

Town of Lake Luzerne

Planning Board Minutes

June 28, 2023

After reciting the pledge of allegiance, Chairman John Kurimski called the Planning Board meeting to order at 7:10pm with the following present: Toni Springer, Kyle McMahon, Josh Fisher, Dane Morton, Howard Schaffer, Zoning Enforcement Officer Karen Putney, Deputy Zoning Enforcement Officer Kristopher Kassay, and Attorney Mary Kissane. Also present: Eric Sandblom, Norene Montgomery, Brian H. Smith, Rebecca M. Smith, and Bill Montgomery.

Chairman Kurimski opened the meeting with the following items on the agenda.

- I. Set date for July Planning Board Meeting
- II. Public Hearing: Evergreen Estates Subdivision revisions
Parcel numbers: 318.1-1-81 through 92
Zone: Residential Town (RT)
Location: Call Street
Applicant: SRA Engineers for Evergreen Estates (represented by Eric Sandblom)
- III. Public Hearing: Major Subdivision Application 2023SD-1
Parcel numbers: 286.-1-18, 93.30 acres & 286.-1-36, 2.15 acres
Zone: Residential Resort (RE), minimum Town size requirement for subdivision is 1 acre with 200-foot lot width
Location: Hidden Valley Road
Applicant: Thomas Reed
- IV. Boundary Line Adjustment: 2023BL-1
Parcel numbers: 319.-1-35.1 and 319.-1-36
Location: Hartman Loop
Zone: Residential Town (RT), 15.85 acres & Residential Rural (RU), 5.47 acres
Applicants: Brian H. Smith, Rebecca M. Smith, Norene B. Montgomery
- V. Acceptance of minutes
- VI. Old/new business

I. Set Date for July Planning Board Meeting

Chairman Kurimski set the next Planning Board meeting for July 24, 2023, at 7:00 PM.

II. Public Hearing: Evergreen Estates Subdivision

The applicant has an 11-lot subdivision that was approved in 2009 that was never started. The Sunset Clause with approvals from DOH and DEC have expired. The owners have submitted a revision to the road in storm water design and are looking for Planning Board approval. A copy of the application subdivision maps as well as other supporting documents are on file with the office of the Zoning Officer or and may be reviewed by interested parties by contacting the Zoning Office.

No letters or submissions by email and no public comment at the Public Hearing was received. Application has been resubmitted to the Department of Health and they've acknowledged receipt with the response that they're one and a half to two months out on their reviews. There was a comment from Cedarwood about getting the wetlands delineated due to the amount of time that's passed they were initially delineated.

SRA met with the Town Board recently and there was no final decision made. There was a bit of a back and forth with a weighing of taking on maintenance of the road and the storm water system which led into a discussion of the amount of tax revenue that each lot would generate for the town that could offset the cost to the town in providing that maintenance, but we don't know what the final determination is on that. There's been more direct coordination with the highway superintendent and our impression is that he thinks it would be acceptable for the Town to take over maintenance of that road and the storm water facilities.

Cedarwood has basically said that you can proceed with everything that you need to do with DOH and then if they make you make any changes then the Town will make their decision after you've gotten the approval from DOH. DEC wants to make sure that the storm water system that you proposed is going to be the storm water system that is submitted in the end.

Kurimski: That's kind of why we left the public hearing open because we don't have any paperwork in front of us, nothing is final yet.

Cedarwood had a couple of comments on Part 1 of the Full Environmental Assessment Form, and they had some suggestions on some questions that needed further explanation.

Page 6 of EAF form: D.2. Project Operations “f. Does the proposed action include, or will it use on-site, one or more sources of air emissions, including fuel combustion, waste incineration, or other processes or operations?” changed from No, to Yes and “f. i. Mobile sources during project operations (e.g., heavy equipment, fleet or delivery vehicles)” was verbally answered by Agent.

Sandblom: I think it's fairly common on a construction site to have a skid with a diesel on site so they can refuel the equipment that's there um and then the equipment itself creates air emissions. It could also be considered that there's a potential for emissions just from dust from that, but we also have a storm water pollution prevention plan that requires measures to be in place to minimize that emission as well.

The board accepted the answer unanimously.

Page 8 of EAF form: D.2. Project Operations “m. Will the proposed action produce noise that will exceed existing ambient noise levels during construction, operation, or both?” changed from No, to Yes.

Sandblom agreed and answered “i. Provide details including sources, time of day and duration:” stating there would be temporary noises from equipment during construction during typical construction hours roughly seven to five. Will the proposed action remove existing natural barriers that could act as a noise barrier or screen I would say no to that. There is going to be some tree removal but there's going to be enough trees still in place that it should not modify the carrying of noise from the site.

The board accepted the answer unanimously.

Page 12 of EAF form: E.2. Natural Resources On or Near Project Site “m. Identify the predominant wildlife species that occupy or use the project site:” Whitetail Deer, Eastern Grey Squirrel, Eastern Cottontail, Birds including but not limited to Woodpeckers, and Black Bear were added to the list.

The board accepted the answer unanimously.

Page 12 of EAF form: E.2. Natural Resources On or Near Project Site “q. Is the project site or adjoining area currently used for hunting, trapping, fishing or shell fishing?” The answer was changed from No, to Yes with no effect to how the proposed action may affect that use.

The board accepted the answer unanimously.

Chairman Kurimski made a motion to declare the Town of Lake Luzerne’s Planning Board Lead Agency for Evergreen Estates SEQRA review process, seconded by Dane Morton.

All in favor: 6, Opposed: 0, motion carried.

III. Major Subdivision Application: 2023SD-1

The Public Hearing for a Major Subdivision by owner Thomas Reed who was not in attendance was left open. No new comments were received.

IV. Boundary Line Adjustment: 2023BL-1

Applicants previously came before the Planning Board and went back with to their surveyor and made this proposal that left the RU- Residential Rural Zone section completely as it is. The remaining part that they are doing a boundary line adjustment on is completely in the RT- Residential Town Zone, which is one acre minimum, with a minimum of 200-foot lot width. Boundary line adjustment must leave at least 3 acres in the RU zone to maintain a conforming lot, so a survey had to be done.

This action is SEQR exempt, and the land is not located within the Adirondack Park.

Rebecca Smith: When my dad was alive, and our parents made this adjustment for us for an additional five acres he had drawn it straight to the back of the field and I was out of town in April but my brother and my husband came over just to talk about the zoning issues with that because the surveyor thought that it might be an issue. One of our family members suggested that we do it this way, leaving the opening of the back of the field still open for the rest of the family to utilize and go into the woods and hike or do whatever.

Springer: You originally wanted to go straight back and cut it right in half.

Rebecca Smith: You couldn't.

Springer: That was your original proposal or thought?

Putney: On a Boundary Line Adjustment, you treat it the same in our subdivision rules as a minor subdivision. It's up to the Planning Board whether or not you call for a Public Hearing.

Dane Morton made a motion to waive the Public Hearing, seconded by Josh Fisher. All in favor: 6, Opposed: 0, motion carried.

Chairman Kurimski opened the floor for public comment.

Bill Montgomery: I'm the son of Noreen Montgomery and I came up to review this application because there's another one previously that the Board passed and when I talked to my mother about it she was totally unaware that the lots that have been conveyed include a property that she didn't think had been conveyed and so when I came in and looked at this application, I saw that the deeds that are attached to the application are not the deeds to the property in question. So, I think from a procedural standpoint the Board cannot go forward because the deeds filed with the application do not relate at all to the property in question and to confirm that, if you look at the deed reference in the survey, it shows a deed reference of three five eight at page 363. The deeds filed with the application are 428 at 267, and 428 at 265 and neither one of those deeds have anything to do with this property. The survey confirms that because the survey was not based upon the deeds that were filed with the application. So I think from the procedural standpoint, the application is defective and at best it has to be adjourned for the relevant deed or deeds to be filed so that this Board can look at the deeds and see if there are any reservations or easements that might exist that are not shown on the survey map or if there are courses and distances in those deeds that might exist that aren't shown on the survey map. The board has no opportunity to do that because the Board does not have the relevant deeds

before it, so I think from a procedural standpoint it needs to be adjourned so that the proper relevant deeds can be filed with the Board so the public and the Board could review the deeds to see if the survey is what it purports to be.

Kurimski: I will have to ask Mary for advice.

Kissane: Can you just show me where in the subdivision and code that the deeds are required?

Bill Montgomery: It's on the application form.

Kissane: The only requirement is that the deeds are attached. You as a Planning Board do not have to determine whether or not those things are correct, whether they've been written correctly, whether the information on them is correct, so procedurally I think that you are fine. If there's some dispute between the family members as to the accuracy of these deeds, I think that's a private civil matter.

Bill Montgomery: There's no dispute with regard to the accuracies of the deeds, it's just that the deeds that are that are filed with the Board do not reflect what the survey purports to reflect.

Kissane: That's not an appropriate consideration for the Board, they do not have the expertise to do that so that again would be a civil matter between you and whoever submitted the application.

Bill Montgomery: My next comment to the Board is that a survey that has been certified to the Board if you look at the bounds that are set forth on the survey, they're not accurate. I made a copy for each Board member. So, as you're looking at that survey the first handwritten notation you see, the notation says, "actual three and a half inches" and underneath it, 175 feet. That's based upon the big survey that you have in front of you which states that one inch equals 50 feet so when you measure that it measures three and a half inches which means it's 175 feet. The survey notes that the proposed distance is 78 feet, which is clearly not correct. That line comes in much more than what the survey shows. The danger to doing this is if there's a deed that reflects distances and this map is never filed because it's not required to be filed, the courses and distances in the deed will not conform to this survey which the Board is being asked to look at. So, if you go to the bottom right hand corner which I think is a more important one, you'll see that the actual measurement if you put a ruler on the survey is 4 and 5/8 inches which reflects 267 feet the survey says it's 226 feet and change so if you extend that line out you have now crossed into the other Zone. If you extend it the other way, your conveying property that's already conveyed, but the survey is not correct, the metes and bounds on it. An interesting note, the bottom of the survey refers to it as being a preliminary draft. This was what my brother did when he came before you two years ago. He submitted a draft survey which did not accurately reflect which was subsequently approved by the Board. So, if you look at the bottom left-hand corner and the big survey, I have a copy here for each of you. It says Darrah Surveyors relied on a survey that was completed by the State of New York when they were conveyed property that is now Moreau Preserve. That was for four or five thousand acres. At the bottom of the survey, the little one I just passed out to you, you'll see that Brooks and Brooks, the survey they did in 1998 which was filed with this County, approved by the State of New York, reflects what used to be the old Glenn's Falls-Corinth Road and that's reflected on that survey and that's what is referenced by Dara but when you look at her survey you see she left that off, put a gravel driveway and then discontinued the gravel driveway. So, she was relying on a filed survey done for the State of New York and she submitted to you a survey that does not reflect the old Glenn's Falls-Corinth Road and the property was deeded to the Town of

Lake Luzerne in the County of Warren and is still owned by them. I'm saying this is relevant because as soon as this Board ran my brother's subdivision and his map doesn't show this either, he put up a gate. So now the thousands of people who would hunt fish and hike down there can't get through because the board unwittingly, his survey left this off too. I say that because when my mom and dad bought their property in 1956, it was surveyed by [inaudible]. When you look at the survey map that my brother submitted to you as the Board done by Matt Steves, he references that map which shows the same Glens Falls Corinth Road that existed when my parents were conveyed the property. Matt Steves in the draft that he submitted initially showed the center line of that road because all of the measurements for the property are made from the center line of that road. The draft was then reworked to take the center line out. So, there is no indication that the Town and County continue to own that road and I say that because the two deeds that were submitted to this board were submitted for one reason. They don't apply to the property, and they don't reference the reservation. When you look at the deed the one cited in the survey from Hamilton to Montgomery dated September 11th and recorded at 358-363 it reads there is accepted and reserved from the premises described in this title of conveyance of all those certain parcels of land here to conveyed by various former owners thereof to the Town of Luzerne in the County of Warren for highway purposes. It together with all rights it's a Town and County and the public into the highways involved within the description. Likewise, in the deed referenced for the other properties 358 at 359, the same exception in reservation is there. That is why when my brother filed for his subdivision, the application said are there any reservations or reasons for public highway and I think he put I don't know. He knew well and he didn't tell you and he had the survey changed not to show it. So now the deed that Becky has chosen to file with the Board reserves to the Time of Luzerne and Warren County the property that highway is built on and I know this because my father always told me that his attorney Jim Davidson told him he never owned the road and therefore he couldn't put a gate up and claim after 10 years it was effectively shut down. So now what they've done and they're trying to do again is to get this board to stamp this survey, so they have another one that doesn't show that road and that's how clear it is. So, for three, four years he set this gate up and to demonstrate his knowledge he put a sign up that states Trail access is closed. Why, because the access was always there. So, I will submit to this Board, one, deeds weren't filed with the application. Two, the survey as a matter of fact if you're doing the measurements look at the courses are not correct, and the survey is not correct where at the bottom right-hand corner it shows a gravel driveway, then it shows an extension of the gravel driveway that just ends. That extension doesn't end you could still drive down that road from the back side until you reach the pile of gravel that my brother had the contractors dump in the middle of it. So, I would submit to this board to accept the survey that has been filed with this application will continue the false belief that that road isn't there, it doesn't exist. The survey is not correct in that respect. The survey is not correct in the two areas that I've shown you and I don't know how many others because you'll notice in the survey it says no posts or markers were put in the property where the measurements taken from. So, if you go up there with a little wheel you can't figure it out because they set nothing, but when you look at that survey right now if the proposed is 75 feet or 78 feet it's the edge of the driveway, it's not out where it says it is. In the other one, because the other property line is already existing, it does in fact go into the different residential Zone. I had that reviewed by a surveyor who says Bill it's as simple as putting your ruler on the map. When I asked him about not depicting the road Matt Steves [inaudible], he said somebody could have a problem. This is the survey that was previously signed off by this Board, September of 19 which likewise does not reveal that road and if the proper deeds have been submitted and you had a chance to look at them you'd notice that in the deeds all the measurements are taken from the center of the road and the deeds describe the property being conveyed as running along the road. In my profession I always tell people you never have to believe a word I say, all you have to do is read the documents that I give you. What I say is just

sort of a guide. You can disbelieve everything I say. The deeds and the surveys when you look at the prior application my brother, the draft done by [inaudible] of the draft survey my brother submitted what you signed was different. You'll see the darkened road and the center line and then if you continue down here you see this line right here which is the center line from which the survey was made and that was the center line of the road that the Town and County owned. So, when Matt Steves filed his final map he left that off completely despite the fact both deeds accepted and reserved it and what he identified as property of Montgomery did not belong to him and the map that he referenced in his survey done in 1956 when the property was bought clearly depicted the County Road. That's what I wanted to say. I would just conclude by saying before you proceed, the map should be accurate. Deeds [inaudible] be filed.

Fisher: My first question is, is this an actual Town road [inaudible]?

Kissane: I don't know, my suggestion would be to hear all of the comments and then we can go through what this Board should be considering [inaudible] should be considered.

Noreene Montgomery: Usually when I have a problem, I go to that gentleman who just spoke, my son the lawyer. Now I have to refute some the lawyer. When my husband and I bought the property of course that road was there it wasn't being used except by the neighbors who went hunting something like that and we were told by a lawyer well look if you want to make it legal you better take time. It was published in the paper that that road belonged to us, not anyone else anymore. So, we did hire a lawyer I'll have to find those papers to prove that that was our land not anyone else's land and then when they had Moreau State Park signed up, they were going to use that as an entrance to the land and Bill and I were on that committee when they did the work on Moreau State Park and we were told we told them that was not owned by the County or anyone else, that was owned by us. We went to a lawyer right after we bought the property and for my son to stand up and deny what his father said, his grandfather's a minister, his father was an upright man, and to hear him tonight they would be shamed and I'm ashamed to think I have to be here and represent myself and my family with him denying everything, so I hope you believe what I say because that is not what happened. We already have turned this land over to another son and we have six children. We're trying to be fair with everybody.

Rebecca Smith: Mom were you here at the meeting with Timmy and Kathy?

Noreene Montgomery: Yes, and I was here with a meeting with Timmy and Kathy they're my other son and daughter and there's been a problem with that. I just have to apologize for my son, I am so sorry that we're going through this and taking everyone's time and I will let my daughter speak.

Rebecca Smith: I would like to say that when my dad gave us our first five acres and we helped him out and he gave us the other five acres, or we bought it, that he said with our first five acres which is the dotted line that he couldn't give us anything on or anywhere near the road because for him to maintain ownership of that road he [inaudible] of it so when we got our first five acres he was very clear on that because they had gone to an attorney and they got this [inaudible]. They did not have to have access there. They went to Moreau State Park, they joined the committee, Dick Cornell on Hawk Road did allow access up on Hawk Road, but my parents didn't want to have access down there because we had a lot of garbage and people bringing in things and hunting close to our homes and we just didn't want to have it. So, my dad was very clear on that when we got our first five acres and this second five acres was actually Bill's suggestion to do it this way because he wanted to gain or have access around the back of the field so that's why we did this we were fine with that. So, I don't know where he's coming from

or what his issue is, it's my mom's land and she and my dad have talked about doing this their whole lives and I'm actually quite ashamed of him myself.

Morton: The Moreau committee that you served on, was the State asking for access through your property?

Noreen Montgomery: Yes, and then it was decided not to allow it. There's no parking there, the State decided not to allow it.

Rebecca Smith: I think that's because it was on a map and my father and mother went and showed them that they did on that road and that the State didn't have access to that. Is that correct?

Noreen Montgomery: Yeah, because we'd had a lawyer establish that fact when we purchased it because we were advised that that would be the thing to do.

Morton: Do you have any idea what year that was?

Rebecca Smith: The Monroe State Park was probably about 10 years ago because I just spoke to somebody at DEC that said Moreau was in charge of the land that surrounded all of our property, but now DEC has another organization that's managing, doing property management so Moreau State Park isn't managing that property anymore. That's what I was told.

Schaffer: But they're not saying that Public Access is restricted, or are they?

Rebecca Smith: They didn't put the public access, the State removed it from their signs, and Monroe State Park had a couple of maps out that showed it as access and that was addressed I don't know if they still had the maps or not but it was never permitted as access when the real estate cards started it.

Schaffer: Even though it was public land at the time?

Rebecca Smith: It wasn't public land. What he's saying is before they met with an attorney and made it their land and their road.

Bill Montgomery: May I comment?

Noreen Montgomery: Let's hear it, Bill.

Kissane: Are we going to continue to entertain this or do we want to go through the proper considerations for the Board.

Kurimski: Yeah, I think we should go through the proper consideration at this point.

Springer: I have a question, why do you want the property line adjustment

Kissane: Don't answer that, let's go through what the Board needs to consider and then we can ask our questions. If you all have your subdivision books, on page 32 is the process for a boundary line adjustment consideration. The first task of this Board is to determine the completeness of the application so obviously you're going to look at the application. You're going to make sure all the information is filled out, everything that's attached is there or is

supposed to be attached is there and I do want to point out that the people submitting this application are certifying that everything attached to this application and in the application, that they are taking that liability on when they submit this application to this Board. They're saying everything we put in here is correct. I understand that there is dispute amongst the people in the crowd whether or not that is correct, but the applicant is taking on that liability by signing this. What is supposed to be included in the application we then have to go to the minor subdivision application. That says for a minor subdivision application they have to submit a sketch plan, they have to submit an application form provided by the Zoning Department which they have, and then they have to include everything included in Appendix B. So, they have to include a plan to be filed with the County Clerk printed on a plastic or mylar polyester material 22 by 34. Has that been done?

Putney: No, they don't usually do that until this Board has accepted what has been put in front of them, then they bring it in for final signature.

Kissane: What they submit has to show sanitation, water, meeting the minimum specifications of health and sanitary code. I would say that is not relevant here because the boundary line adjustment so as long as they're showing you what they're planning on doing which they've done on this certified land survey map, that will be included on [inaudible]. A copy of the deeds relating to the property to be subdivided. I understand that there's dispute as to whether these deeds are correct but they're certifying that they have attached the correct deeds to this application and they are attached. Those are the requirements of a complete application in the subdivision ordinance so as a Board you have to determine if you agree that this application is complete based solely on what's in your ordinance.

Fisher: So, this is a certified survey that is complete, not a preliminary review?

Kissane: Yes, and whoever signed that survey is again putting their reputation on this and saying this is accurate and complete.

Putney: They don't usually stamp them until they bring in the mylar and the final copies this is this is what we look at now to see if there's any changes that you need made and then if you accept this as like the sketch preliminary plan then they bring in the mylar and the chairman signs it at that point.

Kissane: Again, all this company is saying this is that yeah, we've done the work, and this is accurate.

Kurimski: Somebody pointed out that it says right here above the map it says for preliminary review.

Kissane: Correct, that still means they're taking on the liability.

Kurimski: Basically, what we've got in front of us is, they're saying they're putting their job on the line. The people here that have got the application they've submitted everything saying this is the proper [inaudible] accurate and that's our job as a Planning Board.

Kissane: Just make sure everything's included that's supposed to be according to your subdivision.

Fisher: [inaudible]

Kissane: I don't see why it's relevant because it's not even included in the boundary line adjustment, but I just might not be following you, to me it is not relevant, it is outside of any sort of boundary line that does if you look at the map that was given to you as the road at the bottom of the dark line.

Morton: Then the dispute about the measurements that would be more of a civil thing not something that we have the expertise to measure or anything like that, right?

Kissane: Correct and it would be between the property owners, not us and I think the property owners are you two.

Rebecca Smith: Brian and I, and my mom owns the property that's being adjusted.

Fisher: Am I allowed to ask questions about the road, or not?

Putney: Before you move on, I just want to talk to Mary about something.

Kissane: Just to point out to the Board, on the application for the existing areas or acres in the little box right in the middle, they put 5.47 and 12.36 so that pertains specifically to the portion that's being adjusted. The entire parcel though is 15.85 Acres, but there are two Parcels across the road that she owns but they're not being included in this adjustment, so they put just the parcel.

Putney: If you go back and look at this map that I provided to you, the original parcel in blue is split by a road in two different areas but it is all one parcel number and so for the county record, GIS record, it's on record as 15.85 but the piece that is the boundary line adjustment the surveyor has determined that that section is 12.36 Acres. I wanted to explain why there is a difference between the two records that's all it's not a mistake it's just because that is the only portion being considered in the boundary line adjustment.

Springer: If they do it wrong and what they said is wrong, we're only deciding on what information that we're being given.

Kissane: Then they're going to have a code violation they're gonna have to figure that out.

Kissane: I do just want to point out that you've waived the Public Hearing. If you're going to deny this application, you can't hold the Public Hearing.

Dane Morton made a motion to accept the application as complete. Seconded by Toni Springer. All in favor: 6, Opposed: 0, carried.

Kurimski: Anyone have more questions before we make a motion to approve?

Bill Montgomery: I would just ask that everything I [inaudible] with the Board be part of the record.

Dane Morton made a motion to approve the application as submitted. Seconded by Toni Springer. All in favor: 6, Opposed: 0, carried.

V. Acceptance of minutes

No minutes to accept.

VI. Old/new business

ZEO Putney received an email about a training opportunity in Lake Placid on October 12, 2023, that can count toward annual requirements and asked all Board members who are interested to sign up. Attorney Kissane's firm will provide training if members cannot make the Lake Placid event.

One Planning Board alternate member is currently needed, and another vacancy will be created when Dane Morton becomes a Town Board member in January. Two Zoning Board positions are also open.

Springer: Storm water drainage training, you can be certified in four hours.

Kurimski: You know what the big thing was about that when I was talking to Jonathan the engineer was that if something happens down the road, there's a flood, there's a storm and we're taking that over, the Town's got to pay for anything.

Springer: That's why we're looking at separate districts for the new subdivisions and having a subcontractor be responsible for the storm water drainage. It takes the responsibility off the Town and the subcontractor maintains the storm water drainage for new developments and if we create in the tax district for those new subdivisions then that would cover the fee of the subcontractor to maintain them.

Chairman Kurimski made a motion to adjourn the meeting at 8:47pm, seconded by Toni Springer. All voted in favor of adjournment.

Respectfully submitted,
Kristopher Kassay