

## PLANNING BOARD

Town of Lewiston 1375 Ridge Road Lewiston New York  
Thursday – October 15, 2020  
PB 2020-10

Present: Baker, Burg, Conrad, Craft, Lilly, Taczak, Waechter

Presiding: Bill Conrad, Chairman

Conrad: I want to welcome everyone to the October meeting of the Town of Lewiston Planning Board.

**A motion to approve the minutes of August 2020 was made by Lilly, seconded by Waechter and carried.**

The first item on the agenda was a one lot subdivision request from Sam Talarico, Fifth Street.

Conrad: Please step up to the mic and give us a brief run down on your proposal.

Sam Talarico: Good evening. Our thoughts were there is a total of about 21 acres that we're working on a development, single family housing. We have 2 lots; we're trying to make 2 lots out of a lot that's vacant land. Another lot is on north Fifth. One is in the name of Sam Talarico and that would be a lot that is 80'x150'. The other 2 combining the lot, they would be 77.66'x150'. They do meet size requirements. All 3 properties front North Fifth St.

Conrad: We have two items on here for you to address each separately. The 2 lots, there was discussion that it was only going to be 1 lot?

VanUden: You added property to the 1 lot to make comply.

Talarico: We had a lot with a separate tax map number to the north of it was another strip of land that was part of the acreage owned by DMT. This 2-lot subdivision is owned by a company called DMT. Dowd, Minicucci, Talarico. We took the lot that already had the tax map number and the adjacent land and instead of making one lot 80' and the other 75' we shared the difference and made them both 77.66' by 150' deep. That is a 2-lot subdivision off a piece of land that is about 12 acres.

Conrad: Can we have some discussion from the Board or questions.

Taczak: The 12 acres, does that include the land that is to the east of the lots that you are dividing?

Talarico: Yes.

Taczak: In other words, are these lots going to go all the way through towards for lack of a better word North Eighth Street or Hickory Lane. I know Hickory Lane dead ends. Are these lots going to be continuous and go all the way through?

Talarico: No, they will front North Fifth, they will be 150' deep. They are going to have land to the east. That will be in, left over we have about 20 acres. We're working on a development right now.

Taczak: I know it's your land but once these lots are in, if we approve them or pass it on, once these lots are in the additional 20 acres is going to be land locked.

Talarico: No, it will have frontage on North Eighth Street.

Conrad: Depending on the number of homes you put in there, you are going to have to have 2 points of egress for....

Talarico: We have about 1,000' on North Eighth or Hickory. What we're looking at in development is a u shape with retention ponds closer to North Fifth. It will loop in North Eighth like many other subdivisions. There will be 2 roads coming to North Eighth.

Brian Seaman: Here is the issue though is that, that is some possible future development. If we did just what you're asking for us to do today, you are creating a non-conforming lot with no road frontage what so ever and it's landlocked.

Talarico: How is it landlocked?

Seaman: It would have no frontage on any street. This parcel here.

Talarico: No frontage on Eighth?

Seaman: On any street at all. There is no frontage on that street. You're talking about a possible future street that might be put in, right?

Talarico: Oh, you mean because Hickory Lane is not developed?

Seaman: There is no road anywhere connected to this land as it sits today. It would have no frontage. That is not allowed. You have to have at least 75' frontage for any parcel.

Talarico: On North Fifth you're telling me to make it one lot ingress and egress?

Seaman: I guess what I'm really saying is it might make sense with the whole plan in front of us of what you're going to do over here. If you're just asking us to do what you're saying today, what would happen is you would have 1 lot here and 1 lot here, these would be separately divided lots, this lot will have no frontage on Fifth Street at all anymore. It's landlocked and no frontage anywhere else.

Talarico: If these 2 lots became 1 lot which I already have, today that is a separate tax map.

Seaman: It would be the same issue though because you would have no frontage anywhere even if this was 1 lot. Are you saying you would leave 75'?

Talarico: Yes.

Seaman: Then you would not make a non-conforming lot. You would still have the 75' frontage and it would be allowed. As soon as you cut that all off, that's a non-conforming lot.

Talarico: You're saying it makes this 12 acres.....

Seaman: It makes the back lot non-conforming.

Talarico: If we change our plan, I don't need a subdivision because I already have a separate tax map number for this lot.

Seaman: You don't need to do anything for that lot.

Talarico: Let's skip that one.

Seaman: You will have the same problem on the other one though Sam. On the southern lot you will have the same, if you cut this off and turn it in to....

Talarico: Is that not road there?

Seaman: It's not, the road doesn't go there. The road as it exists does not go to your lot. It might someday but as it exists right now it doesn't. I have to imagine that is why they left the 75' here before was to keep it conforming and also as a possible access.

Talarico: I did not know that. I thought it was simple. I understand what you're saying it would be landlocked.

Seaman: Is the larger subdivision something you will be asking for soon?

Talarico: I hope within the next few months.

Seaman: I hope it's not too much of an inconvenience to put it all together.

Talarico: I want to be a good neighbor. Fair enough, thank you.

Lilly: Just to be clear you are withdrawing your plan right now?

Talarico: I guess that's the word.

Lilly: I think we should have that on record that you are going back to the drawing board so to speak.

Talarico: Yes sir. Do I get my money back?

VanUden: Call me.

Lilly: The applicant has withdrawn.

The next item on the agenda was a Site Plan Review, 4579 Porter Center Road, SBL# 89.00-1-24.111, for a pond.

Johnathan Waggoner: Good evening. Can I give you a brief history? The reason why I'm here tonight is for consideration of an exception to be able to construct a pond on property that my wife and I have purchased, which is at 4579 Porter Center Road. It's a 4.5-acre lot. When we were surveying the lot, we found out that the lot is extremely low and in some places it's 3' below what we would need to build on for final grade. We consulted with Tim Arlington out at Appex Consulting about bringing in fill and everything. We found out that we will need somewhere around 3,000 cubic yards fill to raise the house and yard. That naturally leads to a pond. This proposed pond is within all the Town Code as far as size, 1/3-acre residential pond, setbacks from property lines, slope of 3' -1 and all that. This will be a dual-purpose use where we can use it for recreation plus for all this fill that we need. To us this is really the most logical way to start to build the pond first, let the soil begin to settle and that's what Tim Arlington at Appex had recommended to let it start to settle especially over 1 winter 2 if possible. Basically, that's what I'm asking for. We went to the Town Board and then they sent me here.

Conrad: Do we have any questions from the Board?

Baker: All the excavated material will stay on site, no trucking off site or anything like that?

Waggoner: Yes, this would also prevent 200 trucks from bringing in fill from somewhere else. Everything will stay there. We need all we can get.

Conrad: Has your engineer Mr. Arlington, do you have any plans for your house?

Waggoner: We don't have house plans, I've included in the paperwork a relative location, size and everything. What I'm racing here is the winter. Our plan is to do this in the next year or so. The winter and spring are going to be the most effective in settling time. I would like to get this done prior to winter so that we can start settling and we can work on house plans next year. If we do it at the same time my concern is based on his recommendation, I would have settling issues if we try to rush it in the same month.

Conrad: Do you have a concept of the house? We really don't have anything to go on as far as what your plan is. What we are trying to prevent here okay is for example someone builds an accessory use building on an empty lot, the ordinance of the Town says that you have to have the house before the accessory building, it's similar to that. What we want to try to prevent is to prevent people from coming in and making a hole. What you're saying is logical obviously you want it to settle so you can build your house. Sequentially it's a little uncomfortable for me because we've seen other people do this work or put up a barn or building and then walk away from the property. That's the concern that I have is the level of commitment do you have on the project. If you don't have any plans yet.

Waggoner: I will say this, I'm certainly not ready to share them but I have the plans 2/3 of the way done, I'm designing it myself and I will take it to an Architect and they will have to tweak my suggestions and certify and get it ready to submit. That's not something, we're not finished.

Conrad: I understand. Even a concept would be helpful.

Waggoner: Sure, we're at that phase, we've had the funds prepared to do this since we closed on the property in August. Now we are on hold waiting for this. This is really step one, step two will be to gather the funds to get that architectural drawing done. Our plan is this year, later this year. At the start of 2022 would be the building.

Conrad: Your architect is going to have to do more than just look at your plans and tweak them. He's going to have to formally adopt the plans with his stamp with a cover letter before you apply for a permit.

Waggoner: I'm not an architect....but I want to give them a shot at what we're looking for.

Conrad: I am so that's why I'm saying that.

Waggoner: We have quite an elaborate plan but not to the point where I can submit a permit for it.

Conrad: I guess what I was looking at was maybe a floor plan or something like that. It's just my opinion doing what I do for a living. I want to hear from the rest of the Board and see what their feelings are. I'm not the Board, I'm one member.

Lilly: Years ago, I had to do the same thing and I did it in perhaps backward order and it all panned out quite well. I think the neighborhood that is in that vicinity where the applicant is, there are ponds out there without homes or other buildings, just as farm land and things of that nature. I think it's consistent with the neighborhood. I think the fact that the house plans aren't quite mature yet doesn't mean you can't proceed with the pond. I think of that with my own personal experience and I don't think it's that much of an issue. It's not the same issue you brought up with somebody putting up a barn before they put the house up and then no house comes along. This would actually, if something does fall through whoever perhaps builds on this property in the future would be all set. It would be an improvement for whoever else takes ownership of the property if it does come to something like that.

Waggoner: He actually brings up a good point, the area where the pond would go which I have shown on this map is actually terribly drained. When we were out there looking at it before purchasing it, there was sitting water there in the Spring, the wet season. It's dry now but, this would drastically help that drainage anyways.

Waechter: I think to satisfy what is being asked, I think what my concern is because I don't want to see the pond going in and no grading being done on the building site because if you do walk away there is a hole in the ground. I guess I would like to see some type of guarantee that the soil is actually excavated, the building plot is actually graded so if you were to sell the property the next person coming is ready to build. As far as I'm concerned, I don't need to see house plans. I just don't want to have the property half way developed.

Waggoner: I thought somebody might ask for this, I have the quote here for the pond that actually part of the quote is to do the site work that you're speaking of because I wouldn't have any place to put that much soil, it's 3,000 cubic yards of soil and that's a lot of soil. That is right in same money we spend is to do that grade because basically if I can get this done before winter, I want to make sure it's as ready as it can be to start settling in place. If I were to put it in a pile or something like that, we would not be hitting the goal that I'm trying to hit.

Waechter: Can I get a copy of that?

Waggoner: Yes.

Conrad: Did your engineer, did he do any borings to see what the consistency of the soil is and whether it's going to be suitable for structural fill? Structural fill is what it's going to be in the end is what he's looking for right.

Waggoner: With him, we also did a perk test. The perk test failed pretty badly because it was completely clay in that area. On top of that we actually had another agency take some soil samples, Wilson Environmental, they found the same thing, especially in that back area where it was wet. We have had 2 different agencies. We gave him the recommendation, he looked at

it and said you will need to bring in structural fill from somewhere or dig a pond and this would be acceptable.

Conrad: You're saying he will be able to get the compaction out of the soils that are on site?

Waggoner: That's correct. This settling piece, it might sound very logical now but I didn't think through that part. I was just thinking oh yes, we will just dig a pond and here is the soil. He's the one as I was sitting in his office a few months back and he said you will want to let this settle and I said that's a really good point. I need to change the plan to get this done up front. That's where all of this came from.

Taczak: I have a question and this is something I don't know, Mr. Seaman you might, it's just a thought because I'm hearing everybody sort of agree but yet have some disagreements. Is there a possibility, I like the plan I know it's happened before, but some of the questions are the cart before the horse? Is there a possibility that we can have him put some money in escrow that we would be in control of but it would be in escrow just to cover the Town's rear end in case for some reason this falls through so that the Town in that escrow money could make it whole again or ready for the next owner? It's just a thought.

Seaman: Do you mean to fill the pond back in or something?

Taczak: I don't know but I'm just saying it would help guarantee and once the house starts to be constructed....It's just a thought. I don't know. I'm asking the attorney if it's something....

Lilly: How would the Town be on the hook?

Seaman: We have required escrows from people before. I've never known it to be done with a private person, or someone who is building a one family residential house. It's usually like subdivisions and things like that.

Taczak: I'm just trying to come up in my own mind how we can say yes but yet there is a guarantee that once the construction of the house okay fine here is your money.

Seaman: I see what you're saying. He could have come in here today with a full site plan with the house and all that, got his building permit and went out there and dug the pond and then the house. He could have done it that way too.

Conrad: It's less likely though.

Seaman: It sounds like he's fairly invested here at this point. He has taken a lot of steps.

Waggoner: We already have several thousands in to just site surveys and plans and studies, trying to avoid issues. I'm trying to be prepared. If it would somehow help the Town feel more secure about it, I have the amount of money for this quote ready to go in an account and when this work is done it will be fill ready. Even if I were to walk away at that point, the next person coming in would just have to skip all of what I just did.

Taczak: I wouldn't have a problem with that.

Waechter: That works for me also as far as that. If we were to have his documentation, he's got the quote, it's ready to go. I'm good with that.

Conrad: Bill you want to bring up your point?

Burg: My point was before any construction is done there is going to be core samples done and we will be able....from what I understand from Apex's letter they've sampled the soil that they are going to take from the pond. Before he builds you are going to take a core sample before the foundation goes in where the foundation is going. That will resolve one of the ....relief but one of the concerns to the wayside.

Conrad: The one thing I would like to see whichever action the Board takes moving forward is I would like to see something from your Engineer certifying that he believes that the soil sample that was taken from the area where the pond is going to go has the potential to meet the requirements of structural fill that's going to support the foundation of the home that you are going to build. We have nothing that says that that plan is even going to work. We don't have it. If that part of the provision before you started digging, if that letter exists and to have that letter provided, I would be okay with it. It sounds like he's already stated to you at least that it's fine for that purpose.

Waggoner: I guess if that weren't the case, I would be upset with him .....

Conrad: You should be but it would be protecting you as well. Engineers aren't perfect, that's why there's Architects. I have a coffee cup that says that. Anything legal?

Seaman: No. Do you want to refer it to the Town Board with the condition that he provide that letter to the Town Board before the vote?

Conrad: I would make that recommendation.

**A motion to recommend approval of the Site Plan for the pond with the condition that a letter from the engineer is received stating that the soil from the pond will be suitable to meet the requirements for the structural fill for the foundation was made by Conrad, seconded Taczak and carried.**



Seaman: This should be on the agenda at the Town Board in two weeks. Get that letter to Sandy.

Waggoner: Thank you.

The next item on the agenda was a request for a one-lot subdivision from Coney, Langdon Road, SBL# 75.00-2-42.11.

David Boniello on behalf of Mrs. Coney: I've submitted this on behalf of my client who is a senior citizen and owns approximately 44 acres of farm. Basically, she hasn't let anything go in the past but she loved the program. The people that are buying this, I don't know if anybody is aware, Stephen Siller Tunnel to Towers Foundation, which is a multibillionaire who picks out disabled veterans and builds homes for them. There is a gentleman in this area, I don't know who it is but I was told he's from Lewiston and basically, he picked out this site and is 100% disabled. This organization based out of I think it's Long Island is all over the country. They picked this particular veteran because of the number of children, his condition and they are building a house for him, completely handy-cap accessible. We're seeking the subdivision of this particular piece of property which is 4.4 acres out of the 44-acre farm. We want to be able to sell it to the Foundation. We require a subdivision approval for that particular parcel which I believe is part of your survey. You also have the description of that 4.4 acres, shows up in that 44 acres of Mrs. Coney's farm.

Seaman: Is that on a corner?

Boniello: The frontage is 300' which exceeds the requirement for the Town. It's a big piece of property. The gentleman that they're building the house for wanted a big piece of property and they picked it. I think he had a part in picking it out. They talked Mrs. Coney in to selling it, which is the first time she's ever sold a subdivision of her farm. That's the good story that it is. They're paying for all the costs. They provided a title report and are ready to get started. It's agricultural. I think it's just a field. I don't think there are sewers there. I think it's septic and they know all that. They've had people out to check it out. It's a good thing. I don't think there is anything wrong with it. It's almost a gift from God really.

Conrad: In the short form it says the lot is 300'x645' but on one of the sketches we have here it shows it as 612.48 depth.

Boniello: You should also have this which is the breakdown of the lot. It's in 2 pages. I didn't have a copier big enough. That is the actual lot right there. It's 4.4 acres with 300' frontage. Then I also submitted where the lot is located on Mrs. Coney's acreage.

Conrad: The Environmental Commission did review this. They did make one note about the Niagara County Health Dept. would have to have a septic system.

Boniello: We are aware of that. It's a very nice group. They have some top people, retired people working within this foundation and they go all over the country.

Conrad: Any questions from the Board?

Lilly: I don't have any questions. I think it's great.

**A motion that the subdivision to be treated as a minor subdivision was made by Lilly, seconded by Craft and carried.**

**A motion to recommend approval of the subdivision as presented was made by Lilly, seconded by Taczak and carried.**

Boniello: Thank you very much.

Conrad: The tower wind, solar power committee has been done away with so now anything solar related comes to us for review even on top of plan review. We have the same responsibilities as the Tower Committee. Right now, the solar law, I would recommend everybody take a look at it. It's under revision right now. There is a moratorium on solar farms and there have been some updates that the Town Attorney is working on right now. The Board is reviewing it. There is a 2-month moratorium that is coming up at the next Board meeting to be extended from the moratorium that exists right now on building such structures. I just want everybody to become familiar with the solar energy law. If you have any suggestions that you can think of.

Baker: Has anyone addressed the screening?

Seaman: Their intent is to address that in the revisions. It's supposed to be a dense vegetative screen.

Conrad: It is one of the items that is being worked on.

VanUden: Is it going to be another 6 months?

Conrad: No, it's 2 months because what they have to do now is when they make the changes, when the Town Board approves whatever changes are made to the existing solar law, then there has to be a public hearing because it's a local law and it has to go through that process. Since it's a Type 1 action, the SEQRA process and that will allow for the SEQRA process to happen within that 2 months so that following that 2 months or if it gets done a head of the, then there can be another public hearing on the actual proposed solar law for the public to comment on so it can move forward and get rid of the moratorium.

Lilly: Are there people lined up to propose?

Conrad: There were a couple in the hopper before this started. When this whole thing kicked off, I was on the solar committee. We were led to believe that there could only be 3 and then there wouldn't be any more in the Town. The system can't handle it. Now low and behold there are ways to get around that and there are ways to add substations, a way to upgrade substations.

Baker: Is there a limit as to how many there can be in a Town?

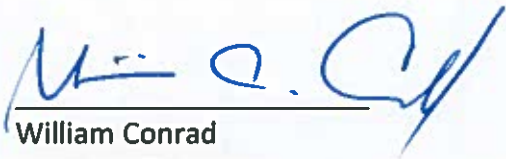
Conrad: According to NYS no.

The next meeting will be November 19, 2020, at 6:30 P.M.

**A motion to adjourn was made by Burg, seconded by Lilly and carried.**  
Respectfully submitted,



Sandra L. VanUden  
Planning Secretary



William Conrad  
Planning Chairman