

TOWN OF CONCORD PLANNING BOARD
Town Hall Conference Room

January 7, 2020
7:00 p.m.

ITEM # 1:

The meeting was called to order by Planning Board Chairman Lawrence J. Kelly, Jr., at 6:55 p.m.

ITEM #2: Roll Call

Present:

Lawrence J. Kelly, Jr., Chairman
James Jozwiak
Julie Zybert
Karl R. Lux

Also Present:

Darlene Schweikert
Clyde Drake, Supervisor
Stephanie Bacon, Deputy Town Clerk
Jeremy Neff
Adam Trautman
Phil Trautman

Not Present:

Bruce Luno
Joseph Edbauer

ITEM #3: Citizen Participation

Chairman Kelly asked those in attendance if they wanted to address the Board. Mr. Neff advised that they were just there to listen.

There was no one for Citizen Participation.

ITEM #4: Approval of Minutes

a) December 3, 2019 – J. Jozwiak made the motion, seconded by K. Lux, to approve the Minutes as presented. All in favor. Carried.

ITEM #5: Mining Permits

- a) McEwan
- b) Cold Spring-Hofmann South Pit (reclaimed)
- c) Cold Spring-Sharp Street Pit
- d) McCarthy Gravel Mine
- e) Gernatt Pits: Middle Road-Vaughn/Gentner; Middle Road-Dewald; Zylinski Clay Mine; Waterman Pit; Wendel Pit.
- f) D&H Materials, Inc.
- g) Russo-Triple R. Properties Pit
- h) Schreiber & Winkleman

Chairman Kelly asked if there were any comments or questions regarding the Mining Permits (a-h above). J. Jozwiak made the motion, seconded by K. Lux, to recommend to the Town Board to approve the renewal of the mining permits, a-h, as presented. All in favor. Carried.

ITEM #6: Junkyard Permits

- a) Jordan's Salvage
- b) Southern Tier Auto Center Inc.
- c) Arthur P. King
- d) Ronald Miller

Chairman Kelly asked for comments or questions regarding the Junkyard Permits. J. Jozwiak made the motion, seconded by J. Zybert, to recommend to the Town Board to approve the renewal of the junkyard permits, a-d above. All in favor. Carried.

ITEM #7: Rails to Trails – Snowmobiles/Bridge

K. Lux provided the members with a proposed resolution and photos of snowmobile bridge. The intended use for that section of the right of way for the railroad is for the railroad and there are no other changes that were ever made to that for the intended use. K. Lux feels that the use of that as anything other than a railroad, is in violation of the Town Code and he believes that the Town Board should approach that based on that information. It is controlled by Erie Cattaraugus Rails to Trails (ECRT) and they have not applied or provided a SEQRA for any changed use. J. Jozwiak thought he was missing something because he thought that Rails to Trails was going to let the snowmobile club use the trails. K. Lux believes that Rails to Trails has to let the Town know that they are going to change the intended use of the railroad; because it is intended for the railroad tracks and if anyone wants to change it, they need to come to the town for approval. J. Jozwiak asked if the bridge is an after-thought; it's the whole railroad? K. Lux said he did not care about the bridge; he just cares about the way that this intended use is changing. It's violating the Code. Chairman Kelly said his question is, is it the railroad's responsibility because they are the ones that have opted not to run it as a railroad or is it the lessee (ECRT) responsibility? They are not the property owners. J. Zybert questioned if the railroad owns the property or does the railroad have a right of way on people's properties? That is not known. K. Lux advised that he is not going for who owns it, how it is own; the intended use for that particular strip of land, the 27-mile railroad, is for a railroad and to change it to anything else would need approval from each town that it goes through. K. Lux and J. Zybert noted that the railroad abandoned the property. K. Lux said he believed they turned it over to the State of New York who then granted permission for the ECRT for the use of that Erie County section. J. Zybert's understanding is that when the railroad abandoned the property that there was something in the right of way language that the right of way was actually supposed to revert back to the individual property owners and then at some point NYS got involved and said that this would be a great corridor for a multi-use trail. J. Zybert noted that she is not sure who really has control of that property and that is the crutch of the lawsuit. The whole

lawsuit was initiated because property owners were saying that they no longer have use of my property and am not be compensated for it. She explained that she owns a triangular lot in Orchard Park that borders up to the railroad tracks and they can never add onto their building because of that right of way. If they had the opportunity, they would like to reclaim use of their property so that they could meet a setback or put an addition on their building. Other landowners may have other kinds of concerns too and may or may not choose to turn over that land to NYS or some private corporation who is going to use it as a corridor. K. Lux said his understanding is that NYS got the right of that strip of land and that ECRT became incorporated and asked permission to be able to develop it and NYS gave them three years to do that. He does not how the ownership works. J. Zybert noted that one argument is that if she is not going to be able to have the ability to use that property and that that portion of their property is not going to be able to be developed, used by them; then they should be compensated for it.

J. Jozwiak brought the discussion back to the ECRT and the snowmobile use. They could take about this forever; the Field & Stream had these issues for three years with their pond and it doesn't matter. He asked if the Town of Concord gave permission for ECRT to use that as a trail. Supervisor Drake advised that there is a resolution on the books from 2008 against the ECRT. Supervisor Drake said that ECRT says they have a 99-year lease from the railroad. The Town has been asking for a copy of the lease for over a year and there has been no response.

K. Lux feels that the nuts and bolts to the whole thing is that if they are going to change the intended use of that railroad right of way, then they need to prepare information for the Town so the Town can see that everything is covered: taken care of first aid, police protection. The railroad runs through federal wetlands and all that needs to be looked at and be able to respond to it. Chairman Kelly asked who? The railroad who technically has the right of way? K. Lux noted that he was told that part of the agreement that if the railroad ever wants to put rails back, all the other agreements would be rescinded. Chairman Kelly questioned again who has to make any application to the Town that a change would be made to the railroad? They did not come to the Town when they pulled up the tracks up and say that they were pulling their tracks up. K. Lux noted that it was their property and that intended use was for the railroad. Jeremy Neff advised that it still is their property. K. Lux said they abandoned it; they are not paying the taxes on it anymore. Mr. Neff advised that they are still paying the taxes on it because ECRT is paying the tax to the railroad and the railroad is paying the tax. K. Lux said so the railroad is not paying the tax; they are just taking the money from someone else. Chairman Kelly feels that the railroad is the one in control of the property. Mr. Neff advised that he has not seen the agreement and the agreement will never be seen. It is highly confidential. Supervisor Drake asked how they can expect the Town to do anything for or against it. K. Lux said that it was written that way to be confidential forever. Mr. Neff noted that he is not on the ECRT board but he talks with them enough to know that the railroad does not want the agreement to be public and as soon as they give it an entity that can be foiled, it becomes public. K. Lux said that the railroad did not turn it over to ECRT. Mr. Neff said they did; in the lease. Mr. Neff does not know the whole history but the state was involved at some point but the state has become

uninvolved at some point. ECRT is working directly with the railroad; it's in a railbank. K. Lux was understanding that the state was involved. Mr. Neff worked extensively and directly with the railroad to get a 49-year lease with two renewals that would give them upwards of 99 years.

K. Lux reiterated that his whole argument to this is that the intended use has changed and that violates the Code. Chairman Kelly advised that the railroad is the property owner, the controlling interest; they leased it to ECRT. K. Lux questioned that if the lessee wanted to put a building up there and applied for a building permit because they had a lease on the property; you'd go after the lessee not the property owner. Chairman Kelly disagreed on that if he owned the piece of property and lessee was going to put a building on it; the owner should know about. K. Lux understands that but if they put a building permit over to a building inspector, the building inspector would go back to the lessee and talk to them about any changes; not to the owner. Chairman Kelly agreed. K. Lux felt that this is what this situation is. Ownership and control of the actions are two different things. K. Lux advised that he doesn't care who the Town sends a letter to, he just thinks that it needs to be done. J. Jozwiak said that if the Town doesn't want Rails to Trails then they probably don't want the snowmobiles going through there either. K. Lux doesn't care what the outcome is as long as they follow the rules. If it ends up being a snowmobile trail, then that is the way it is but nobody is taking the first step in the right direction. If the intended use is going to change, let the Town know; have a SEQRA done on it; make sure it is safe; protect people. J. Jozwiak asked how this is different from any other snowmobile trail? K. Lux advised that they are all on private property. J. Jozwiak asked if the railroad bed was private property if the railroad owns it? J. Zybert said that is where it gets interesting because the question becomes have the individual landowners granted a right of way or does the railroad actually own some width of property. K. Lux said that he is not arguing that at all but if the intended use of it was for a railroad and if it is going to change, it has to come to the Town. The Town needs to know why, how it will be taken care of. It wasn't done with the railroad because that was done before there was any rules.

Mr. Neff advised the members that he does have a signed SEQRA from the Planning Board for the snowmobile trail. He had been before the Planning Board previously. K. Lux asked if it was for a snowmobile trail on the railroad. Mr. Neff thought it was structured was basically snowmobile trails anywhere in the Town of Concord. K. Lux remembered that Mr. Neff was before the Planning Board when he came in with new maps and it had nothing to do with the railroad. K. Lux again said that he believes that the intended use of that strip of land was for the railroad. Mr. Neff just wanted the Board to know that he had a SEQRA and that the way it was structured with the previous Supervisor was that that they did not have to come back every time a change was made.

Chairman Kelly asked K. Lux if he would like to make this a motion to be presented to the Town Board. K. Lux said he would like to, yes. K. Lux made a motion that the Planning Board hereby requests that the Town Board issue an immediate "Cease and Desist Order" to ECRT for the revised use of the railroad right of way in the Town of

Concord, as well as a request for a completed SEQR Application for any such revisions to the existing railroad rights of way's intended use. Chairman Kelly asked if there was a second. There was no second on the motion. Motion failed. Chairman Kelly advised that Supervisor Drake can take this back to the Town Board and our Planning Board takes no position at this time.

ITEM #8: Business from the Members

1. Chairman Kelly advised that there will be a Southtowns Planning & Development meeting on Monday, January 27th at Steelbound. RSVP if you will be attending.
2. Supervisor Drake informed the Board that there will be a DEC meeting at the Town Hall on Wednesday, January 29th at 7 p.m. The topic of this meeting is the Scoby Dam.
3. Supervisor Drake had attended a Supervisor's Meeting earlier today and noted that one item that will need to be put on an agenda in the future is food waste. Erie County is pushing right now trying to get restaurants to find a better way to dispose of their food waste and some towns are already thinking about laws to try to figure out where these food disposal places can be. Most of these food waste places get about a 25-mile radius and try to position themselves where they can make money. Some private start ups are going on right now. One piece of advice given was not to let it go into an agricultural area because the smell cannot be controlled. It should be in light industrial areas. This needs to be put on the town's radar. The waste would be collected and composted. It is coming; the question is whether the town is rural enough that it worthwhile in our town. Eden is trying to get a law ready to pass. J. Jozwiak noted that this is another cost that restaurants have to pay out that would raise the cost to the consumer. J. Zybert asked if this would be a completely different service than the ones that pick up the cooking oil/grease? Or would it be an add-on to their accounts? K. Lux feels that Waste Management would probably get into this service. Supervisor Drake informed that Board that Erie County has a disposal at the Alden jail. J. Jozwiak said that this would affect grocery stores for produce and prepared foods. Stephanie Bacon noted that Wegmans already does this. At this point, this would only apply to commercial.
4. Supervisor Drake noted that the Planning Board is short a member and asked the members to let him know if they know of anyone who may be interested. This could be a village or a town resident.
5. Supervisor Drake updated the Board with regard to Mr. Thie. Mr. Thie has invested in more equipment and is trying to team up with partners to see if he can get 10% of the wood that he is using from property owned by the team of partners. J. Jozwiak noted that he didn't listen to the Board and now he is trying to go further. CEO Singleton has not yet issued any summons to Mr. Thie; it was all word of mouth with the CEO.

ITEM #9: Motion of Adjourn

J. Jozwiak made the motion, seconded by J. Zybert, to adjourn the meeting at approximately 7:30 p.m. All in favor. Carried.

Darlene G. Schweikert
Planning Board Secretary

Planning Board Meeting of January 7, 2020

Subject: Change of use of railroad property in the Town of Concord:

Whereas, there has been some revisions to use of the existing abandoned railroad property at its intersection with Sharp St. in the Town of Concord. See attached photos.

Whereas, it appears that the restricted use of the railroad property has been changed without approval of the Town of Concord. As such, this is in violation of the Town's intended use of the property.

Whereas, this change of use would also require a State Environmental Quality Review (**SEQR**) application to be submitted to and approved by the Town of Concord.

And Whereas, the present responsible party for the railroad right of way in the Town of Concord is the Erie Cattaraugus Rails to Trail Inc. a 501(c)(3) (**ECRT**) a not for profit organization.

The following motion is proposed to be submitted to the Town Board of the Town of Concord:

The Town of Concord's Planning Board hereby requests that the Town Board issue an immediate "Cease and Desist Order" to ECRT for the revised use of the railroad right of way in the Town of Concord, as well as a request for a completed SEQR application for any such revisions to the existing railroad rights of way's intended use.





