

TOWN OF CONCORD PLANNING BOARD
Court Room

May 1, 2018
7:00 p.m.

ITEM # 1:

The meeting was called to order by Planning Board Chairman Lawrence J. Kelly, Jr., at 7:00 p.m.

ITEM #2: Roll Call

Present:

Lawrence J. Kelly, Jr., Chairman
George Donhauser
Bruce Luno
James Jozwiak
Julie Zybert
Karl R. Lux

Also Present:

Darlene Schweikert
Clyde Drake, Supervisor
Jeff Singleton, CEO
Ken Zicarelli
Nick Gier
Rich Pecnik
Peter Sorgi
Dana Gabel

Not Present:

Joseph Edbauer

ITEM #3: Citizen Participation

Chairman Kelly asked Dana Gabel to address the Board. Ms. Gabel owns property at 12080 Springville Boston Road and currently has a kennel license with the Town. Her property is zoned R-AG. Ms. Gabel wanted to check with the Town to determine if she could board dogs at the property and also do dog groomer. In past her kennel was a private kennel. Chairman Kelly asked her if she had any employees. There are 3 now and would be no more required. Discussion about her driveway and the number of car spaces available. The driveway will hold about 10 vehicles. She feels that the most dogs she would board at one time would be 5-10. G. Donhauser asked her about hair and feces; there is already a dumpster on site for these purposes. The members had no other questions and feel that these services correspond with her kennel license. J. Jozwiak made the motion, seconded by K. Lux, to allow Dana Gabel to board dogs and perform grooming services at her 12080 Springville Boston Road property. All in favor. Carried. Ms. Gabel thanked the Board and left the meeting.

ITEM #4: Approval of Minutes

a) April 3, 2018 – J. Jozwiak made the motion, seconded by B. Luno, to approve the Minutes as presented. All in favor. Carried.

ITEM #5: Gernatt Rezoning Application – 9080 Middle Road

Rich Pecnik, Gernatt Asphalt Products, Regulatory Affairs, addressed the Board. Mr. Pecnik, Mr. Zicarelli and Mr. Gier are responsible for developing all the permit applications on behalf of Gernatt. Also here tonight is Peter Sorgi, Gernatt's attorney.

Gernatt has submitted to the Town a Rezoning Application and a Special Use Permit Application for approving a mining use in the Town. Gernatt purchased the remaining acreage from Ruth Gentner that is on the east side of the railroad tracks and the north side of Middle Road. Property boundaries were reviewed on the diagrams. The parcel is a little over 40.4 acres but within that parcel there is 17.7 acres that they would like to mine. It is limited to 17.7 because of the wetlands to the west; to the south they get into depression near Ruth's home and basically run out of deposit in that area. 17.7 acres represents the life of mine. It would involve mining below the water table same as what was approved for Gentner and Waterman; there would be an 11 acre lake when they are done with the site. An Environmental Assessment form for SEQR purposes and Agricultural Data Statement were provided. Mr. Pecnik advised that they would intend to use the driveway that Ruth Gentner has used for many years to access Middle Road. B. Luno questioned how in Town history Mayo Road was abandoned. Mr. Pecnik advised that the surveyor that did all the work for Gernatt researched that and found no legal documentation other than an easement for the use of the road. B. Luno is concerned that if in the Town that road was given back to property owners, it could cause some excitement down the road. Mr. Pecnik noted that there is a permanent easement that is written with the deed that goes with the Gentner property for use of that for access to the property. He does not believe the ownership reverts; the easement stays with the property. B. Luno noted that he has no issue with the road being used; he just wants to make sure there is no issue in the future for the Town. Attorney Sorgi showed the members the easement language in a deed from January 13, 2000 Michael Backhaus; that deed conveyed the easement together with the benefits of the easement for ingress and egress to Middle Road as conveyed by Donald & Ruth Gentner in 1984 and also pursuant to an easement in 1966. In the initial easement from 1966 contained a maintenance agreement. It was a maintenance agreement between all those who use it to maintain it. Mr. Sorgi noted that if a road was abandoned today, a Certificate of Abandonment would be filed with the Clerk's Office and then the next step would be to deed the property to the owners. Years ago that was rarely done but, as a matter of law, after six years of not being used by the public, it is abandoned. It would have been a cleaner title process if the documents would have been filed but it was rarely done back then. B. Luno still had concerns. Attorney Sorgi noted that there would not have been an easement if it was a public road so the fact that easements were filed and refiled all these years, indicates that it was abandoned.

J. Zybert about the headstone shown on the drawing. Is there a cemetery or a single headstone? Mr. Pecnik noted that it is just Ruth's husband. How close is his gravesite to the edge of the mine? Mr. Zicarelli explained that Mrs. Gentner had discussed with Gernatt moving the gravesite and will work with Mrs. Gentner or her family to move it in future if they so desire. Otherwise Gernatt will not disturb the site.

K. Lux asked how much of the purchased land would need to be rezoned and Mr. Pecnik noted that the life of mine is 17.7 acres; that includes the driveway and everything that would be affected by mining. There would be no further expansion to the west because of the wetlands and the topography and to the east is National Grid. The total acreage purchased was 40.4 acres.

The next step would be for the Board to recommend this Application to the Town Board. The Town Board would then set a Public Hearing date, neighbors/Erie County would be notified and the Notice would be published.

G. Donhauser stated that he would like to see the Cultural Resources Survey done. He would like to see that done before he would vote to proceed. He would also like to see more documentation on the easement matter; that the people residing there would not want to see Gernatt trucks on that driveway everyday all day. Mr. Ziccarelli asked what people and G. Donhauser showed the parcels on the drawing. Mr. Ziccarelli noted that they are in contact with Emmick who did not have any problem with this and are negotiating with them. The Public Hearing would allow for neighbors to discuss this matter. G. Donhauser does not feel that Gernatt has any right to that road; he wants to see the history; the Application only gives measurements. Mr. Pecnik noted that it varies from 40' at the entrance and at spots it could be 25'. G. Donhauser believes that if it is not an easement of record, then the easement will need to be 50' wide. Attorney Sorgi stated that it is an easement of record; the deed makes an easement of record. An easement can stand alone or can it on a deed and recorded at the Clerk's Office. They reviewed the easement on the drawing provided. Planning Board Secretary Schweikert had obtained an Assessor's Map showing the parcels conveyed to Gernatt; Mr. Ziccarelli noted there was an error on the transfer with regard to the SBL numbers conveyed and their attorneys are working to correct that.

J. Zybert asked about the paperwork required for the native artifacts. Mr. Pecnik explained the Cultural Resources Survey process. The Office of Parks has the criteria for this. An archaeologist was out there yesterday looking over the site. A literature search on the history of the site and look through all the old reference books then he comes out and does an actual field survey. Depending on the condition of the property, that determines how intensive the search is. Most of the survey will be done by walkover rather than having to go dig holes. Most artifacts found around here are not pre-historic artifacts; they are cultural native artifacts that have been here since the last Ice Age; 10,000-13,000 years ago. These are generally found in the top 10-12 inches; not deeper than that. He will view the ground and take samples and do a walkover survey on a prescribed interval as directed by the Office of Parks. The Office of Parks oversees this Survey and approves/disapproves the results of the survey. These results are put together with their recommendation as to whether the project can move forward as planned or note if there are areas out there that are potentially sensitive and need to be avoided. That all goes to the Office of Parks and they make their determination on whether or not there is a level of sensitivity out there that needs to be preserved or avoided and if that happens, the Gernatt plan would need to be modified. The archeologist used does not send the report to Gernatt first; it goes directly to the Office of Parks whose integrity is without question. These same studies were done for the Dewald site and the Waterman site. There needs to be greater traces of occupation before something becomes an avoidable site. Mr. Ziccarelli noted that the Survey will be done; the DEC will mandate it.

J. Jozwiak made the motion, seconded by K. Lux, to recommend the Rezoning Application to the Town Board. Chairman Kelly; B. Luno, J. Jozwiak, J. Zybert, Karl Lux voting aye; G. Donhauser voting nay; J. Edbauer not present. Carried.

ITEM #6: Gernatt Special Use Permit Application – 9080 Middle Road

This was discussed simultaneously with the Rezoning Application; Item #6. This is not a whole lot different from the Rezoning Application. Mr. Pecnik noted that both Applications are necessary for Gernatt; they run a parallel course. The documents are basically the same.

J. Jozwiak made the motion, seconded by K. Lux, to recommend the Special Use Permit Application to the Town Board. Chairman Kelly; B. Luno, J. Jozwiak, J. Zybert, Karl Lux voting aye; G. Donhauser voting nay; J. Edbauer not present. Carried.

ITEM #7: Donna Heft-Home Occupation Application

Ms. Heft appeared before the Board at the April 3rd meeting for a Home Occupation Permit. After reviewing the minutes from that meeting, the members determined that a Home Occupation Permit would not be required. Since Ms. Heft appeared, CEO Singleton has done a home inspection and a Certificate of Occupancy was granted. J. Jozwiak made the motion, seconded by J. Zybert, to refund Ms. Heft's \$100 Home Occupation Permit fee. All in favor. Carried.

Chairman Kelly introduced the Town's new CEO to the Board. The members asked CEO Singleton some questions: his hours (his hours would remain the same as they are now); CEO Singleton may make a few form changes; he will issue violation notices and follow up with our Justice Court if need be. There was discussion as to unlicensed vehicles, setbacks, and how CEO Singleton would proceed with enforcement of violations and complaints.

ITEM #8: Storage Pods

The Board has been reviewing "storage pods" to come up with language for the Code. This does not refer to the pods that are used temporarily for storage while someone is moving or renovating; but would include storage units that are used as a "shed" on a permanent basis. CEO Singleton said he would see these units as a shed or outbuilding and that fee should apply. Additional research is needed to move forward with Code language.

ITEM #9: Business from the Members

a) G. Donhauser and B. Luno were discussing gravel pits. They recall that the Town in past wanted to regulate the number of acres utilized as mining so that a person who had over a certain amount of acres zoned mining could not add more acreage to mining without reclaiming so of the acreage first. This would keep the number of

mining acres down. J. Jozwiak felt that this did not seem feasible from a business point. Chairman Kelly stated that the DEC controls reclamation. J. Zybert asked if they recalled why, was it for rain/water run off or the beauty of the land. B. Luno replied yes.

b) Chairman Kelly advised the members that there was an interesting article "Red Flags on Wireless" in the Talk of the Towns & Topics March/April 2018 issue and recommended the Members read it.

ITEM #9: Motion of Adjourn

J. Jozwiak made the motion, seconded by J. Zybert, to adjourn the meeting at approximately 8:18 p.m. All in favor. Carried.



Darlene G. Schwelkert
Planning Board Secretary

