

**PLANNING BOARD
TOWN OF ANCRAM
APRIL 3, 2008**

Present:

Jamie Purinton, Chair
Terry Boyles
Donald MacLean
James Stickle
Colleen Lutz
Barbara Docktor
Madeleine Israel
Dennis Sigler

Also Present:

James MacArthur, Highway Superintendent
Mark Graminski, Engr., Westfall LLC
Brian Billings, Westfall LLC
Scott Weaver, Westfall LLC
Mr. & Mrs. Nickerson, Westfall Road Residents
Nancy Rudder, Westfall Road Resident

The meeting was called to order by Jamie Purinton at 7:30 p.m.

A motion was made by Ms. Lutz to accept the minutes of the previous meeting on March 6, 2008. Mr. Boyles seconded the motion, and the minutes were approved.

Old Business

Segalot

Minor Subdivision

219-00-01-47

The Chair gave a brief update on the Segalot subdivision, stating that the application was duly filed and that the board had received notice to that effect. The question arose of how to reply to Mr. Abrams' recent letter inquiring about any change in the status of the conditional final approval for road construction, as the board is still waiting for the building permit and stamped final declarations. Mr. MacLean suggested the board respond by mail stating that the current status is still one of conditional final approval. Mr. MacLean further suggested that the board check to determine whether there are any existing regulations governing subdivisions that address the length of time a condition of final approval may stay open without certain conditions being met.

AGENDA

Westfall Road LLC

Sketch Plan Major Subdivision

196.00-01-59

In March, this item was presented by Brian Billings of Westfall Road LLC for public information. The Chair stated that the main issue of today's meeting is that until the board decides how the road will be handled, the development is at a standstill. She remarked that the board needs to decipher the correct process to utilize in order to come to a determination about the road, particularly who finances whatever must be done to secure it for the proposed development. She reminded the board that the town may face certain liability, particularly if pre-existing liability is a factor, if the road is found to currently pose problems for appropriate emergency vehicle access.

The Chair further stated that it would be a huge undertaking for the town of Ancram to assume the burden of improving the road condition, and that, as of yet, as no position has

been finalized, the board should determine the intended process together. The Chair asked Mr. MacArthur, Highway Superintendent, to give his position on the nature and extent of existing limitations regarding the road issue.

Mr. MacArthur stated unequivocally that Westfall Road is not what one would call a “good” road, and clarified that, as Highway Superintendent, he has no plan or intent to earmark funds to improve the road. Ultimately, he said, if the road needs improvement for the proposed subdivision, it would entirely be up to the town to bear the burden as far as he is concerned.

Mark Graminski, a project engineer working with Westfall LLC, asked if Mr. MacArthur thought there was a section of the road that is worse than others. Mr. MacArthur answered that the front sections, closer to Route 7, seem to be better than rear sections that fall mostly within Taghkanic town lines.

Mrs. Nickerson of Westfall Road offered that she could not even get out of the road in her Subaru, as the ruts in the road were so deep. She added that there are a lot of places at which cars cannot pass one another.

Nancy Rudder, another Westfall Road resident, offered that school buses and mail delivery vehicles will not traverse the road. She added that in her assessment, those living on the road love the environment they live in, and that while she is well aware that development is important to the economy, it is agriculture and not other kinds of development that should remain most important. Ms. Rudder underscored that there are serious safety issues on the road. Ms. Rudder further suggested a referendum to determine whether the developers or the town of Ancram should put up a bond for financing the improvements.

Mr. Nickerson stated that his oil delivery truck will not deliver oil to his home if the weather is bad, and his house is right in the front section of the road.

The Chair then said that the attorney for the town and the board had said at the last meeting that subdivisions can be denied due to issues like road deterioration, but that he then shifted this position somewhat, stating that where there is a pre-existing condition, grounds for denial on such basis may not apply.

Brian Billings said there was no legal precedence as far as Westfall LLC understands. The Chair said she would ask the attorney again, because he had said there was case law that was relevant to this situation.

Ms. Rudder said the planning board is within its rights to ask for a bond from the developer to ensure the refurbishment of the road if an abnormal amount of usage is anticipated. She claimed that this is a standard procedure in incidents where excessive logging is to take place. The Chair agreed that this solution may make sense. Mr. MacArthur added that if major improvements were to be done to Westfall Road, the Town does not in fact own any of the road, so according to New York State highway law,

his department could only maintain what is being maintained currently, and the board would have to get the property owners to approve any new actions to the road.

The Chair stated that the board could have the town engineer evaluate Westfall Road to see exactly what it needs, but that the board needs money in escrow from the developer to fund the town engineer's time. Mr. Graminski asked if it is up to the engineers to incur the costs of that, or if Ancram was going to incur some of them. The Chair replied that she believed the town may consider incurring some of the costs. This would be up to the Town Board.

Mr. Graminski said he discussed with Westfall LLC the possibility of combining certain land with Schnaper's portion so that there would be four lots, for the purpose of reclassifying it as a minor rather than a major subdivision. The Chair replied that the board has the ability to decide if the proposal is for a major or minor subdivision depending on its impact. Mr. Graminski said it was his understanding that if there are only four lots, the subdivision would indeed be considered a minor one.

Mr. Sigler said that regardless of classification of a major or minor subdivision, if there are existing concerns about the road or the development, the board will still treat those concerns as they need to be addressed.

Mr. Graminski asked if the subdivision is deemed a minor one, whether such classification would then affect the way the board reviews the project, or the process that is involved. He then showed on the map, and explained, what he would propose in order to make the subdivision area four lots, involving only one bridge.

Mr. MacLean said that technically there could be a change in how the subdivision is termed, but the road condition is the same regardless of classification, and that if the town believes the planning board cannot approve the subdivision application due to the lack of emergency access to Westfall Road, then the classification as major or minor would not matter.

Mr. Graminski pointed out that as four lots, the anticipated impact would only be from County Route 7 to the bridge closest to Route 7, rather than two bridges.

Mr. Nickerson added that the board should still have to consider the number of cars going in and out of the road.

The Chair stated it was only fair to be deciding on what is on the table right now, or what has been submitted and presented.

The Chair asked to hear from the board, encouraging members to articulate all individual questions.

Mr. Boyles asked if perhaps the board should set a time stipulation on individual home sites within the proposed development, which may help some of the road considerations.

Scott Weaver, who also works with the Westfall LLC, said the LLC does not want to change the rural, picturesque quality of the road, or the inherent character of the road, and that the LLC can schedule along with the Town to complete some houses, then others, planning a timetable out for least impact to the road and its use.

Mr. MacLean said he believed a bond for damage incurred to the road during construction, and other issues, do not address the fact that once construction is finished there are still four new homes on a road to which there is limited or no access at various times. He asked about the extent of the board's liability in making a decision regarding this application and the treatment of the road. He stated that even if the board plans and schedules while mindful of these issues, it doesn't affect the final outcome of the road being, at times, inaccessible – and now to more people there than before. He said the board's choice of action depends upon the town attorney Mr. Shaw's opinion. He suggested the board obtain in writing a legal opinion of the status of the road in regard to current residents and current town liability.

The Chair stated that Mr. Shaw said he sent a letter to Tom Dias and that the board would have to get a copy of that letter.

The Chair said the board would also send Mr. Shaw a copy of this meeting's minutes. Mr. MacLean added that Mr. Shaw would note from the minutes that in this meeting the board heard that no fuel trucks, mail delivery vehicles, emergency access vehicles, or school buses would brave the road during difficult weather. He said Mr. Shaw could also let the board know what its liability would be if it were to approve a subdivision -- for instance, if the board were to mitigate problems involved in the construction process, and also what the board's liability would be if it were to approve the subdivision and offers a plan to deal with basic issues for the few additional residents of the road, yet it doesn't nail down the matter to whether the town either disapproves the application or provides for the fixing of the road. Mr. MacLean said Mr. Shaw should address the question of whether there is some median area where the board could act but not incur lawsuits later on.

The Chair said the board would ask for the town engineer's assessment of just how safe or unsafe Westfall Road is, and it will then be easier to determine who is going to pay for improvements to the road.

Mr. MacLean said that would be for the supervisor and attorney to work out – and posed the question of who would pay, at this point, for an engineer's review.

The Chair suggested that perhaps both parties would pay a portion and asked if that would be a town board decision to make.

Mr. MacLean said that at a minimum, the board would need clear word from Mr. Shaw regarding whether the board should be asking the applicant to pay for that service at this

point, and that normally the applicant would be putting money in escrow to have the board's evaluation of what is created and how it's dealt with.

Mr. Nickerson asked if the telephone poles were part of the road plan and the development plan, and learned that they are. Mr. Billings (or Mr. Graminski) said the utilities have not been contacted yet. Mr. Stickle said that if there are telephone poles on that property they have right of way already, and if not, then they have to get right of way. The Chair asked if utilities affect the road. Mr. Stickle said that remains undetermined until the utilities decide how to proceed.

Mrs. Rudder asked if there were there any proposed improved septic system sites in the application. Mr. Graminski said that the proposed locations are shown on the map, and that the issue is being considered.

Mr. MacLean said that whether the proposal is considered as a major or a minor subdivision, the board still has to show whether lots are buildable.

Ms. Israel agreed the board did not have enough legal information to proceed, and is at an impasse without further information from the attorney. She asked whether there were any implications for the town of Taghkanic due to its residents not being able to get out of the road other than through the Ancram outlet, and whether or not that might dictate that Taghkanic share the burden of improvement.

Mr. MacLean asked Mr. MacArthur how much of Westfall Road actually is in the town of Taghkanic. Mr. MacArthur replied that Taghkanic has about a half a mile, while Ancram has a mile.

Mr. Stickle asked the Westfall LLC representatives if they could confirm that they hadn't sold any portions yet, and thus would not be building right away. Mr. Billings confirmed that the LLC had no plans as of yet to apply for a building permit.

Mr. Graminski referred to his earlier question regarding modification in the application – a proposed alteration to create four lots, and then by lot definition, the proposed subdivision would be considered a minor subdivision. He asked if that change was made, how it would affect the review process with the board.

The Chair said the complexity of the road is still there, even if less of the road is affected. She posed the question to the board of whether the board should determine if the subdivision would be considered major or minor at this meeting.

Mr. MacLean said the applicant would have to resubmit a new application and at that time the board would determine whether it was a major or minor subdivision.

Mr. Graminski said he had hoped for open discussion with the board – although not to delay the purpose of this meeting.

The Chair offered that four lots would still be major because of the existing road issues.

Mr. Graminski asked if there is a section of the code that states that regardless of the number of lots, the board can determine what category to classify it in.

Ms. Lutz said there is, and that the board has been through this question previously. She read the relevant section aloud.

Mr. MacLean said the board would have to come to a decision, that if the developer would like to resubmit this application as a minor subdivision, the board would have to meet at another time to determine whether the proposal meets some or all of the requirements of a minor subdivision. Mr. Graminski stated that he was just trying to gather information for the applicants.

Ms. Docktor asked how far along Westfall Road from Route 7 the LLC was referring to. Mr. Graminski replied probably about three quarters of a mile inward from Route 7.

Mr. MacLean then asked, on the scale of the map, what the distance between the two entrances would be. Mr. Graminski replied that it would be 1700 feet. Mr. MacLean then asked the LLC representatives if they were basically reducing the impact on Westfall Road by 1700 feet, but that as the project would still be three quarters of a mile inward from Route 7, in his opinion, the proposal is still a major consideration.

The Chair then said that the board would have to submit to the town of Taghkanic. Mr. Graminski agreed the board and the developer would have to contact the town of Taghkanic. The Chair said she would go to their meeting, which would be the appropriate thing to do at any rate due to the road issues.

Mrs. Nickerson asked if the board should take the future of the other side of the road into consideration in all its deliberation. The Chair asked if there are plans to develop there. Mr. MacLean said it didn't matter, as there's nothing in the zoning preventing this application from being three acre lots. Mrs. Nickerson asked if the board should consider it for the future. Mr. MacLean said the board should and that if the town is examining the issue of its own liability for current items, the board would have to look at the potential for any amount of subdivision -- not to go too far, but to understand and take into account what may occur down the line.

Mr. Graminski said that in order to proceed in the review process by this board it would appear the LLC would have to make application for preliminary subdivision, and if they were to do that with this plan, they would revise what was sent in. He added that it appears, in order for review to continue by this board, the LLC would have to submit escrow fees.

The Chair said everyone on board thought that what they saw before was reasonable. Mr. Billings said the LLC would need to know who pays for what.

The Chair said the board needs engineer fees and Mr. Billings said he would get that to the board.

Mr. Sickle asked if the board could clarify first what the town's responsibility is. The Chair said the board would, and that if the developers are coming to Ancram, they should undertake some burden.

Mr. Graminski then said the application, when made, would ferret out some of the comments from the town engineer – to begin the process and then address those items moving forward – and that he would actually submit plans prior to the next meeting for preliminary examination so that review prior to the meeting could occur. The Chair voiced her approval of this.

Mr. Graminski asked that Westfall LLC Subdivision be placed on the next meeting's agenda.

Walk In Item

Roche Lane Subdivision Inquiry

A Walk-In subdivision proposal was brought to the board by Robert Matthews of Roche Lane.

Mr. Matthews owns 94.2 acres of land and an on-site paintball facility. He explained that he had asked a long time ago if he could subdivide in three places and was told the town road ended by Mr. Baxter's house, and you're only allowed five subdivisions. He said Mr. MacLean at the time asked him if he owned it, and he thought he did, but it was a deeded right of way by 50 feet.

Mr. MacLean said you couldn't use a 50-foot right of way to subdivide five parcels, according to open area development law.

Mr. Matthews stated that he is currently proposing a specific subdivision, noting along the way on the map what he was referring to. Mr. MacLean asked some particular questions about retaining a smaller parcel in one place on the map, and a larger parcel in another, and the relation of the access with the 50 foot right of way.

Mr. Matthews responded affirmatively, and said the reason he has come to the meeting is that the town supervisor has suggested he subdivide and let the town buy his private road to make it a town road, and that once that happens, Mr. Matthews should be able to complete his subdivision. He said he had to be able to come to the board and say how he would do this, and that he would like the option of moving his paintball facility to a certain spot on his new subdivision.

Mr. MacLean said it seemed simple – a huge parcel with a 50-foot right of way currently existing, which doesn't really change anything (pointing to sites on the map).

Mr. Matthews then pointed out the road that would go to the town, and said the road would be sold as a separate parcel with a lot line adjustment to be completed.

Mr. MacArthur clarified that Mr. Matthews was asking if he could subdivide so the town could buy the road. Mr. MacLean said it would be a minor subdivision, with two lots.

Mr. Stickle said the neighbors on that road are concerned about increased traffic down that road. The Chair said they could attend the town meeting.

Mr. Stickle told Mr. Matthews he would have to see Mr. Florio about his proposed new site for his paintball business.

Last Remarks

The Chair said that regarding the Bryant Mine referral, the board has to issue its own remarks on the proposal and would need to submit them to the DEC.

The meeting was adjourned at 9:22 PM on the motion of Ms. Docktor, seconded by Ms. Israel.

Suzanne Bressler