

TOWN OF CONCORD PLANNING BOARD  
Town Hall

January 4, 2022  
7:00 p.m.

**ITEM # 1:**

The meeting was called to order by Planning Board Chairman Karl R. Lux, at 7:00 p.m.

**ITEM #2: Roll Call**

**Present:**

Karl R. Lux, Chairman  
Bruce Luno  
Julie Zybert  
Michael Cochran

**Also Present:**

Darlene Schweikert  
Clyde M. Drake, Council Liaison  
Thomas Roberts, CEO  
Steve Buckley  
Scott & Stephanie Bacon

**Not Present:**

James Jozwiak  
Raymond Hilliker

**ITEM #3: Citizen Participation**

There was no one for Citizen Participation.

**ITEM #4: Comments from Council Liaison Drake**

Councilman Drake will be the Council Liaison to the Planning Board. He does have some personal goals for this year. The Town Code has not been updated online since 2017 so he will start going through the Code to see if some of the contradiction in language can be remedied. Not sure how long this will take but that is his goal.

Councilman Drake introduced the new CEO, Thomas Roberts, who is here tonight to provide guidance to the Board.

Councilman Drake looks forward to working with the Board again. The Board members are glad to have Councilman Drake back with them as the Town Board's representative.

**ITEM #5: Approval of Minutes**

a) December 7, 2021– M. Cochran made the motion, seconded by B. Luno, to approve the Minutes as presented. All in favor. Carried.

**ITEM #6: Buckley Application**

Chairman Lux asked Steve Buckley to address the Board relative to this application. Mr. Buckley advised that he is here to ask the Board to have a one-acre parcel on this R-Ag property zoned as Commercial for a venue/event center building. The building is already built on the property. He would like it zoned commercially so that he would not have to deal with a Special Use Permit application anytime he would like to use it. There is applicable parking on site. He is working with the Erie County Department of Health to get the septic system designed and approved. He is going before the State Variance Board for the fire suppression system requirement. This application will be turned in to the State Variance Board within the next week so that it can be on their February docket. CEO Roberts and Mr. Buckley met with the engineer yesterday to bring him up to date with what it takes to get the variance and the process. Mr. Buckley's engineer is on the State Variance Board; he will be recused from the Buckley application but he was able to coach Mr. Buckley with the details as to the number of doors, the spacing between the centerline to the doors, etc.

Chairman Lux asked CEO Roberts if he had any input. CEO Roberts advised that to change from an R-Ag use to a Commercial use, changes it to an A2 assembly which requires sprinklers for anything over 1485 sq ft. This building is 4000 sq ft. There are ways around this requirement via one part of the Code but Mr. Buckley's engineer is on the State Variance Board and Mr. Buckley will try to get a variance. If a variance can be obtained, CEO Roberts has no issues with that. He sees no problem with access for fire trucks; the trucks can go all around. There is gravel around the building. CEO Roberts went to the site yesterday and there is adequate parking so that cars do not need to park on the road. There is discussion about putting a dry hydrant in his pond. CEO Roberts has no opposition to this application.

Councilman Drake asked what adequate parking is. CEO Roberts stated that the area is pretty good size (maybe 100 ft x 100 ft in the one spot) and Mr. Buckley is intending to go to the back at least another 75 feet. Mr. Buckley advised that once this is approved, he will figure out the occupancy load and he will make sure that his parking will exceed that occupancy load. Currently he believes he has more than ample parking for any occupancy that he has now; he owns a site work & excavation company so it is nothing to add more parking if needed to meet an occupancy load. There are two ways to figure out an occupancy load: with tables or empty space. There are multiple exits to the road; there are three exits to the road. There are ample ways in and out of the premises. All the driveways are 15 feet or 18 feet wide so there are no issues with ingress or egress.

J. Edbauer asked what zoning Mr. Buckley was looking for? C-1, C-2. Mr. Buckley noted that the Planning Board would be better to answer that for him. It is not a "for sale" business so what is the correct zone? J. Edbauer noted that C-2 is general commercial district and C-1 is local retail. Mr. Buckley advised that it would be C-2 then; it is not goods for sale. J. Edbauer asked if the wedding/event venue was the only business to go on there? Have you checked with your neighbors? Mr. Buckley advised that he owns the neighboring parcels and down the road there is commercial, Heary

Lightning Rod which is zoned Commercial as well. To the south of him is the 219 buffer and to the north is an empty lot which he would like to purchase.

Chairman Lux asked if there were any other questions from the Board. There was not. Chairman Lux asked if Mr. Buckley would like the Board to discuss this at their next meeting after everything is put together in a packet. Mr. Buckley has no problem in having this come back to the Planning Board in February but he would like to walk out of tonight's meeting knowing that he is going to be able to move forward based on the approval from the State Board; if he continues to wait, the longer he waits is a loss of revenue for the structure. Mr. Buckley questioned that if he does x, y and z and the application will be granted; then he can move forward. If he doesn't meet the quota, then it is on his end. Chairman Lux noted that he would prefer to rezone it vs. Special Use it every year. J. Edbauer noted that he is not a fan of spot zoning but he believes in this case where it is going to be, he does not see a problem. Mr. Buckley noted that approximately ½ mile down the road, there is an industrial manufacturing facility. Mr. Buckley advised that John Wozniak's house is the closest to him to the north with the 15-acre piece in between. Chairman Lux asked if Mr. Buckley wanted to touch base with his neighbors or not as far as getting the signatures of approval; that would probably help the town to know that your neighbors are not going to be upset with this application; notice is given to property owners within 500 feet. Mr. Buckley owns 500 feet north and south. He owns the neighboring lots and both those houses. J. Edbauer asked about the acreage across the street. Mr. Buckley advised that it is a vacant lot used for hunting. The owner doesn't live here; it is only used for hunting. B. Luno noted that the more the neighbors know what is going on will be less problems there may be at the Public Hearing. Mr. Buckley does not have a problem with talking to them. Councilman Drake advised that there is one neighbor closer to Genesee Road who has issues with the Grottanelli events. Mr. Kean is Mr. Buckley's parent's neighbors; he grew up next to the Kean family. Chairman Lux asked Mr. Buckley to touch base with the neighbors. CEO Roberts asked Mr. Buckley if there would be any signage on the road? Mr. Buckley advised that if there was a sign, it would not be at the road and it would maybe be in a rock that is sandblasted in; nothing obtrusive. Chairman Lux advised that a sign permit would be necessary. Mr. Buckley advised that he is not sure any signage would be necessary; directions to the location would be easy: first building on the right-hand side of Moore Road.

There were no other questions. Mr. Buckley will get the Planning Board the State Variance exemption and feedback from the neighbors. The notice to his neighbors will not be sent out until after the Planning Board makes their recommendation to the Town Board. The Town Board will then set a Public Hearing date. The Notice of Public Hearing will be published in the Journal and notices sent to the neighboring property owners and Erie County Department of Planning. The neighbors who would receive notice would be Wozniak/Gombos to the north and then south to his parents, including the vacant land parcels.

Mr. Buckley thanked the Board for their time this evening and left the meeting at 7:17 p.m. (For further discussion on Buckley's rezone, see Item #7.)

Chairman Lux asked Mr. and Mrs. Bacon if they would address the Board at this time. Mrs. Bacon advised that they have a situation similar to Mr. Buckley's except they haven't built anything yet. The property they purchased is 44 acres at the top of Kissing Bridge which was originally owned by one of the owners of Kissing Bridge; he sold it to them; 43 acres is south of Abbott Hill and an acre is north of Abbott Hill. Approximately 5 acres south of Abbott Hill and the one acre north of Abbott Hill are still zoned R-1 for some reason even though the rest of the parcel is C-R (Commercial-Recreational). The Bacons would like to see if the zoning could be changed to make it all contiguous and make it all C-R. Mrs. Bacon advised that she was going to try to get the application ready for tonight's meeting but with the holiday's she didn't get it submitted. This is just informal to see what they would need to do; is it even something that the Board would consider? Chairman Lux asked if the parcel would be attached to the existing zoning for C-R? Mrs. Bacon noted that it is smack-dab in between. Chairman Lux advised that it would not be classified as spot zoning. Mrs. Bacon said they would like to make the entire parcel the same zoning. CEO Roberts advised that it actually streamlines the zoning. J. Edbauer asked if they had plans to do something on the property. Mrs. Bacon advised that Kissing Bridge's current owner met with them to review the project. A boutique style hotel; an Airbnb bread and breakfast sort of building. With C-R because it is a ski resort, it says that you can have ski lodging. When the parcel was first zoned C-R, it was all the same owner (Kissing Bridge Corporation) and then one of the owners, Ron Gerstner, sold off his part of it to us. Kissing Bridge actually sold Bacon an additional 1/3 of an acre to make a larger part in the area where they would like to build. Kissing Bridge has given the Bacons their blessing on this project. The Bacons just need to make sure that they can move forward before they get too far into planning. B. Luno would like a copy of the map of the area which will be included in their application when submitted. B. Luno questioned how close it is connected to the Bridgetop properties? Mrs. Bacon advised that their parcel surrounds it; they own everything around Bridgetop; this is what was going to be that whole project. They purchased what was left over after the Bridgetop project was scaled back. Mr. Bacon noted that there are 10 actual buildings there and 12 lots total. The rest of the project stopped in the 1990's. Mrs. Bacon advised that the part that they would like to build on currently is, there's the pedestal homes at Bridgetop and then there is Art Hahn's former house that is right on the slopes and then their property and then KB Water District building. The Bacons purchased the property for a couple years now and just completed the sale of the additional property on the north side. Mr. Bacon noted that this is a win-win for everybody. Chairman Lux noted that it is contiguous zoning and wraps around so he doesn't see a big issue with it and asked the Bacons to put their application together and the Board could look at it next month. B. Luno questioned about the fire lanes and how much extra that it could take for what was designed at that time as far as ingress and egress to the property. Mr. Bacon advised that the property is on Abbott Hill Road; not

in Bridgetop. Their parcel is before Bridgetop. It is just after the parking lot is for Kissing Bridge; still on the main road. They are not in the subdivision. Councilman Drake asked if they were looking to expand the water district; they are not. This will be on its own well and sewer. Mrs. Bacon will get their application together.

**ITEM #7: Special Use Permit-Rails to Trails**

Chairman Lux asked Councilman Drake to explain this a little bit more. Councilman Drake advised that this has been a hot topic. In Colden's zoning law, there is a requirement for a Special Use Permit so they have been trying to back off Rails to Trails using that language. There have been residents attending Town Board Meetings several times now noting that there should be some control over Rails to Trails and there has been a lot of discussion as to how this could be done. This proposed language is something that Councilman Snyder worked up and had reviewed by Town Attorney Attea. The Town Board would like the Planning Board's review and to see what questions this Board may have; Councilman Drake has some questions of his own. The Town Board would like the Planning Board's thoughts on this language based on the existing Code that is in place.

Chairman Lux noticed that when he read the new language states "public access park and trail" and then later it states "public access parks and/or public access trails" and feels that the term should stay consistent. He questioned how the language excludes mining and public access park and trail in the first section; there is the new section with the park and trails. Will there be another section for the mining? So it doesn't look like it is just being done for one thing. Councilman Drake gave his Code book to CEO Roberts so he doesn't have it to reference. Councilman Drake advised that this is really going after Rails to Trails but then there is the snowmobile club on it so does this mean, is it just the snowmobile club that has to get one Special Use Permit or do they have to go to every property owner to get the Special Use Permit? That is the first thing that popped into his mind. Chairman Lux and J. Edbauer questioned this as well: "...privately owned property throughout the Town." Councilman Drake questioned if it is the trail or the property the trail is on? Chairman Lux wasn't sure if public access trails is really the right term because it is still private property. If an owner says to the snowmobile club that they don't want the trail there next year, it's not there next year. He believes that that really nails it down to the railroad. Councilman Drake noted that there is no question that that is who this is going after. J. Edbauer noted that that there is the lease so they are just saying go ahead and use it. They are going to the railroad and getting permission to use the trail. Chairman Lux advised that the snowmobile club is not; they get it from the State Parks. The railroad turned it over to the State for 99 years and they turned it over to another division in the State, Parks or another division. Then that division got the snowmobile clubs to do the work and get it open; that is what he recalls. Councilman Drake is looking at it differently. Rails to Trails, this is putting these restrictions on them because it is public access so does that automatically mean that the snowmobile club, other than Rails to Trails, would be drawn into this? Chairman Lux questioned if this could be enacted after it has already started? Councilman Drake had asked this question

of Town Attorney Attea and he thought we could. Chairman Lux wasn't sure of that; that might end in Court. The snowmobile club has already started making it work. The Town is coming in later and saying you need a permit for this.

M. Cochran asked if the members could define "a Special Use Permit is ongoing"? How is ongoing defined? M. Cochran was thinking about this in Buckley's situation. If Mr. Buckley puts it in there, and it is wedding facility, and it is ongoing for 50 years, does ongoing means it stays as a wedding facility or does it mean that it has to be in constant use? J. Zybert referred to Section 150-181 (B): If there is a one-year discontinuance of said permitted use, any resumption of use shall require a new application process. She reads it is that ongoing means that it is never more than a year between uses. B. Luno noted that if it goes through that lapse, then it is no more. J. Zybert noted that with the Buckley application, how she would understand it is that as long as he rented it out as a venue at least once in the 12-month period from if/when he got a Special Use Permit, then it would be continuance. M. Cochran noted that if it is continuous use, it will renew automatically of the anniversary of the granting of the permit. M. Cochran questioned why Mr. Buckley would go through the rezoning application; why don't we just tell him to get a Special Use Permit? B. Luno noted that the disadvantage to Mr. Buckley would be that this permit would issue to him; if he sells to someone else, the permit is gone; or if he were to change the use. Chairman Lux felt that rezoning would make the property more valuable. M. Cochran wonders why the Town would go through the process of changing a zone if we didn't have? Chairman Lux said good point. M. Cochran noted that this is off the subject of the proposed language for Special Use Permits but he felt it was pertinent. M. Cochran's concern is that if the Town rezones, then Mr. Buckley could change this to whatever business he would like. Anything within a C-2; which opens it up to a lot of changes. It could open up his construction stuff or disposal business. Why would the Town take action for something we don't have to? CEO Roberts questioned whether Mr. Buckley needed to rezone for something for financing. Initially Mr. Buckley thought he should go before the Zoning Board of Appeals to get a use variance; there was contact with past CEO Singleton prior to his resignation to discuss this matter. The input on how to proceed probably came through past CEO Singleton; not Code research by Mr. Buckley. CEO Roberts needs to figure out how he can do an A2 assembly because it would need to be A2 to run a wedding facility there. He would still need the sprinklers or waiver. If this Board decides that the Special Use Permit application would work, Mr. Buckley can just change his application from rezone to Special Use Permit. A Public Hearing would still be required with notice published and sent to Erie County Planning and the neighbors. Rezoning is done by local law so if it's changed to a Special Use Permit, that step would not be necessary. Chairman Lux wondered if Special Use Permits that continue forever; M. Cochran stated that the way he reads it, it is until discontinued. The members were trying to recall prior Special Use Permit applications and if they are still in existence. M. Cochran noted that there is not even a fee after the initial application for the Special Use Permit. Special Use Permits can also be granted with conditions that this Board or the Town Board can put on the permit. The Board could make them come in annually to see if the conditions are being met. Chairman Lux asked CEO Roberts if he would be seeing Mr. Buckley in the next couple of days; CEO Roberts can bring this to Mr. Buckley's

attention to see what his thoughts are. CEO Roberts likes the Special Use Permit process because with the C-2 rezone, Mr. Buckley could change the use of the building at any time. It's in their backyard so he probably won't move his cardboard sorting facility there; but he could with a C-2 zone. M. Cochran wondered where people would stay if they attended a wedding there. Councilman Drake had heard that the wedding venue across from Pioneer Motor Sports charges \$10,000 for the rental. There is money to be made there. Chairman Lux advised that with a rezone, there is already commercial property on Moore Road so that doesn't bother him so much.

Chairman Lux went back to the topic of the proposed language to change Special Use Permits and asked Councilman Drake what the Town Board would like from the Planning Board. Councilman Drake advised that the Town Board is looking for a recommendation. Based on the timing of this, the snowmobile season will be over before the Town can move forward. Any proposed language change would require a Public Hearing with a local law to change the Code. This is not just a simple motion to change the language. J. Edbauer thought that this would be yearly because it would change, it is changing. The trail moves. Chairman Lux noted that they are hoping to have it contiguous from Springville to Orchard Park. CEO Roberts questioned the off-shoots. J. Edbauer noted that that is where things change in his eyes. Chairman Lux felt that this is only geared only for the railroad bed; this is what it is set up for. His concern is that it doesn't take care of everything for the snowmobile trails and then it gets into a lot of public/private differentiation. J. Edbauer felt it was trying to incorporate that; Chairman Lux thought the intent might be there but the wording is not. Chairman Lux felt that this needs to be reviewed again by the Town Attorney and then word-smithed a little bit so that all the terms match up. Councilman Drake questioned whether the snowmobile trails should be excluded somehow. If the snowmobile club is running on the Rails to Trails trail bed, whatever is done for the trail bed is automatically going to affect that section of the snowmobile trail.

Chairman Lux asked if there was any other input. M. Cochran noted that there was quite a bit of input from R. Hilliker and J. Jozwiak who had emailed their thoughts. M. Cochran believes the Rails to Trails is inevitable; maybe not in our lifetime but it is inevitable. In the North towns, it's awesome. J. Edbauer noted that a lot of that was built for that not where they are trying to take something else and make it into something. He would not want this next to his house. R. Hilliker had emailed that "I support Steve Buckley's request to start his business if he is in compliance with all health department and building requirements. I like the idea of giving him a yearly special use permit to run his business and if problems occur, he could have it revoked the following year. This help the town maintain control; however, from a business perspective I wouldn't want to invest in a business that was dictated by the town board so therefore I vote to spot rezone a separate parcel for the business. I believe we should do whatever it takes to promote new business in our town as long as the business is in compliance with safety ordinances. Thus, my first choice is to do a spot rezone and my second choice would be a special use permit."

“I do not support changing the special use permit language as an avenue to try to stop the rails to trails project. Rails to trails is a good project, and will be an asset to the community, and businesses. There are similar trails all over our country that are an asset. I get the homeowner complaints, but for every homeowner that doesn't want to live by a trail, there is someone else that would find it an asset to their property to be next to the trail. Individual property ownership along the trail is such a short amount of time when compared to the fact this trail could serve the community for hundreds of years. While in the short term it may cause some adverse effects on property owners, over the long term the next property owners will have a choice as to whether or not to purchase by the trail. I feel the burden of the current owners is well worth the greater good for our community for generations to come. Furthermore the trail is already open thru the village area where the most property owners are already affected by it so I can't fathom why we want to restrict it thru the rural portion of the town. I truly believe we as a town should be looking to push this project forward and not be finding creative ways to stall it. I vote no to the special use permit change.” M. Cochran liked R. Hilliker's email except the minimal burden to current owners like Chairman Lux where it is so close to his house. There are only a couple of those vs. hundreds of other ones. Chairman Lux noted that there really are only like 3-4 that it really affects for a 10-mile stretch. M. Cochran agrees that it is a small piece but it is a pretty critical piece. J. Zybert noted that if you were one of those people that it profoundly affects it is a big deal. Chairman Lux doesn't really care if it goes through or it doesn't except he has all these liability issues that he thinks about when he is driving down his driveway and a snowmobile hits him on the side of his car going out because they are going down the trail at 40-50 mph and he is coming down his driveway and not looking. As far as walking and biking, that doesn't bother him at all. Councilman Drake noted that one resident would like to see speed limits. Chairman Lux noted that there are speed limits, nobody enforces them. J. Edbauer noted that at Letchworth; they have a radar gun. M. Cochran suggested that a temporary deputy could be hired to sit there with radar. J. Jozwiak had emailed that his “comments were almost identical views to R. Hilliker. I 100% agree on his opinion for rails and the junkyards. I agree 100% that we need small business. As I am small business, we are the backbone of our community. We donate and support where we live. I think that having a venue like this is good and MRC companies as the owners of this venue, are a good company that employs quite a few people. I would like to find a way to let them operate this as a venue. I agree with ray that a board in the future may dictate him out after quite an investment. I also however do not like spot zoning because it may start a trend. Also to be added that I am friends with Allison and Steve and do business with them, just being up front. So I am inclined for a spot zone for that venue but notated as such that they cannot add to that zone to put another business adjacent to it with a different purpose.”

J. Edbauer asked if the Board was going to digest it? Chairman Lux felt the language has to be redone so that it takes into effect the railroad specifically if that is what they are looking at and not all the trails in the whole area. J. Edbauer mentioned that the Rail Trail could then say this only affects the snowmobile club. Chairman Lux thinks it needs to be reworked; it is too general right now. It doesn't cover all the private property areas. Councilman Drake said that it's sad because it could have been a nice thing if it had been handled differently. There are some real dangers on that trail that people just ignore. There are steel pylons sticking out, there's deep water in those swamps.

**ITEM #8: Mining Permits**

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

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

**ITEM #9: Junkyard Permits**

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

Chairman Lux asked for comments or questions regarding the Junkyard Permits. B. Luno made the motion, seconded by M. Cochran, to recommend to the Town Board to approve the renewal of the junkyard permits, a-d above. J. Edbauer abstained with regard to Jordan's Salvage. All in favor. Carried.

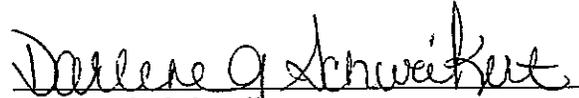
**ITEM #10: Business from the Members**

There was no Business from the Members.

CEO Roberts advised the Board that he will be doing the Perkins Trailer Park inspection on Friday and will be meeting with the owner of the North Street Trailer Park on Friday as well to go over the issues with his Park.

**ITEM #11: Motion of Adjourn**

J. Zybert made the motion, seconded by J. Edbauer, to adjourn the meeting at approximately 7:55 p.m. All in favor. Carried. The next meeting will be Tuesday, February 1, 2022.



Darlene G. Schweikert  
Planning Board Secretary