieces would be land locked until the other property owners bought them and merged them. Mr. McGrath contends that they are not; because the lot doesn't actually exist until it has been recorded at the Clerk's Office. And once it has been recorded in the Clerk's Office it will be owned by these people. He thinks that it would not be land locked.

Chairman Griff States that they do have separate parcel numbers until they merged it. So it would be landlocked in the eyes of the law.

Mr. McGrath states that it would be landlocked here, in the Town, but at the Clerk's Office where all of the recording is happening...

Town Attorney says that he disagrees with Mr. McGrath. Chairman Griff agrees with Attorney Jones. It would be a separate parcel number.

Mr. McGrath: But the parcel isn't created until the deed is recorded

Attorney Jones states that it should be a condition of the subdivision that they merge those pieces with the other lots.

Mr. McGrath asks: If that is a condition will it ever be landlocked?

Board: No, it would not be land locked.

Mr. McGrath: Ok, I'll put it on the map that these need to be merged.

Attorney Jones states that there would be nothing stopping someone from selling one of those parcels off.

The parcels themselves would be non conforming lots.

Chairman Griff: It will have to be one of the conditions of the subdivision that each of the four parcels deeds would be merged.

CEO Forth: What if a party backs out? Would it stop the whole thing from going through?

Chairman Griff: No, just on that one parcel.

Attorney Jones: This will be noted on the map that they will be merged, that will be a condition of the subdivision.

CEO Forth: Do you want to mention the lot line change?

After some discussion about the lot line change between Parcels 27 and 28 (owners are related) and whether a separate application needs to be made, the conclusion is that it can be made at the same time.

The Board discusses whether this is a major or minor subdivision. No adverse change to the parcel that the lots are coming out of it. Addition of acreage to make lots conforming, it adds road frontage on two lots and it helps make it conforming. This is all being done cooperatively with the neighbors. The Board agrees to keep the process simple.

The completed EAF (SEQRA) short form has been received.

**Resolution 2016-39: The Miner Subdivision is determined to be a Minor Subdivision, Earlville Road, Earlville, NY; Tax Map # 199.12-1-19,**

Motion: Elaine Hughes

Second: Bill Nolan

Vote: Aye – 4      Nay – 0

ADOPTED

Parts 2 and 3 of the EAF (SEQRA) form will be filled out as well as any conditions will be added after a formal application is received.

**2-6 East Main Partnership, Roger Foster and Charles Wilburn; 1245 Earlville Road, Poolville, NY; Tax Map # 199.12-1-12, Special Use Permit**

Deputy Clerk Robertson reports on the Sound Study. It is only partially completed at this time. They still need to take readings from several other properties. Some of the data has been compiled but not enough to really analyze in a meaningful way. It is still in process.

We have all the information on the traffic study.

Chairman Griff asks everyone if they have had a chance to read the Madison County Planning Departments review.

There has been no word back on other outside advice about the subdivision.

The Board needs to make a determination about the SPEDES-SWPPP- Storm water prevention plan. The board had previously determined that it was not necessary. However, many concerns were brought up by citizens during both a public hearings for the Planning Board and the Zoning Board of Appeals concerning water usage.

Chairman Griff refers to Madison County Planning Department's response to our letter of August 3 regarding multiple concerns regarding this project. Specifically, number 2 is in direct response to this issue of Storm water run-off. Chairman Griff reads directly from the County's review. Please see ADDENDUM #1.

Chairman Griff suggests that the Board do their due diligence and revisit the SPEDES permit.

Mr. Charles Wilburn states that they have a letter stating that this is an existing parking lot, it is not being constructed.

After a few questions it is determined that the letter of which he speaks is the Notice of Action Letter that was sent to them dated July 21, 2016 by the Zoning Board of Appeals. Please see addendum #2.

Chairman Griff states that it does not matter if it is "existing" or not, that they are going to have to do some work there, such as putting in lights.

Mr. Wilburn contends that technically the property is owned by Travis Dubois, it is not owned by them, so it is not really part of their project.

Deputy Clerk Robertson prints out copies of the Notice of Action for the Board.

CEO Forth would like to point out what is in quotations in number 2 of the County Report. The DEC is a higher authority.

Town Attorney Jones refers to the fact that the County has said that this is part of a larger plan.

Mr. Wilburn counters that the County didn't get the letter from the ZBA saying that this is an existing parking lot.

Deputy Clerk Robertson clarifies that the County DID receive a copy of that letter.

Chairman Griff Points out that the ZBA said that it was used as a parking lot in the past and that it would not change the character of the neighborhood. It did not make the determination that it was a parking lot.

Chairman Griff states that we are not making a determination whether it is an existing parking lot or a new parking lot, but we are talking about a SPEDES permit, we are talking about land disturbance. If there is going to be work at the sight, whether it be grading or putting in underground wiring to put in the lights. That will be land disturbance, so it has to be included in the square footage for the SPEDES permit.

The board needs to determine that they want a SPEDES permit or whether the land disturbance is less than one acre.

The square footage was very close on the original sight.

A determination needs to be made of exactly how much land is going to be disturbed.

CEO Forth inquires what the Planning Board will require of the parking area, if it will need lighting and landscaping, etc. It is up to the board what they want, or they could require nothing at all. He also points out that we have no site plan for a parking area at this time so it is difficult to determine how much land will be disturbed.

Attorney Jones asked if we have a sketch.

Mr. Wilburn states that they are not putting any more money into this until the lot issue is resolved. He and Mr. Foster state that they thought that was what this meeting was supposed to be about.

Attorney Jones states that we got an answer from the County and that they do not think that the lots can be merged.

Chairman Griff reads from the County's response to the Planning Boards letter of August 3<sup>rd</sup>. Please see addendum #1.

The partners express displeasure with the County's response and ask why this was not addressed earlier in the process. Attorney Jones and Chairman Griff state that they did explain that the subdivision may be a problem from the beginning.

The partners ask why they needed a site plan for a project that was never going to happen? If they merge their lots then their property is conforming. She is not conforming. Now they are aware that there are other non-conforming lots in town.

It is explained that those lots existed before the current Zoning Law was put into effect. The Board has reached out for outside council, but have not heard back yet. The letter from the county was received by the Town Office the day of the meeting (September 6, 2016).

Mr. Wilburn states that they will jump through any hoop that the Board throws at them if they can put those lots together. If that is not going to happen then they might as well not come back into this office. They are 70,000 dollars into this project.

Chairman Griff states that the Board cannot legally make that determination. About the merge, can we?

The partners say that her house is going to be sitting in limbo anyway, they own the property no matter what.

Chairman Griff: This board has exhausted every avenue that they can think of to make a determination on this. The ZBA's not approving the variance for Penny Strong-Collins shows how they feel about it.

Mr. Wilburn: But at the same meeting they approved the off street parking. Now we have an 80 foot parcel that is land locked, with the loss of potential revenue makes it the most expensive piece of property in the whole hamlet.

It is explained that the parking was a separate issue.

Board member Nolan asks Town Attorney Jones what the term "nonconformance can not accurately be claimed", mean?

Attorney Jones: I believe she used the wrong term, what they meant to say is that it is a nonconforming use because she deeded this property away after the Zoning Law was already in effect.

CEO Forth: We had the same question and we called Scott (Ingmire) about that to clarify.

Ms. Strong – Collins cannot claim that it is grandfathered because she deeded it away after it was determined what the minimum lot sizes were.

This has been a very frustrating process for everyone.

Chairman Griff: we would like to give you an answer but we need to have legal standing to be able to do that or we open the Town up to liability.

Attorney Jones: Now we have the county weighing in against it.

Chairman Griff : And that is actually, a couple of times they have weighed in that way.

Attorney Jones: Yes, but the last time was before we knew that Penny (Strong-Collins) could not get a variance.

Chairman Griff: The land has been a problem from the very beginning and has been hand tying the Board. We have moved forward with other things, while we try sort through the subdivision, but we keep coming to a dead end.

This situation is entirely unique as far as anyone we have consulted.

The Town Supervisor Eve Ann Shwartz has asked Town Attorney Jones to contact a lawyer who specializes in Zoning Law regarding this matter. He is busy but willing to take a look at it. This is not something that can be addressed in a letter. He needs all the materials including our Subdivision and Zoning Laws, Site plans, GML reports and so on and at considerable expense. Ultimately, they are not bound by that attorney's opinion but it does offer more information for the Board to make a decision. Some discussion takes place about the consequences if the Board would allow this project to just move forward.

Both the applicant's attorney and the Town's attorney have been in contact.

Ms. Strong-Collins was notified by mail about everything that has transpired until this point, both a certified letter and a first class letter were sent. It seems she is comfortable staying there. The Partners asked if she would sell the rest of her property and she said for 150,000 dollars. Mr. Foster states that that house can sit there and rot. Mr. Wilburn asks what their legal standing is if the Town denies them the usage of their property.

Attorney Jones replies that they would have to ask their own counsel.

CEO Forth states that the County is saying that because her variance was denied that it prevents the partners from merging the properties, for the record, we haven't denied it. We are trying to find a way to get it granted.

Audience Member Neill Joy believes that the more information the Board has the better.

The Planning Board has to follow the Zoning Law and the Subdivision Regulations, listen to the public, and protect the Town.

Chairman Griff: We have certainly done our due diligence. We have gotten all the information together we could and spent a great deal of time to doing it. We have moved forward, kind of piecemeal with some of it, helped you guys get some information decide what you need to do or what you want to do down there. I think that you would agree that some of that has changed drastically from what your initial project was. I don't feel that that, at least that part of it, would be considered wasted time but we keep coming back to this land use that is hamstringing us. Believe me we all feel your frustration maybe from a different perspective, but we certainly do. I just don't know where to go anymore.

Town Attorney Jones says he will contact the other attorney. This is the last avenue the Board feel that they have. They have exhausted everything else they can think of.

It is suggested by Chairman Griff that they contact *Towns and Topics magazine*. They can be another resource. Attorney Jones has been waiting on a decision from them on another matter for quite some time. He can inquire with them as well.

Board member Elaine Hughes feels that the board needs some other opinions.

It is important that the Board have a strong legal standing to make a decision and that they are comfortable with it, to make that determination.

The Board determined last month to seek more legal advice but needed to get approval for the funding. This subdivision issue needs to be settled before anything further can be done, there is no definite time frame, it will be out of their hands.

Attorney Jones will also reach out to the Association of Towns for their opinion as well.



The Boards decision on SPEDES will be tabled until a decision is made on the subdivision. We will address it if this can go forward, along with a list of other things that need to be addressed. Mr. Foster says that they are back at square one. They were supposed to get an answer tonight. He asks when the subdivision law went into effect.

Town Attorney Jones states that it went into effect 1988 and the Zoning Law went into effect in 1975.

Mr. Foster asks how they could buy a piece of property without knowing.

Board member Hughes says that he may want to talk to his attorney about that.

The next meeting will be on October 4, 2016 at the Hamilton Court House.

No other business to come before the Board.

**Resolution # 2016-40- Adjourn Meeting**

Motion: Elaine Hughes

Second: Bettyann Miller

Vote: Aye – 4            Nay – 0

ADOPTED

Respectfully submitted by  
Deputy Clerk  
Elisa E. Robertson