

MINUTES OF MEETING ~ FEBRUARY 22, 2010

ATTENDANCE: Rick Bump, Eugene Dutcher, Harold Ellsworth, Paul Little, Bob Thurling, George Hilton, and Secretary, Pat Smith. Also in attendance, Zoning Administrator, Walt Tennyson. Absent were Ken Raisner and Suzanne Robbins.

CORRESPONDENCE: Copy of E-Mail from Linda Taverni/Gary VanLeuven; Zoning Administrator's Activity Report for January 2010; and Factual submission of Waterfront Access Lot for Peter & Kathryn Fitzgerald (Atateka Properties, LLC). Handed out at the meeting, correspondence with regard to the Fitzgerald proposed subdivision from Atateka Drive Homeowners Association (Eugene Albright), and Albert Muench. Also handed out was a letter from the Department of the Army, US Army Corps of Engineers with regard to the Steven Howell subdivision on the east side of the Friends Lake Road.

MINUTES: Secretary offered a correction to the Minutes of the January 25th, 2010 meeting, as follows: Page 2, line 11, " Parcel #120.11-1-10.1" be corrected to read "Parcel #120.-1-10.11." (Happy fingers!) On a motion by Mr. Bump, seconded by Mr. Dutcher, the Minutes of the January 25th meeting were accepted, as corrected. Motion carried 6/0.

PUBLIC HEARING: Having been duly advertised on February 15th, 2010, the public hearing was opened at 7:02 p.m. by Chairman Paul Little.

#SD2010-01 ~ Atateka Properties, LLC (Peter & Kathryn Fitzgerald) ~ proposed 7-lot subdivision. Applicant was represented by Attorney Melissa Lescault of McPhillips, Fitzgerald & Cullum, LLP. Lucas Dobie from Hutchins Engineering was also in attendance.

Atty. Lescault offered a six point presentation, beginning with a layout of what the parcel looks like from the tax map perspective, and then to elaborate on the purpose of the project before the board, as well as the project itself. The fourth point would be to discuss the compliance of the project with respect to the Zoning Ordinance, then detail the water access (common) lot that is defined in our code, and, lastly, to detail the easements that are currently existing on the property.

1. Existing project is made up of three tax parcels. The first lot, #120.11-1-1.3 is made up of 1.82 acres and is owned individually by the Fitzgerald's. The second parcel, #120.11-1-1.1 is made up of 5.9 acres, also a shoreline parcel, owned by Atateka Properties, LLC. On this property is a single family dwelling and a cabin. The final parcel, #120.-1-10.11 is made up of 66.18 acres, and is all vacant land, which actually continues on to another tax map parcel.

The purpose of the project is a family planning. The Fitzgerald and Malone families have owned this property for the past 150 years. Basically what they have decided to do, before any family disputes occur, is to come together to do a family planning so that they can break up this property and keep it in it's family membership, so that the current family members can continue to enjoy it, preserving it under family ownership, and family use.

3. There are seven lots proposed in this subdivision. Lot #1 is a horseshoe shaped lot on the

shoreline of Friends Lake, having a current and existing single family dwelling. Lot #2 is referred to as the Common Lot, a non-buildable shoreline lot which will remain a vacant parcel. Lots #3, #4, and #5 are located across the street, (Atateka Drive), non-shoreline, and each are proposed for the construction of a single family dwelling. Lot #6 is 61 acres, all vacant land behind parcels #3 thru #5, and will continue to remain vacant, with nothing proposed for construction on it. Lot #7 is a shoreline parcel of 2.22 acres, for which a single family dwelling is proposed. To recap, this is a seven lot subdivision, for which 2 lots will remain vacant, one has an existing single family dwelling on it, pre-1973, and 4 are proposed for new single family dwellings.

4. The project, as a whole, is in complete compliance with the Town of Chester Zoning Local Law, the APA law, it meets all of the dimensional requirements, it satisfies all engineering, and all environmental requirements of the law. Nothing is in non-compliance with respect to this project.

5. Land facts were put together for the waterfront access lot, and a factual submission was given to the board for review. Pursuant to our code, a water access lot has to meet a two prong dimensional requirement, with the first prong being the shoreline frontage. In a Moderate Intensity Land Use Zone, you need to have 100 feet of shoreline for 4 deeded access rights, and an additional 25 feet of shoreline frontage for any additional lots. According to this project, there are 171 feet of shoreline. Thus, there are automatically four rights for the first 100 feet, and an additional two (25 feet x 2 = 50 more feet) rights for a total of 6 deeded access rights, pursuant to the shoreline in relation to the first prong test. The second prong to that test is the acreage. You need one acre to have four lots, and an additional quarter acre for each additional lot. There are 1.61 acres proposed, so that gives the right to six deeded access rights to this common lot. With that being said, Atty. Lescault stated that the Fitzgerald family has absolutely no intention of granting any deeded access rights to any of these lots. It is their sole desire to keep the designated common area owned by the family. They do not want it sold, they do not want access granted to third parties, they just want it to remain in the family, as is. They do not plan to have any parking, they do not plan to alter the layout of the shoreline, they do not plan on having any structures. They simply want to continue to leave it as it has been for over the past 150 years. However, what they do want to do is reserve the right to retain those 6 deeded access rights. They do not want them extinguished. Should, in the future, someone decide that for financial purposes they need to sell a lot to grant an access, they will come back to the Planning Board, and ask the Planning Board to review this and get a modification of their subdivision application. At this time, they have no desire to grant any deeded access rights over this common lot.

6. The last point is in regard to the current easement rights over this property. According to the record Title, there are four deeded access rights over Lot # 1. The first one was granted in the early 1930's, tax parcel #120.11-1-4, which is now owned by Taverni. They have the right to cross Lot 1. The second easement across Lot 1 was granted to Broderick. Not personally to Broderick, but through their chain of title. The third access belongs to tax parcel #120.11-1-41, and the fourth to Freidlander, which is solely a "put in/take out" right. (Only the right to put in and take out a boat). They do not have any other easement rights to use this property. That is the current chain of record title for the owners who have access rights to cross applicant parcel. All of those rights were granted pre APA, and comply with our Zoning Ordinance.

Mr. Peter Fitzgerald was then introduced, and basically reiterated the desire of the family to preserve the property for the family. They just want to set it up in such a way that everybody can have their own lot, and still continue to use the property as it has always been used.

There was a question with regard to a fifty foot ROW to the large vacant parcel, and running adjacent to proposed Lot # 5. Atty. Lescault stated that it was created in order to have road frontage, and not to land lock the parcel, should there be any further subdivision of the 61+/- acre parcel in the future.

From the public, Linda Taverni questioned that no lake access rights would be granted to the proposed common lot. Atty. Lescault reassured her that that was correct, due to the Fitzgerald family's wishes to keep that common lot solely for use by the family.

James Flacke was concerned about additional traffic over the deeded ROW to the beach area on Lot #1, as his family provides a portion of that ROW across their land. He stated that the original easement had been attached to the land many years ago. Atty. Lescault explained that the current law states that a landowner cannot further overburden an easement, and therefore the 4 existing deeded rights to use that ROW are the only ones that are allowed. Applicant has agreed to have this information included on their final map.

Mary VanLeuven, former President of the Friends Lake Property Owners Association, concerned over additional lake rights due to continued subdivision. Wants something written in the deed and map that Lot #6 cannot increase their deeded lake rights in the event that they subdivide that parcel sometime into the future. Atty. Lescault agreed with Mrs. VanLeuven's concern, and has no problem, on behalf of her client, to introduce such language on the map, but reiterated that applicant still wishes to reserve six deeded lake access rights, to be used as they choose, with the added recognition that applicant will come back to the Planning Board for amendment of their subdivision application, and approval, prior to granting any of those deeded access rights.

Following these discussions, motion was made by Mr. Bump, seconded by Mr. Dutcher to close the public hearing at 7:25 p.m. Motion carried 6/0. With no further discussion, motion was then made by Mr. Bump, seconded by Mr. Dutcher, to approve application #SD2010-01 for Atateka Properties, LLC for the 7-lot subdivision, as proposed, and including the deed/map information additions, as per agreement, limiting total deeded access rights to 6, and allowing no further encumbrance of the existing easement to the lake on Lot #1 beyond the existing 4 deeded rights. Motion carried 6/0.

OLD BUSINESS: No pending projects on agenda.

NEW BUSINESS: #SPR2010-01 ~ Randy Roberts proposed food service establishment. Applicant was present to explain his project. He owns the building located next to D & R Auto Body Repair business on the Stone Bridge Road in Pottersville, and stated that his wife would like to open a breakfast and lunch "eat-in and take out" business. He added that he has a lot of ground to cover for additional permits, etc., but wanted to start with this board. He also stated that the building used to be a soft ice cream, hot dog, hamburger establishment, and he is just looking for approval to put another food establishment there. He will have plenty of parking. He added that he has to have his water tested, and will need to have an engineered

purification system, and a septic system, as well. Following brief discussion, motion made by Mr. Dutcher, seconded by Mr. Bump to approve application #SPR2010-01 for a food establishment, as proposed. Motion carried 6/0.

#SD2010-02 ~ W. & R. Aiken Irrevocable Trust proposed 6-lot subdivision. Lucas Dobie, EIT with Hutchins Engineering, was in attendance representing the applicants. In summary, the project proposes subdividing 71.5 acres on the Priory Road, tax parcel #103.-1-11, into five new building lots, and conveying 16.6 acres to parcel #103.-1-13.1 which already consists of 14.44+/- acres along State Routes 8 and 9. This lot will not change its use, but consists of a family dwelling now being utilized, and will only increase their land area. Lot #1 would consist of 9.08+/- acres, Lot #2, 9.18+/- acres, Lot #3, 8.50+/- acres, Lot #4, 8.59+/- acres, and Lot #5, 19.5+/- acres, involving flagged wetlands. Each lot is located in Rural Land Use, having at least 200 feet of road frontage, and 100 foot setback for any construction. Project has received a Notice of Incomplete Application from the Park Agency, so approval and permit from the Agency is pending. Lot along Routes 8 & 9 has only one lake access right associated with it, from the Hill Park HOA. Following presentation and brief discussion, motion was made by Mr. Thurling, seconded by Mr. Dutcher, to schedule a public hearing for the March 15th meeting. Applicant is hoping for approval from the Park Agency by that time. Motion carried 6/0.

#SPR2010-02 ~ Peckham Materials & Lyme Timber Co.- proposed Log Concentration Yard. Peter Simoneau from Peckham, and Attorney Wilson Mathias were in attendance, along with a representative from Lyme Timber Co. The project for a log concentration yard will utilize about 7 acres on the east side of State Route 9, using the northernmost lots. Basically, the project involves the storage of logs before they go to their final destination. The project will be located at the rear of the property, and will be unseen from the main travel line of State Route 9.

Don Tayson (sp?) from Upland Forestry and the property manager for the Lyme Timber Company, explained the project. Lyme Timber Co. owns approximately 275,000 acres within the Adirondack Park. They currently have a log yard in Ticonderoga right at the Paper Mill. They are in a confined space which is insufficient, and is not ideally located relative to where the properties lie. Chestertown has been determined to be the perfect location, and the current operation in Ticonderoga will be moved here. They will employ at least 3 log loaders, 2 employees from Upland Forestry, and 3 contract employees. They will have an independent contractor to oversee equipment, etc. Logs will be drawn in, with approximately 25 loads per week, on an average. Hours of operation will be from about 7:00 a.m. until 5:00 p.m. Traffic will be variable, based on the season, with more logs coming in during the winter, and leaving the lot at various times. Most of the wood will be coming in from the western part of the State, with some coming from the east, using various traffic routes. Logs leaving will probably utilize Interstate 87. Self loaders, (trucks having their own loading capabilities), will be allowed to come in to the lot when their own loaders are not in operation. Mr. Tayson stated that there would be a gate, and they will be getting together with Peckham to see what time the gate should be locked. (Possibly unlocked from 6:00 a.m. until 6:00 p.m.). The log loaders will produce some noise, but not a lot.

Mr. Hilton asked about clearing of the land being used, and was reassured that there would be no impact on visibility from the travel corridor. They will be bringing in an Office trailer, and power will need to be brought in for the scalers. They would like to be in operation by late May or early June. There will be no lighting on the site, per se, only that which is on the equipment.

There will be some merchandising of the logs with chain saws, but the little pieces cut off of the logs will be taken away by whomever they contract with to provide the equipment. They would like to have the ability, in the future, to expand and to bring in longer logs for merchandising on the site. This would involve the use of log slashers, which are louder than a chainsaw. The board agrees that this will make an ideal use for this Industrial Zone.

On a motion by Mr. Ellsworth, seconded by Mr. Dutcher, application #SPR2010-02 was approved, as presented for a Log Concentration Yard. Motion carried 6/0.

ADJOURNMENT: On a motion by Mr. Ellsworth, seconded by Mr. Bump, the Board adjourned at 8:00 p.m.

Respectfully submitted,

Patricia M. Smith ~ Secretary