



PLANNING BOARD

MINUTES (FINAL)

THURSDAY, AUGUST 11, 2022

6:00 P.M.

ZOOM WEBINAR

CALL TO ORDER : Mark Torpey, Chair, called the meeting to order at 6:05 P.M.

SALUTE TO THE FLAG:

PRESENT: Mark Torpey, Chair; Kerry Mayo; Todd Fabozzi; Ruth Horton; Chuck Marshall;
Mark Pingel

ABSENT: Bill McTygue

STAFF: Susan Barden, Principal Planner, City of Saratoga Springs
Leah Everhart, Counsel to the Land Use Boards - arrived at 6:30 P.M.

ANNOUNCEMENT OF RECORDING OF PROCEEDING:

The proceedings of this meeting are being recorded for the benefit of the secretary. Because the minutes are not a verbatim record of the proceedings, the minutes are not a word-for-word transcript of the recording.

A. APPROVAL OF MEETING MINUTES:

Approval of meeting minutes was deferred to the end of the meeting.

B. POSSIBLE CONSENT AGENDA ITEMS:

NOTE: The intent of a consent agenda is to identify any application that appear to be “approvable” without need for further evaluation or discussion. If anyone wished to further discuss any proposed consent agenda item, then that item would be pulled from the “consent agenda” and dealt with individually.

**** NONE AT THIS TIME****

C. APPLICATIONS UNDER CONSIDERATION:

1. **#20220555 44 RUGGLES ROAD, SUBDIVISION MODIFICATION,** 44 Ruggles Road, Proposed Modification of previously approved two-lot conservation subdivision in the Rural Residential (RR) District.

Mark Torpey, Chair, provided background on this project. When this property was subdivided the Planning Board undertook a Conservation Analysis for the project. Final approval of the two-lot subdivision with conditions was issued on February 12, 2020. A SEQRA Negative Declaration was

also issued at that time. In this instance there was additional logging of trees in the conservation area. Trees were cut in the no cut buffer area. We are attempting to rectify this situation. Board Member, Chuck Marshall, Susan Barden, Principal Planner, Tom Denny, Sustainable Saratoga and Steve Lashomb, City Arborist along with the applicant visited the site to provide insight into the proper mitigation. Chuck forwarded his recommendations as did Tom Denny which were provided to the Board.

Chuck Marshall stated the clearing took place in two concentrated areas. It was on the southern side of the site and was not intentional to Ms. Eberlein activity. He does not feel it is appropriate to offer or require additional financial compensation or penalty. There should be tree replacement either in that area or offsite would be a discussion for the Board. Additional trees were identified by Tom Denny or Al Flick that might be beneficial to saving. Tom had sent a note regarding saving those larger diameter trees. The easement area could be either expanded or modified to include different areas so that Ms. Eberlein was not giving up money but instead giving up land, so there is not out of pocket expenditure on her behalf. My recommendation was the replacement of six trees, redesign-replacement of the house to determine what trees would be cut. If trees were planted on site those trees should be larger diameter trees, not sapling size, He does not feel there should be a direct payment by Ms. Eberlein to the City for a penalty. The Planning Board should require site plan approval or modification to the site plan for a building permit so those trees that were identified as worth saving in the cut area today could be modified.

Mark Torpey, Chair, stated Tom Denny's letter and your information came to the same conclusion. Tom identified three areas where he felt on his walk through these mature trees are worth saving.

Kerry Mayo stated Tom's information was received, Chucks was received along with a letter from a member of the public. This communication state that the conservation area was not denoted until after the stop work order. If the applicant did not mark off the area which was to be protected, there is responsibility there.

Chuck Marshall stated Al Flick noted that there was orange fencing placed but it was not appropriately placed at least not on his first visit.

Mark Torpey, Chair, reiterated what Tom Denny noted in his write up if Board Members did not see it. Tom identified three areas A, B and C. A is where the house is intended to be, area B is alongside the driveway about halfway from the house to Ruggles Road there is a heritage oak worth preserving and area C down by Ruggles Road where a cluster of larger trees where identified. These are all outside the areas of the original conservation area. These are to be preserved since they are mature trees and have significant canopies as part of the mitigation. In addition to that Tom has also recommended a replanting of trees within the zone of a smaller caliper tree but larger than a sapling or whip. He also noted that the Planning Board should for the future, process a methodology for looking on how to impose a fine.

Todd Fabozzi questioned if someone could explain how this excessive logging in the conservation area took place.
Looking for clarification.

Chuck Marshall stated the applicant is here so she can explain but, she hired a tree service to clear a driveway. Upon identifying valuable trees, they took it upon themselves to take those down. The orange fence which was to delineate the conservation area might not have been as established as Al Flick would have liked it. Chuck stated he did not get the sense that this was before or after the

clearing. When the stop work order was issued, he had the fencing re-established. In an email and following site visit he was pleased with the remedy Ms. Eberlein had done. How the logger got on site would best be explained by the applicant.

Susan Barden, Principal Planner stated in conversation with the applicant it was not a through the applicant's fault and that is how the applicant has represented it. We do not have any reason to believe otherwise. In response to Kerry, one of the conditions of the subdivision, was orange construction fencing to be installed to delineate a no cut buffer areas and conservation areas prior to clearing, cutting, site work or construction. One of the neighbors stated that those permanent markers were not placed until the stop work order was issued. This is not required for clearing purposes. Something is required to denote and mark those areas and ideally have city staff go out prior to any site work. That was not done, we did not have a pre-construction meeting in advance of clearing which is typically done to provide additional background.

Ms. Eberlein stated when she closed on the property after it was subdivided, part of the closing was she had to have it marked by the surveyor. Matt Steves went out and placed the markers for the conservation area. She did not go back out there. She hired the loggers, sent them maps, as well as the points Dave Ingalls made about the 30ft. buffer from the Raga property. The conservation area was marked, the stakes were in the ground. She was attempting to only carve out a small driveway so potential buyers could access the site. That night she received a call from Dave Ingalls called and indicated the town wanted them to stop immediately. She has all the texts, and phone messages made to the logger informing them not to return. They returned after the stop work order was issued and she needed to have the police intervene. She is attempting to mitigate this. She has no problem replanting trees. Moving the house and the driveway will entail more engineering, surveying, and expense. She has no recourse but to sue civilly the logging company and has been in touch with the DEC regarding these loggers. Ms. Eberlein stated the City Arborist has been out to the site and noted the loggers were clearly out for the money trees. She would like to get this resolved; she has buyers for the lot.

Chuck Marshall stated his recommendations were reconfiguring and the reason he did not ask for a financial payment.

Understanding that you would undertake the cost of reconfiguring the property. My position is you can reconfigure it and save the larger trees that were identified.

Mark Torpey, Chair, stated Tom Denny's recommendation does not talk about a financial penalty for this application. He recommended what you have suggested moving the house to preserve the other trees. The only true mitigation for what has happened is to preserve the mature trees and replanting the smaller trees.

Todd Fabozzi stated he agrees with the Chair. This sounds more than a civil issue it is also a criminal issue. It was as if you had property stolen. Does the city play a role in this with a type of action.

Leah Everhart, Counsel, stated likely not. This is a property dispute between the applicant and the logging company who removed the timber.

Susan Barden, Principal Planner, stated she believes that the city is a third-party enforcer of the conservation easement.

The McCormick property has reciprocal enforcement rights, and the city also has an enforcement right to that area as well.

Leah Everhart, Counsel stated we could consider this further. Having the ability to enforce an easement such as this would be enforced against the owner. The owner would have the ability to bring in the contractor that did this harm.

If this damage can be reduced to a monetary damage it would be between the owner and the contractor. We can review the easement further.

Chuck Marshall stated we should make a recommendation tonight that the applicant is able to sell the property and that the mitigation requirements are transferrable to whoever purchases it. The repositioning of the house is the ultimate solution to moving forward on this application.

Leah Everhart, Counsel, questioned if this was a previous subdivision and if that was when this easement was created, as a condition of approval. It appears if the location of boundaries of the easement are to change. The most appropriate way would be an application to amend the subdivision. We cannot compel the applicant to modify it without litigation.

Discussion ensued regarding the easement, protection of the trees, amending the subdivision approval or civil action.

Susan Barden, Principal Planner stated the stop work order was issued under conditions of the subdivision.

Leah Everhart, Counsel, stated it must be given thought if this can be determined under the conditions of a stop work order. Typically, a stop work order can be conditioned on mitigating the violation, but this is a little different. We can do anything if it is agreed on by all. If we are in an adversarial situation our advice would be different.

Mark Torpey, Chair, stated based on the information received from Chuck and Tom he feels we should expand the conservation area to include areas identified on Tom Denny's chart. These areas need to be more closely defined to protect and preserve the trees in the areas identified. Those areas should be included in a new conservation area to protect the areas delineated on the map. There could be a change in conservation boundaries to achieve this.

Chuck Marshall questioned if the conservation area was expanded or altered to include those areas. If Ms. Eberlein

Has one acre of an area where the building could be placed today, and he wants to be assured that there is the same amount of property usable for the house siting.

Mark Torpey, Chair, stated he feels that a modification is not the right approach. An amended subdivision plan is the way to go and solve the problem. We would like the applicant to go back and submit that application.

Leah Everhart, Counsel, stated a simple motion from this Board stating we are going to redesign the easement area is not sufficient or enforceable. These issues are more typically managed by our enforcement agency. Hopefully, we can mitigate this for the applicant. The procedure best acceptable and at this level would be a modification to the subdivision.

Susan Barden, Principal Planner, stated we do have a subdivision modification application. It does not show any changes to the lot line.

Leah Everhart, Counsel, stated an approval could be issued subject to showing the changes to the easement area.

It would also have to be conditioned on the applicant agreeing to an amended conservation easement. We are not amending the size of the easement but changing the boundaries to

incorporate the older growth trees and eliminate the younger trees in the easement area which are not in need of protection now.

Mark Torpey, Chair, stated it would be helpful if the applicant went back and reviewed the suggestion of Tom Denny's Letter. Proper mitigation would be to preserve the larger growth trees on the site and look at how the conservation area could be modified or changed to accommodate that and afford flexibility for the applicant to relocate the house.

Ms. Eberlein spoke regarding having 3 potential buyers and suggested shifting the conservation area. Move the potential house siting to the area which was clear cut and shift the easement to another area on the site where the mature trees are intact.

Mark Torpey, Chair, stated you have hit on what we were trying to propose. Moving the house to the area which has already been cut and re-establishing the conservation area to the area which has remained intact. You can revisit the area and establish a buildable area and footprint.

Kerry Mayo stated this seems to make sense. Re-siting the house where the trees were already cut and moving the conservation easement to the area which remains intact.

Mark Torpey, Chair, stated the Board seems to agree if there is an area already cut you cannot do any more damage but would be great place for the house.

Susan Barden, Principal Planner, questioned Counsel if the conservation area changes, would the applicant need to get consent of the adjoining property owner since the adjoining property owner has rights over that shared conservation area.

Leah Everhart, Counsel, stated we would need to review the conservation easement language.

Ms. Eberlein stated she will review the paperwork she has as well.

Mark Pingel questioned if the Board agrees on the approach which is save the trees that were not cut and use the area that was cut to position the house. Can we do something with executive action to allow the applicant to go after a solution so that she would have information for her buyers.

Mark Torpey, Chair, stated what is being required needs more attention than could be given administratively. This is usually brought to the entire Board.

Susan Barden, Principal Planner, stated she feels it could be an option. You have discussed modification of that area; you have not discussed replanting. This should be discussed if you would be deciding via Administrative Action.

Mark Torpey, Chair, stated moving the house to where the trees were cut down eliminates the notion of replanting trees in that area. Preservation of the existing mature trees and planting either onsite or offsite of 6 trees. If the Board is comfortable with me overseeing this administratively with the applicant, he is willing to do it.

Leah Everhart, Counsel, stated she has not reviewed the city's policies on administrative actions such as this. This may not be something which needs to be managed in this manner.

Mark Torpey, Chair, suggested the applicant have a conversation with her builder, discuss the areas which Tom Denny has designated as high priority areas. The Planning Board is amendable to the relocation of the house where the trees have been cut. Is there is a layout of where you can put the house that is amenable to you as well. Then return before the Board for a final determination on this application.

Ms. Eberlein stated she will discuss this with the builder and obtain a rough sketch of where the house could be placed along with the proposed septic and return before the Board.

Mark Torpey, Chair, stated this is the most appropriate way to mitigate this. We will then place you on the next agenda. Our next meeting is scheduled for September 15, 2022.

APPROVAL OF MEETING MINUTES:

Approval of meeting minutes was deferred to the September 15, 2022.

UPCOMING MEETINGS:

Planning Board Workshop, Thursday, September 8, 2022.
Planning Board Meeting, Thursday, September 15, 2022.

MOTION TO ADJOURN:

There being no further business to discuss Mark Torpey, Chair adjourned the meeting at 6:58 P.M.

Respectfully submitted,

Diane M. Buzanowski
Recording Secretary

Minutes approved September 15, 2022