

# PLANNING BOARD TOWN OF PORTER

3265 Creek Road • Youngstown, New York 14174 • (716) 745-3730 • Fax (716) 745-9022

*Approved March 2, 2017*

**Thursday, February 2, 2017.**

The regular meeting of the Town of Porter Planning Board was called to order at 7:01 p.m. with the Pledge to the Flag.

Present: Chairperson Peter Jeffery, Vice Chairperson Anthony Collard, Member Mark Fox, Member John Bis, Member Robert Tower, Assessor Susan Driscoll, Attorney Michael Dowd, Code Enforcer Roy Rogers

## **Approval of the minutes from the Planning Board meeting on January 5, 2017**

A motion was made to approve the minutes as presented by Member Collard and seconded by Member Bis. All in favor, motion carried.

## **Public Hearing/Minor Subdivision for Tom O'Connor, Lake Road, Ransomville, Tax Map ID: 33.08-1-47**

Chairperson Jeffery read the public hearing notice as below.

*NOTICE IS HEREBY GIVEN THAT a Public Hearing will be held by the Planning Board of the Town of Porter, 3265 Creek Road, Youngstown, New York on Thursday, February 2, 2017 at 7:00 p.m. for the purpose of considering and hearing all interested persons concerning the following:*

*APPLICATION OF THOMAS O'CONNOR, 2234 Lake Road, Ransomville, New York, Tax Map ID 33.08-1-47 for Minor Subdivision*

*Legal description attached.*

*Applicant or authorized representative must be present.*

Chairperson Jeffery explained that Mr. O'Connor owns a large lot off of Lake Road, Old Lake Road and Lake Avenue that he would like to subdivide into four lots. He stated that Mr. O'Connor intends to maintain ownership of one parcel and will most likely sell the remaining three parcels. Mr. O'Connor was present.

Attorney Dowd asked who owns Lake Avenue. Neighbor Pat Denny stated that the road is maintained by the residents. Attorney Dowd stated that the survey does not show an easement on the property line however, Chairperson Jeffery stated that he thought that Beverly Jeffery's deed did show a 15-foot easement (Mrs. Jeffery is Chairperson Jeffery's mother). Mr. O'Connor stated his deed also showed the 15-foot easement. Assessor Driscoll provided Attorney Dowd with a tax map for the area along with other older documents.

Chairperson Jeffery stated that the area was going to be developed into a major subdivision known as Hubble Beach. Originally the lots were going to be 50 feet wide, but many property owners wanted wider Lake frontage and purchased two or more lots. He stated that the road is a dirt/gravel road, but there is not much wear and tear on the road as it is only used by the residents, many of whom are seasonal. One of the residents plows the road as needed and the utility poles are located on the south side of the lots north of Lake Avenue. Chairperson Jeffery stated that there is no formal agreement between the neighbors for the maintenance of the road.

Attorney Dowd stated that in looking over the paperwork, it is not clear who owns the road. Chairperson Jeffery stated that it would be good to determine who owns the road and therefore who pays the taxes on the road.

Chairperson Jeffery read a letter submitted by the Town Engineer Christian Amico from GHD as attached.

Attorney Dowd stated that the 15-foot easement is south of Lake Avenue, but the title may have never left Mr. Hubble. This easement could be considered a prior non-conforming use of the 40-foot road (as opposed to 49.5 feet) as it appears to be a public way not a Town owned road.

Attorney Dowd suggested to Mr. O'Connor that he have a property line agreement created stating that Lake Avenue is a resident shared and maintained road. He stated that there is a fire hydrant at the end of the road that can service any potential homes on the road.

Member Bis stated that without having documentation about the road, it could cause issues for Mr. O'Connor when he sells the parcels. Attorney Dowd stated that a property line agreement would "clean things up".

Member Tower asked if a right of way on the property would be a solution to the access to the parcels. Attorney Dowd stated that if a right of way is created for access, it would not have to be 40 feet wide to approve the subdivision.

Mr. Denny asked if the driveways of the homes would come out to Lake Avenue. Mr. O'Connor stated that they would, although the corner lot could go to Lake Avenue or Old Lake Road. Attorney Dowd stated that Old Lake Road is a Town maintained road.

Mr. Denny asked how large the lots would be once subdivided. Mr. O'Connor stated that the west end lot was 358 feet by 225 feet. He said he anticipated that any homes being built would face the Lake. Member Fox stated that Mr. O'Connor could have chosen to subdivide his lots into much smaller parcels.

Chairperson Jeffery asked Attorney Dowd for his recommendation on this subdivision. Attorney Dowd stated that the Planning Board could approve the subdivision with the condition that a property line agreement be created by Mr. O'Connor or an easement be provided for the owners of the three lots for access to the parcels that would be sufficient with Code Enforcement Officer Rogers. He also stated that the Planning Board could table the decision, which would allow him to discuss the situation with Mr. O'Connor's attorney.

A motion was made to table the decision on the subdivision by Member Bis and seconded by Member Collard.

Chairperson Jeffery asked if the public hearing should be closed. Attorney Dowd stated that it could remain open until the March meeting.

With no further discussion, roll was called:

Chairperson Jeffery: Yes  
Member Collard: Yes  
Member Fox: Yes  
Member Bis: Yes  
Member Tower: Yes  
Motion Carried.

Chairperson Jeffery stated that the SEQR would be completed at the March meeting.

### **Discussion on recommendation to the Town Board regarding Transient Housing/Airbnb Regulations**

Attorney Dowd stated that the discussion is better titled Short Term Housing (over Transient).

Chairperson Jeffery stated he went to the Zoning Board of Appeals meeting where there was discussion of short term rentals. The ZBA agreed that a definition was needed to avoid future confusion. It was suggested that Attorney Dowd write up a definition.

Member Fox asked where short term rentals would be allowed. Attorney Dowd stated short term rentals could become a permitted use in specific zones and said that he could create a draft suggestion that would clarify conditions without the burden of a special use permit.

Chairperson Jeffery updated the Planning Board that Secretary Freiermuth did contact Mr. Nowacki to present his situation. Mr. Nowacki informed Secretary Freiermuth that he appreciated the offer, but felt it would be too time consuming to put into writing. Chairperson Jeffery also stated that he unexpectedly ran into Mr. Nowaski who did claim that he has attempted to be a good neighbor, but did not offer much input on the anticipated code changes.

Member Tower stated that the definition and code would be for the entire Town and not this specific situation on Lake Road. Attorney Dowd agreed and stated that typically there is a limit of two people per bedroom plus one, however it can be burdensome to enforce.

Chairperson Jeffery stated he received another letter from the Lynch's and distributed a copy (attached). Chairperson Jeffery read the suggested factors for consideration (on page two). Attorney Dowd stated that the Lynch's had a few good suggestions that he would consider when drafting the proposal, but stated that permits may be a burden to the Town and hard to enforce.

Member Bis agreed that having Attorney Dowd draft a proposal was a good idea and that he should take into consideration the health and safety of the short-term renters as well as the neighbors. He stated that the responsibility should lie on the landlord and not become a liability to the Town.

All members agreed to have Attorney Dowd write a draft and Chairperson Jeffery stated that a motion was not needed as it will be a recommendation to the Planning Board, not determination.

### **New / Old / Miscellaneous Business**

Chairperson Jeffery stated that Assessor Driscoll had a last-minute request for an Assessor Merge that the board should discuss. Assessor Driscoll stated that Debby Parker from 3903 Ransomville Road has three parcels that she would like to combine into one property. The taxes are paid on all three parcels. Attorney Dowd asked if all three parcels are zoned the same use. Assessor Driscoll confirmed they are the same zone.

Chairperson Jeffery asked about the driveway that runs through the property that belongs to a house on neighboring property. Attorney Dowd stated that the Planning Board does not need to consider the driveway for the merge. Member Bis stated that the driveway is the same if she has one large parcel (merged) or one small parcel (current). Attorney Dowd stated that the Deed may have an easement for the driveway, but was not sure. He stated that either way it was OK for the Planning Board to approve the merge.

A motion to approve the Assessor Merge was made by Member Bis and Seconded by Member Fox.

With no further discussion, roll was called:

Chairperson Jeffery: Yes

Member Collard: Yes

Member Fox: Yes

Member Bis: Yes

Member Tower: Yes

Motion Carried.

Chairperson Jeffery informed the Planning Board that a resident at 1575 Lake Road subdivide a parcel and filed the Deed with Niagara County but did not come to the Planning Board as Town Code requires. Attorney Dowd stated that a letter should be sent to the resident stating they need to follow the Town process with the Planning Board. Chairperson Jeffery stated that if they did not comply, a formal complaint can be made with the Code Enforcement Officer.

Attorney Dowd informed the Planning Board that there is a box on the paperwork with the county asking if municipal approval is required for the subdivision. He stated that an applicant may mistakenly check no. Because the County Clerk's office does not offer legal advice, they will not determine if the municipality requires approval or not.

Chairperson Jeffery stated that it appears a larger flag lot is being created to offer beach access to a road front parcel. However, the tax map property lines were conflicting. Because the Planning Board did not have the current survey, measurements or legal description, the applicant will be asked to present to the Planning Board as required by the Town Code for a minor subdivision including a preliminary sketch plan, public hearing, SEQR, etc. He stated a letter should be sent to both parties and Attorney Dowd stated he would supply that letter to Secretary Freiermuth if an old template could not be found.

### **Code Enforcer Rogers report**

Code Enforcer Rogers distributed his report. He stated that a building permit has been issued to Heritage Manor for sewage disposal (which Niagara County will oversee). A permit has also been issued to demolish a cottage on Beech Avenue. Code Enforcer Rogers also stated he attended NYS training.

### **Attorney Dowd report**

Nothing to report.

A motion was made to close the meeting 8:36 p.m by Member Bis and seconded by Member Tower. Motion carried.



January 31, 2017

Reference No. 11137123

Mr. Peter Jeffery, Chairman  
Town of Porter Planning Board  
3265 Creek Road  
Youngstown, New York 14174

***Sent via email only***

Dear Chairman Jeffery:

**Re: 2234 Lake Road-Thomas O'Connor Four-Lot Request for Minor Subdivision**

GHD Consulting Services Inc. (GHD) has conducted a review of supporting documentation for a four-lot minor subdivision of the above-referenced property. The minor subdivision request is illustrated on a map prepared by McIntosh & McIntosh, P.C., dated December 28, 2016.

Based upon our review of available information, the proposed subdivision will not have an adverse impact on Town drainage facilities.

It should be noted the road (Lake Avenue) to the north of the proposed subdivision is shown as 40 feet wide. Per Section 25 of the Subdivision Regulations, "*marginal access streets shall have a pavement width of 20 feet and a Right-of-way width of 49.5 feet.*"

As discussed in the documentation provided, has a determination been made regarding the ownership of the 15-foot-wide easement and have provisions been made for adequate access to the lots being created?

This constitutes completion of our review.

Should you have any questions or comments, please contact us at your earliest convenience.

Sincerely,

GHD

A handwritten signature in dark ink, appearing to read "Christian Amico", written in a cursive style.

Christian M. Amico, PE  
Project Engineer

CMA/ck/1

cc: Ms. Barb DuBell, Town Clerk  
Mr. Scott Hillman, Town Highway Superintendent  
David M. Britton, P.E. – GHD

Mark Lynch/Patricia Lynch  
2089/2091 Lake Road  
Youngstown, NY 14174  
toadholow@aol.com/plynch2091@aol.com

Peter Jeffery  
Chairman, Planning Board  
Town of Porter  
3265 Creek Road  
Youngstown, NY 14174

January 8, 2017

Re: Transient Housing Rentals

Mr. Jeffery:

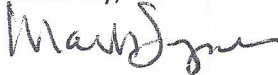
Thank you for allowing us to speak at the January 5, 2017 Planning Board meeting. We apologize for the confusion that our situation injected into your meeting but it was caused by the Town's enforcement arm trying to force a square peg into a round hole by insisting our case is one involving single family residences. Per the diagram we provided you containing the pertinent zoning codes, you can see that our case does not conform to zoning definitions for single family dwellings, but does conform to definition for a motel operation on the lakeside of Lake Road.

Our experience with the invasion of 250-300 customers per season into our neighborhood, which does not include those customers at 2053 Lake Road or the customers from the Motel and cabins on the south side of Lake Road at Lakeview Motel and Cottages (who are given right-of-way access to the lake via the properties at 2085 and 2087) does give us the opportunity to share with you the hazards of short term rentals in a residential neighborhood. Our neighborhood is primarily one of single family residences, owner occupied year-round.

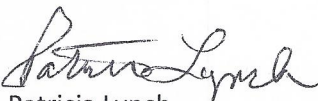
In an effort to provide input to your board, based on our 4 years of experience with this type of business, we've attached a list of factors that we suggest be taken into consideration as you craft a law addressing residential rentals to transients.

We are available for further discussion/input at your convenience.

Sincerely,



Mark Lynch



Patricia Lynch

Suggested factors for consideration to be included in regulations for residential rentals to transients:

1. Quantify the definition 'transient'.
2. Limits on the number of occupants per single/multi family dwelling (if this is already covered by occupancy permits, then see requirement # 6.)
3. Owners provide handout to renters explaining residential nature of neighborhood and copy of Town noise ordinance.
4. Owners provide neighbors with contact information in the event of a problem
5. Permits required for transient rentals when they exceed 2 rentals per calendar year
6. Permits issued on condition of proof of existence of all health and safety and building permits/certificates, eg., occupancy, fire, waste disposal, electric, construction, fencing, etc.