

**PLANNING BOARD
TOWN OF MARILLA**

Date: February 19, 2009

Present:

Nathan Barnard, Chairman
Judy Gillman
Richard Janiga
Paul Domanowski

Debbie Zimmerman
Bob Miller, Consultant
Melissa Stark, Clerk

Absent: Barbara Spanitz, Town Board and John Fronczek, CEO

Guests: Cathy Berger and Leon Berner

- I. Chairman Nathan Barnard opened the Planning Board meeting at 7:02 p.m. Chairman Nathan Barnard asked for the approval of the January minutes. **MOTION** to accept January minutes, moved by Rich Janiga, seconded by Debbie Zimmerman. All in favor – 5 ayes.
- II. Old Business
Chairman Nathan Barnard stated that he is tabling the Rohl Property until next month due to the absence of John Scheene.
- III. New Business
 - a. Chairman Nathan Barnard introduced Cathryn Berger to the Planning Board and stated that Cathryn was present to discuss a flag lot. Cathryn Berger stated that the application for a flag lot stated that a pre-application conference with the Planning Board was necessary and that is why she is here tonight. Cathryn Berger explained that she has property on Porterville Road. Chairman Nathan Barnard asked if she had a map of the property. Cathryn Berger handed the Planning Board a survey of the property. Cathryn Berger explained that there are two side lots that have been sold off the property. Chairman Nathan Barnard asked how present the survey was. Cathryn Berger thought it was from 2006. Cathryn Berger explained that her property is directly across from Winchester and that there have been two 200 foot lots sold off of her property. Debbie Zimmerman asked if the lots had 200 feet of road frontage. Cathryn Berger stated that they did. Chairman Nathan Barnard asked how long ago the lots were divided. Cathryn Berger stated one was sold November of 2006 and January of 2007. Cathryn asked if she could split the property so she could sell 10 acres with the house. Rich Janiga stated that it could not be split without a subdivision process. Cathryn Berger asked if she could split and sell the lots with a stipulation that they did not build on the lots. Chairman Nathan Barnard stated that she needed to wait 5 years from the last split to be allowed to divide more of the property. Chairman Nathan Barnard stated that a split could not be done until 2011. Rich Janiga stated that each flag lot is considered a split on the property. Judy Gillman stated that there needs to be 200 feet between each flag lot and each lot needs to be 300 x 300 feet. Cathryn Berger stated that she is able to meet those requirements. Bob Miller stated that any more than 2 splits within a five year period would be considered a subdivision according to the code. Bob Miller stated that no more splits could be made on the property until 2011.

IV. CEO Report
None.

V. Town Board Report
None.

VI. Open Presentations from the Floor

Bob Miller stated that he inquired about the Chris Collins letter and spoke with Mark Roundtree and with a person on the Amherst Planning Board who helped create the Framework, referred to in the letter, in October of 2006. Bob Miller stated that there is no legal mandate that requires this to be followed. It is guidance that the County would like to be followed. Bob Miller stated that the Framework is similar to NYS Municipal Law Section 239 Referral. The law requires a 30 day review from the County of Erie. The County can say that they agree with the proposal, say it is a town decision, or it does not agree with the proposal. If the County does not agree with the proposal, it does not mean that the proposal cannot go through; it means that there needs to be supermajority, a majority plus 1 in order for the proposal to go through. Bob Miller stated that just because the town received this letter from the County, it does not mean that the subdivision cannot go through. The Planning Board would need a supermajority vote to make the proposal go through. Chairman Nathan Barnard asked what would happen if there was not a supermajority. Bob Miller stated that it could be challenged in court. Bob Miller stated that the Planning Board is just a recommending body so the final say should come from the Town Board. Chairman Nathan Barnard asked Bob Miller to call George Gertz to explain this. Bob Miller stated that Nate Neil should be familiar with this and can relay it to George Gertz. Rich Janiga asked if since the Planning Board is just a recommending body, does the supermajority still apply or just to the Town Board. Bob Miller stated that he feels that the supermajority applies to the Town Board, but to stay consistent the supermajority vote would not be a bad thing. Bob Miller stated that the Framework applies more to the Preliminary Plat stage and not so much in the Sketch Plan phase.

Debbie Zimmer asked if the Zelasko Subdivision had gone before the Town Board. Chairman Nathan Barnard stated that he knew the proposal was before the Town Board, but he did not feel that they would be able to vote on it tonight because the Town Board was short a member. Debbie Zimmerman asked when the Planning Board would be getting their new members. Chairman Nathan Barnard and Judy Gillman stated that it could be next month.

MOTION to adjourn at 7:40 p.m. moved by Judy Gillman, seconded by Debbie Zimmerman, all in favor 5/0.

Respectfully submitted,

Melissa R. Stark

