

Minutes  
Planning Board  
December 10, 2020  
11:00 a.m.  
via Video-Conferencing and  
Published by Local TV, Inc.

Those present were:

J. Kenneth Wessberg, Chairman  
Bruce A.T. Siska, Member  
Obron Farber, Member  
John S. Tarbet, Member  
D. Walker Wainwright, Member  
Elizabeth Baldwin, Village Attorney  
Billy Hajek, Village Planner  
Leonard I. Ackerman, Attorney on behalf of Furtherfarm, LLC  
Linda Margolin, Attorney on behalf of Furtherfarm, LLC  
Oliver Cope, Architect on behalf of Furtherfarm, LLC  
Jody Gambino, LTV Moderator  
Pamela J. Bennett, Clerk

Mr. Wessberg: Welcome to the Planning Board meeting of Thursday, December 10, 2020.

1. **Minutes**

Mr. Wessberg: I would like to go over and get a motion on last month's minutes, please. Everybody have an opportunity to read them?

Mr. Wainwright: Yes.

Mr. Siska: Yes.

Mr. Wessberg: Can I have a motion and second?

Mr. Siska: I will make that motion.

Mr. Wainwright: Second.

Mr. Wessberg: All in favor?

Mr. Tarbet: Aye.

Ms. Farber: Aye.

Mr. Wainwright: Aye.

**2. Furtherfarm, LLC 218 Further Lane and EH 226 LLC 226 Further Lane**

Mr. Wessberg: Pam, can you read the application today, please.

Ms. Bennett: It is the continuation of the hearing for Furtherfarm LLC, 218 Further Lane, and EH 226 LLC, 226 Further Lane.

Mr. Wessberg: Do we have the applicant on line here?

Mr. Ackerman: Yes, this is Lenny Ackerman, good morning. First of all, I would like to thank Pam first continued efforts in allowing us to do this remotely and under the conditions of the pandemic we are in, it is really a credit to the Board, to the wealth of Village Officials especially to Pam that she has done this effortlessly made it convenient for all of us who are scattered all over the country. I believe everyone on the Board except for Bruce Siska participated in the earlier hearings that were held on this matter. You should have before you the November 25<sup>th</sup> letter which I attempted to summarize the application, where it was, and where it is today. We subsequently submitted on December 8<sup>th</sup> a Saskas survey which shows essentially that we moved the driveway from the eastern side of the property to the western side of the property. Just a brief summary of the matter I just want to note that my colleague and partner Matt Pachman who worked on this matter since last year and Linda Margolin who also participated with me is on this call as is our representatives for Lee Fixel, Oliver Cope, his counsel I believe David Dubin is also on.

Mr. Wainwright: Len, you are breaking up a little bit.

Mr. Ackerman: Let me speak up a little bit then. Essentially what is happening here is we have overcome the FAAR issue and we are...[inaudible]...side. We are removing the curb cut on the eastern side yet there will be remain a pedestrian easement servicing the Nature Conservancy as an interest in the oceanfront property. Historically the background summary is in 1976 this property was

approved a two-lot subdivision with a shared driveway on the eastern side. What we are proposing is to swap property between 226 and Furtherfarm to allow the owner of the eastern parcel to share the vacant parcel that fronts on Georgica Road (sic) and as an accommodation, the owner of the rear lot, Lot 2, is going to relocate his driveway access to his home which is under construction on the western side. In our summary letter of November 25<sup>th</sup>, we have addressed the traffic, the safety, and the landscape concerns. I believe we have demonstrated that there would be no adverse impact from the location of the...[inaudible]...driveway from the east to the west. I believe we have dealt with any concerns raised by Suffolk County Planning Commission. There will be no Suffolk County Health Department necessary, and I believe with respect to other concerns that were raised by the Planning Board in prior discussions, we have addressed all of those with the Nelson Pope report and the engineer. Any driveway design curb cut will be dealt with by the Village Highway Department with respect to the curb cut application. We are available to answer any questions or deal with any other issues that the Board may have at this point. Thank you.

Mr. Wessberg: Are you done speaking, Lenny?

Mr. Ackerman: Yes, thank you.

Mr. Wessberg: Okay. Any of the Board Members like to speak? Bruce?

Mr. Siska: Yes, I know I was not a part this discussion beforehand but I have read through the minutes of the previous meetings for this application and the materials that were submitted along with it. So, I just have a couple, sort of observations and then a couple of questions to finish out with. Just overall observations, Further Lane is a little unique in that it has no road right-of-way which means land owners can basically landscape up to their property line which is the road edge. So I think that is something we should keep in mind. The property to the west of this new curb cut does have very mature landscaping right up to the edge of the road, sightlines probably are not great looking west. I did stand there a couple of weeks back trying to gauge sightlines looking east and then sightlines looking west. I know we cannot sort of dictate what happens or predict what happens down the line, but I think it is just something to think about where the landscaping potentially will happen on the 218 lot and how that might affect looking eastbound. I just have a question on the FAAR road why, what has sort of changed in regards to not requiring a FAAR road for these two lots, and then my last question is how, I am assuming the utilities for lot 226 run down the existing east easement. Are they going to remain there and how that utility easement may get addressed in the

future if anything happens and those utilities need to be worked on, repaired, or whatever, in the future where access might to get to those and how all that sort of pans out. I just think that is kind of odd for me to put utilities on someone else's property and then how that stuff gets accessed and how the logistics of that sort of work out.

Ms. Margolin: Len, would you like me to address this?

Mr. Ackerman: Since Bruce did not sit on any of it, if you do not mind, can we hear, there may be duplication of these questions, Linda, instead of answering each one, Kenny, do you want me to, instead of doing, answering each one, I thought if we could go through everybody's comments a lot of them will be the same comments and I thought we could, I will do it anyway you want to do it but...

Mr. Wessberg: Bruce has been brought up, abreast here with all this. I am going to go around to all the Board Members and see what their opinion is on this. Listen, I have spent the last two days, including this morning, up there, I have to agree with Bruce, the utility under this road, to maintain them, the homeowner has spotted a fire hydrant at the end of this road which is the perfect access for fire apparatus and you know, Lenny, I would like to, the safety issue here, to address the pull-up in front of the garage, this guy has made this existing road to fit his house. The question I have is all of a sudden why did we need to do this? The road has all the utilities under it, water main, and like Bruce said, to maintain this, should something happen down the road, what do we do? Yes, we are repeating probably, Lenny, but this project has been going on over a year which you know. If we are going to ask the same question a couple of times, you have to bear with us.

Mr. Ackerman: No, I am fine, I will answer each one's questions or observations however you want to do it.

Ms. Margolin: Would you like me to do that, Len?

Mr. Ackerman: Yes, Linda, go on.

Ms. Margolin: Okay, there is an existing written agreement between the owner of Lot 1 and the owner Lot 2, that Lot 1 will give a written easement to Lot 2 to install and maintain the utilities here including whatever access is necessary in order to address any future maintenance needs for the utilities. So, we expect to record such an easement in connection with the approval, if it is forthcoming, of



this lot line change because in order to effectuate it, we would have a deed running from, we would have deeds running from both parties to the other and the easement would be expressed in the deeds. With respect to sightline issues and the possible interference with landscaping, the Village Code already addresses this which is to say that even though the Village does not have title to any shoulders beyond the paved area of Further Lane, the Village Code in the section dealing with highways, empowers the Village to control landscaping that interferes with safe use and access of its roadways. My clients certainly do not intend to plant anything that will obscure visibility looking east, and while we do not have the ability to control what the owner of the lot adjacent to the west does, the Village certainly does. It is already in the Village's Code and so we do not think that that is, a. we do not think it is an issue, and b. we do not think it, as an enforcement issue, is an issue that actually falls in front of the Planning Board. Enforcement is a question for the Village and not for the Planning Board.

Mr. Ackerman: Linda and Bruce and Ken, what Ken and Bruce are both asking, Linda, is a more fundamental question. What they are asking is, and I would like you to respond to this because you negotiated the agreement between the parties, what they are saying is if someone were to develop a house...

Ms. Margolin: Why do we want to do this?

Mr. Wessberg: That is the question.

Ms. Margolin: Okay, fine, I will be happy to address that. The agreement between these two parties was done with the idea that there would be an advantage to both. The Baron family, which owns considerable property to the east of Lot 1, would be able to add this Lot 1 essentially which they intend for the moment to remain in its undeveloped state to what is essentially become a family compound without the separation of an active driveway which is what there would be if the driveway remained along the easterly edge. And the owner of Lot 2 would gain the advantage of instead of having a narrow 20 foot flagpole to provide access to the lot, they would have a more generous area in which to install a driveway and the advantage in terms of, there is also an added advantage, we think, in terms of what the fire apparatus access rules and the fire code will require because the length of the flagpole going down to Lot 2 calls essentially for a midpoint pull-off to allow one piece of fire equipment to pass another. It would not be required with respect to the existing 20-foot flagpole because that predates this rule but with the new lot line change, it will be required and there is actually room to do it. So, from the standpoint of fire safety, it should also improve fire safety access but the principal

advantage that the two lot owners were looking at is, as I said, for the Baron family it was the ability to create continuousness across lot lines and for Mr. Fixel who owns the 226 parcel the advantage was to have better driveway access. They made these plans a very long time ago, well before construction started. The application was presented to the Planning Board for reasons that are revealed from the various minutes and so on and so forth. This application proceeded through many, many meetings and was altered on the basis of pre-application conference to provide for two curb cuts, not one, because of the concern that under the interpretation that the Village Building Inspector was using of the FAAR rules at the time, it was going to require a 26-foot-wide driveway all the way down to Lot 2 if it was a common access. We did not ever believe that interpretation was correct because it had to do with the number of buildings that would be served by the driveway and the definition under the State Fire Code of building in this case is a building suitable for human habitation and therefore we did not think certain buildings counted but we were trying to exceed to the interpretation that the Building Inspector was then using, the Building Inspector now has brought his interpretation in line with what we believe is correct and therefore the use of a common access does not require a 26-foot wide driveway, it requires basically a 12-foot wide driveway with a pull-off to allow one piece of equipment to pass another if necessary. So I hope that answers all of your questions. If there are more, I am happy to do my best.

Mr. Ackerman: If I may Ken...

Mr. Wessberg: Walker, go ahead.

Mr. Ackerman: I just want to interject something. I always look at an application in terms of what is the story behind the application. These are two neighbors who are trying to work together to solve some issues they have as adjoining lot owners. In 1976, there was this narrow access strip, there was the focus on fire apparatus, on safety issues with respect to these estates at the end of these long driveways was not a major concern. Today we are more focused on that. I think there certainly is obviously there are benefits to the landowners, the benefit to Mr. Baron is that he has now an adjoining, contiguous piece of land to his other property. His present intention, although I cannot commit to this, is to maintain this and develop this lot, Lot 1, more as a garden, as a place for his grandchildren. Over the last several months since COVID, he and his entire family have been living on their property and more than ever he appreciates the fact that he owns this piece of land and wants it to remain as open space. That is not to say in the future he may not build something there but that is his present intention. The benefit to Mr. Fixel, the owner of Lot 2, is, albeit, he planted his utilities here to start construction and

because this has taken, through no fault of the Board's, so long to resolve, they want the, the owner of Lot 2, wants the utilities to remain there, we have an agreement that is going to cover that. There is also a benefit to the parties in that as you noticed on the southern boundary Mr. Fixel gets some additional property down here which gives him more expanse to the north. So, I always look at the story in terms of what are the benefits, what is the benefit to the owner, what is the benefit to the Village, I think the benefit here with respect to access for fire apparatus is I think very important, very significant. It is also a benefit to the owner of Lot 2 and what is the detriment to the Village. Well, we are moving it to the west, we are moving the common access to the west, certainly the owner of the lot to the west has encroached with their landscaping but that is something that the Village has to deal with as I pointed out at a prior meeting. The Village has the right of enforcement to deal with that and to have people when they plant right up to the property line, to the road line, to be sure that there is no an obstruction of view. I noticed most recently the Village has done that, for instance, on the corner of Apaquogue and La Forest, I see that they have had people cut back hedges so that when you pull up to a stop sign, you could see what is coming around the corner. So, I think there are positives and there are negatives but I think it is all part of the story and I think on balance, this is a fair application, I do not think it is setting any precedent whatsoever in terms of having an adverse impact in the future on the Planning Board's work. I would ask you to approve.

Mr. Hajek: Can I ask...

Mr. Wessberg: Walker? I am sorry, John, go ahead, one of you go...

Mr. Ackerman: Yes Billy?

Mr. Wessberg: John Tarbet?

Mr. Hajek: I cannot see everybody with the screensharing so I did not know...

Mr. Wessberg: Yes, Billy, I am sorry.

Mr. Hajek: Okay, I just want to clarify a few questions that I have just so the record is straight. There were previously plans submitted, multiple versions of it, by a landscape architect showing the curb cut and a raised or elevated island within the curb cut, is that, is the applicant still seeking approval for that specific plan or is the detail of the driveway not, or is there a different, that is what I am asking, are you still asking for approval for that specific plan?

Ms. Margolin: No. We are saying that the details of the driveway will be worked out as necessary with the highway department as they usually are with respect to any curb cut application.

Mr. Hajek: Yes, for a single driveway. What are the requirements, I do not know, it is not clear to me that the Building Inspector, you have changed his interpretation of the Fire Code but if he has, do we know what the requirements are for two houses? What the driveway width would be required.

Ms. Margolin: The requirement is, there is no building currently planned for Lot 1.

Mr. Hajek: Okay.

Ms. Margolin: The requirement for a drive, so this driveway at the moment is going to serve one single family house on Lot 2 and the requirement for that or for a driveway that does not serve more than four buildings, buildings being defined in the Fire Code as inhabited buildings, and we do not think that even if Lot 1 were to be developed, it would have more than one inhabited building on it, but it is a 12 foot wide driveway with, given the length of this driveway, at least one area to pull off where it becomes wider so that one piece of equipment can pass another if necessary. And in addition, I believe, Oliver Cope, who I believe is on the call, may be better suited to answer this than I do, there may be a requirement, due to the driveway's length and the fact that it is a dead end, for a turnaround area on Lot 2 so that equipment can turn around and exit and does not have to back up.

Mr. Hajek: Okay.

Ms. Margolin: Oliver may be able to speak to that more than I but I believe that those are the requirements of the New York State Fire Code.

Mr. Hajek: Okay.

Ms. Margolin: They will not ever...

Mr. Hajek: If it goes, it is going to serve, ultimately it is going to serve two homes...

Ms. Margolin: A driveway that serves two homes does not have to be wider than 12 feet.

Mr. Hajek: Okay, so 12 feet, okay, that was my question.

Ms. Margolin: Is that right, Oliver?

Mr. Cope: I think that we may need two pull-offs because you need one every 500 feet so we will widen out to 20 feet, I do not think we will do a driveway that is only 12 feet anyway, we will do 14, but one of the things to keep in mind is the scale of the environs and the community at large, and I would point out that Further Lane is only 21 feet wide on this stretch.

Mr. Hajek: Okay, I just wanted to understand what was required, that is all, that is helpful, but it does seem that you could comply with the State Code in the existing 20-foot-wide common driveway then, so, okay.

Mr. Wessberg: I have one question for Beth. Has the Village adopted that road yet, the width of the road, what they are referring to?

Ms. Margolin: The Village, if I might say, it is not up to the Village, the Village long ago was required to adopt the New York State Fire and Building Codes and any changes to those are automatically imposed on the Village.

Ms. Baldwin: Though I think the question was whether or not Kenny, in his role as the Code Enforcement Officer, has changed his opinion as to how to interpret that Code section of the Fire Code, and I believe that he has changed it, however, we have not finalized exactly what his opinion is. I do believe in speaking with him that he did say that the driveway, specifically right now, would require the turn-outs, that Linda you talked about and Oliver you had talked about, and that it was not the 26-foot-wide driveway that we were talking about in the past or that had been an issue in the previous. So, I think as far as this application is concerned right now, I think the need for the driveway, I think that issue has been addressed, what the final opinion will be is still in progress, but for this application I think, as long as the turn-outs and the turnaround areas are provided, I think that will satisfy the Fire Code issue.

Mr. Wessberg: Thank you.

Mr. Siska: Is that something we need to have shown on this survey?

Ms. Margolin: If I may answer, it is my belief the answer is no because it will be a function of applying for a Certificate of Occupancy. In other words, a Certificate

of Occupancy will not be granted without a driveway that meets the Fire Code so it is really a Building Department issue, it is not a Planning Board issue.

Mr. Hajek: Well, you are relocating a common driveway easement that was required by the Planning Board, generally speaking, common driveway easements are subject to Planning Board review.

Ms. Margolin: No, no, I am not talking about the location of the easement, I am talking about the fact that, in other words, if New York State were to change its Fire Code between the time the Planning Board approves this and the time that Mr. Fixel is ready to seek a C.O. and requires something else, it is what the State Fire Code is going to require, not what the Planning Board approves that is going to govern how this driveway is constructed and, therefore, we do not think we should be showing driveway details on this lot line change. We think that we should, that those details should be something that the Building Inspector in enforcing the Fire Code will be passing on. Oliver, have I misstated?

Mr. Wainwright: I have one or two questions. Is the fact that the utilities are under the driveway, is that an issue in terms of the Fire Code?

Mr. Cope: No, it is not, it is not an issue as far as the Fire Code is concerned and, Linda, to your point, yes, we are subject to the Building Code for the driveway and the earlier design, Billy, that was for access to one house and the sole use so that the location of the gates and those kinds of things do not have any relevance anyway to what we are talking about doing now. One other thing that is worth noting just again because I am very conscience of the scale of the Village and the importance of not kind of overdoing it when it comes to this. I think the Village Code itself with respect to driveways, if there were a right-of-way, limits the width of the driveway to 14 feet.

Mr. Hajek: It does.

Mr. Cope: That is more of a scale issue but I want to make sure that, again, to give context to what we are talking about doing. I do not want to make a big statement here and we have addressed safety multiple times as far as sightlines with the Nelson Pope report and Drew Bennett's review of it.

Mr. Hajek: I still believe the map needs to show the easement because that is something, that is a document that will be required by the Planning Board.



Ms. Margolin: I am sorry, if you are saying that we need to identify the area to the west as the area on which an easement is going to be imposed, yes, I agree with you, to that extent this drawing is deficient.

Mr. Hajek: Okay. Yes, I was not talking about the improvements...

Ms. Margolin: You were just saying that this is the area that is subject to the easement for Lot 1 to take access and it will be restricted, yes, we fully expect that we will be required to record a covenant that will say that and we can note that on the drawing.

Mr. Ackerman: I assume that that would be a condition of approval, if the matter is approved, the covenant that you would want to review and the map, and there are conditions under which the map has to be filed I guess, right Beth?

Ms. Baldwin: Right.

Mr. Ackerman: The subdivision map.

Ms. Baldwin: I just want to say as far as reviewing, and maybe the applicant wants to address this a little more if the Board has questions, regarding the Board's jurisdiction to review a prior determination, subdivision requires the change in circumstances and maybe the applicant can address what is special about the change in circumstances here that would give the Planning Board the jurisdiction to modify a prior Board's approval. I think that is one of the things that maybe we can discuss a little more.

Mr. Ackerman: We would be happy to. Linda is going to deal with it but I think from 1976 to the present, one of the changes in circumstances is we have become much more aware of fire safety and access, and I think that is pretty significant when you have a driveway this long. I think that is a major, probably the most significant issue after public water, after all of these years now we are focusing on safety with all the new equipment that is available, with sprinklers in homes and the like. I think that that is a significant change in circumstances. Linda, do you want to address any of the other issues.

Ms. Margolin: Yes, sure, let me just say that one of the reasons that New York State has changed its rules on fire apparatus access is because fire fighting equipment has become bigger and what the size and the width of equipment in 1976, including even ambulances and other emergency equipment that are not fire-



fighting, they have become wider and so the existing 20-foot-wide flagpole, which Mr. Fixel could not make any wider, does not actually allow for safe passage for one piece of equipment to pass another or for, there was no rule mandated for a turn-around either, so there was no room on this 20-foot wide strip to do the two pull-off areas because they would not be wide enough. I would say the fact that the Baron family has acquired the parcels adjacent to the east certainly does represent a change in circumstances for the property owners, this is not a variance application and the question is not, that change should not be discounted because it is equivalent to what a Zoning Board might call a self-created hardship, it is an actual change in circumstances. The property owner of Lot 1 is affiliated and essentially controlled in the same family with the property adjacent to the east and therefore that is another change in circumstances so we think all things considered that those two things provide sufficient justification for the Planning Board to revisit its earlier determination. I will say that we have looked hard at everything about why this easement was located on the east to begin with and the choice of location at that time appears to have been, as best I can tell, how can I say this, arbitrary. They were going to put it on one side or another and for some reason they chose the east side, there is not any indication in the file that it was chosen for reasons of safety or its distance from Two Mile Hollow Road.

Mr. Ackerman: I would add that I have known the Baron family for many years, long before they bought their property and they have assembled substantial amount of property to build a family compound with homes on this property for their children and grandchildren. I think you will ultimately see that, in and of itself, is a change of circumstances. I do not think the concept of assemblage, as we see it today for family compounds which has been significantly enhanced by the COVID pandemic. You find today clients who are coming out to East Hampton, who are allowing their children and grandchildren to occupy their homes and they are renting homes to provide a safe environment for their families. This concept of assemblage of providing for family compounds, for quarantine areas and the like is, I think, a change in circumstances, and what the Baron family has done has assembled all of this property not just for a family compound but for open space as well. As part of the agreement with the Fixels, they had relinquished certain access to the beach over the Fixel property because they already have access to the beach over their own property. I think, although it has not been discussed because it is a current historical event, COVID has changed people's thinking about their properties and how they want their properties to be developed and the like. Recently we were before the Zoning Board in connection with property on Apaquogue where a family came out and bought a significant amount of property from three different parties to assemble a family compound and are restoring a

historically significant home in the Village rather than demolishing it and tearing it down for open space. There is a whole new concept going on in the Village and I think this is also part of it. This sends a very good message out to the public that you do not have to chop things up anymore, that people are re-assembling it.

Mr. Wessberg: But this application was put in before COVID, it is good that we are talking about it...

Mr. Ackerman: No, absolutely, but the concept of the family compound...

Mr. Wessberg: I agree with you, Lenny, but this application goes back a long way.

Mr. Ackerman: Ken, I agree with you but there is more focus and emphasis by Baron to try to do whatever has to be done to accomplish it, that is all.

Ms. Baldwin: Can I just say that I agree, I understand the family compound aspect but concern here is that this lot is going to remain a separate lot, it is not going to be something that he is merging into his adjacent lots, this is its own subdivision, it is not part of the other lots next door. So, my concern is, the change in circumstance focusing on his properties adjacent, I do not necessarily feel play in as far as, unless he was proposing to merge this into those lots, then maybe that would be something, a change in circumstances.

Mr. Ackerman: He certainly would if he was allowed to build on this lot because this lot will probably eventually provide for a home, not for his children, because he has land for them but for grandchildren. We cannot do that, can we?

Ms. Margolin: Can I just ask Attorney Baldwin a question. Are you suggesting that the greater cognizance of fire safety and what it requires?

Ms. Baldwin: My only concern with that is the law has changed, that is every single subdivision basically in the Village then, because the law has changed for everyone. So, laws change all the time and so I think, and I am just trying to, I just want to make sure that whatever the Board decides, this is really the first step in establishing the change in circumstances that allows the Board to make their decision.

Ms. Margolin: Let me just point out that I think there are two different issues here, one was discussed quite a bit previously when we were asking to abandon the restriction on a single curb cut for these two properties, and I think the Board was

very concerned at that time about whether or not they were going to set a precedent for another application because we understand that those restrictions are designed to prevent a proliferation of curb cuts and to preserve essentially a more rural appearance and cut down on potential traffic conflicts. There are a number of salutatory purposes served by covenants that restrict subdivisions to a single access point. We are no longer asking for relief from that condition and the only condition that we are asking for relief from in the original subdivision approval is the location of the single access point. In that respect, the changes in circumstances that pertain to this application are unique, they are not shared by any other parcel in the Village, that is to say, we have two different circumstances, one is the fact that Lot 2 is owned by an adjacent landowner who wants essentially to use it as part of a family compound as open space and the other is that relocating the access to the west, together with the additional width that the property owners have agreed on, will allow and indeed mandate that these properties provide a fire access compatible roadway which could not have been required if we were not asking for relief from the location covenant because as I think everybody is aware, if we were not seeking to change the subdivision lines, Mr. Fixel could build a 12 foot wide driveway right down the 20 foot strip, he would not have to provide a turnaround, he would not have to provide any pull-offs because if there is a subdivision approval or a site plan approval that pre-dates the fire access rules, then you are not bound by them. So, I do not think these circumstances are necessarily replicated on any other lot and that they are unique to this and because we are not asking for relief from the shared access, I do not think it will in any way provide a, it will not be a road map for any other application. Any other application would have to establish why, if the single curb cut is already located, why they think it ought to be relocated.

Mr. Wessberg: Any other Board Member want to talk about this? John Tarbet?

Mr. Tarbet: No, it has been on the agenda for a long, long time.

Mr. Wessberg: I know.

Mr. Tarbet: I am satisfied with what is there and is being proposed. The only thing I am not sure about is a turnaround at the terminus of this driveway. Is there a possibility for fire equipment to turn around there?

Ms. Margolin: Oliver, do you want to address that?

Mr. Cope: There is a considerable amount of, I would say, flexibility for fire apparatus to drive and position itself around the property and turnaround and depart, and we did an analysis and then laid this out and I do not think we are going to see any kind of issue. Again, I think this is something that we should be addressing through the Building Code and the specific requirements. There are diagrams and things that are specific to a, these kinds of things, it is in there and ultimately, I have to work it out with Ken. I have done the layouts and I do not think we will have an issue. We are happy to work it through with the Fire Department too at the time to make sure everybody is comfortable.

Mr. Wessberg: Bruce?

Mr. Siska: Yes, I have a question. Could Linda or Lenny, could you talk about the access or the pedestrian easement from Fithian Lane (sic) all the way down to the Nature Conservancy. Is that something that needs to remain open? Does that need to remain accessible to the public? What exactly is that?

Mr. Wessberg: You mean Further Lane.

Ms. Margolin: The Nature Conservancy has a pedestrian easement to reach its property. We do not think they have actually ever used it because it is far easier to go and park at the parking lot at Two Mile Hollow but that pedestrian easement will not be obstructed and therefore that is the reason, we believe, you have not heard from the Nature Conservancy which certainly got notice of this application. So, if they want to walk all the way down, they will be able to, no one intends to obstruct their passage. Typically, when you have a pedestrian easement that runs over a 20-foot-wide parcel, you do not actually have to leave the entire 20 feet open, it needs to be open for sufficient pedestrian passage but the burdened property can do something with that 20-foot wide, it does not all have to remain open as long as people can walk back and forth. Does that address your question?

Mr. Siska: So essentially, they will have access or somebody could potentially have access from Further Lane down the 20-foot east side easement through both properties and get to the oceanside lot.

Ms. Margolin: Yes.

Mr. Ackerman: That is a described easement, I notified Nancy Kelley of these hearings, I never got a response, I dealt with pedestrian easements numerous times with Nature Conservancy. We are not going to obstruct them, we are not going to

put up a grate that prevents them from coming in, they will have the same access that they have had since 1976. For 44 years there has never been a question of access. Usually, what Nature Conservancy does is they make an appointment with the lot owner, the oceanfront lot owner to visit the property, that is what they have done with me on numerous Further Lane properties and they usually visit the property from the beach, they do not want to come through there. So we have dealt with that. I think that answers it. Okay.

Mr. Cope: And one minor note while we are over on the easements. We have noted on the Saskas plan the utility easement. It is called out, perhaps that was an oversight but it is there.

Mr. Ackerman: Ken, can I ask that you close the hearing and move forward with a determination on this matter.

Mr. Wessberg: I would like to leave it open, Attorney Beth?

Mr. Ackerman: For what purpose to leave it open?

Mr. Wessberg: Well because Billy wants the updated map on that, I would like to see that, I would just like to leave it open. Walker, do you have anything else?

Mr. Wainwright: I have one question. We spent a lot of time discussing the sightlines upon egress of the driveway, has that been addressed, it has been a while so forgive me if it has been covered.

Ms. Margolin: The report from Nelson and Pope that said that sightlines were adequate for traffic departing in both directions from the driveway was concurred in by the Village's Engineer, Drew Bennett, those documents were on file with the Village Planning Board I think in some part maybe by June of 2019.

Mr. Wainwright: Okay.

Mr. Wessberg: Is Obron here or no?

Ms. Farber: I am here.

Mr. Wessberg: Obron, what is your input on this?

Ms. Farber: You know, my objections to the western driveway are on the record and there is nothing that has been presented that changes my conclusions. I know that Nelson and Pope had their report, I know there was agreement from the Village that that was sufficiently researched, I personally never agreed with those conclusions, and nothing has changed my opinion on it so my thoughts are on the record, nothing has changed.

Mr. Wessberg: I have to agree, we looked at this project a long time ago, the biggest safety issue, we stood at the bottom of that hill going toward Two Mile Hollow, that intersection, and I sat down there yesterday and I sat down there again this morning, that line of vision coming up over that hill with those trees at the intersection, I have, from the beginning, I spoke about this, that intersection and how that lays out there. I do not like it but however that is why I am trying to poll the positions of the Board Members here to see what their, Bruce, do you have anything to add to this?

Mr. Siska: Yes, I have to agree on that. The new curb cut is at the bottom of that hill just west of that sort of intersection at Two Mile Hollow, and, Kenny, as you know, if you ride your bike, you used to do that, I used to do that, seriously...

Mr. Wessberg: I know, I know you come over the hill.

Mr. Siska: You come over the hill, it is a dangerous spot. I sat down there also and just sort of watched cars and pedestrians go by and you know, I have to agree, it is in that hollow, the sightline to the west, I know we have no jurisdiction over landscaping and any of that, but I think it is a dangerous spot going eastbound, also going westbound.

Ms. Margolin: I would just like to point out that we had a supplemental report done by Nelson and Pope that specially analyzed...

Mr. Wessberg: We had that from the beginning.

Ms. Farber: We know that but common sense says we have been there, we stood there, we have watched it, and we do not have to, some of us, I personally do not agree.

Mr. Ackerman: Then, Ken, what is the point of continuing, why do you not just close the hearing, take a vote and do whatever you are going to do but why prolong this any longer. If there is not a sufficient vote here, then you should deny the



application, but we need to move on, we cannot continue going back and forth over this. We had a deal with the FAAR, we had a deal with FOIL under COVID, we are here, to make a notation on a map could be a condition of a determination...

Ms. Farber: I do not think COVID is relevant to what we are discussing, Mr. Ackerman, really it is not.

Mr. Ackerman: No, no, no, I am asking you now to close the record and make a vote. Why prolong this, if you are going to deny it, then deny it, but why prolong this? I am asking the Chairman to poll to see if there are sufficient votes to deny it or pass it but there is no point in continuing this. You do not need a hearing to have another hearing unless you have some basis for continuing the hearing. The basis of making a notation on a map, that is not, that is a ministerial act that is done in the course of providing the Village Attorney with the easement documents and all the other conditions that are necessary to comply with a final determination but if this Board is going to deny it, then let them deny it, let us move on already.

Ms. Farber: Ken, I would like to understand something if I can. The idea of the utilities being on the eastern end, that seems like an issue that I am not really clear we are all understanding in terms of its impact currently or in the future. I just would like some clarification on that as far as what the other Board Members think.

Mr. Siska: Obron, that is sort of what I was talking about in the beginning, I agree with that.

Ms. Farber: I feel like we have not, during the course of this meeting, focused on that and we are getting off on these side tracks. You know, Mr. Ackerman, it is very nice for people who can have big family compounds but those are not issues of our concern. We are talking about things that are of our concern and one of them is brought up early in this meeting but we never really went anywhere with it and that is the issue of the utilities under that eastern current access road so I do not feel like we are clear on that and I do not see in any point in getting distracted by some of this other stuff about what families are fortunate enough to have the big family compounds and what the factors are that are involved there. If we could just stick to the point of the utility issue and get some consensus on what those factors are, I would appreciate that because I myself am not clear on that.

Ms. Margolin: Mr. Chairman, if I could say something on that point to provide some clarification?



Mr. Wessberg: Go ahead.

Ms. Margolin: So, the issue of where utilities are located in relation to a lot that is being developed is of concern to the Suffolk County Department of Health which will require an easement in a form that they dictate with respect to the ability to place and maintain the water supply to the lot in question. Otherwise, there is nothing I am aware of in the State Code or the Village Code that dictates that utilities that serve a developed lot have to be on the property of that lot. And in fact, if you look at various subdivisions that have been approved in the Village, you will see that it is not uncommon for utilities to traverse a lot that does not belong to the lot that is being served by the utilities. One that I am personally familiar with is the Cartier subdivision that resulted in the Village getting the historic house as its property and the property in the rear remained in private ownership and utilities serving the privately owned lot traversed the lot that went to the Village, I certainly, I worked on that some years back so I know about that but I believe that there are many others. If the Planning Board were to go back and look at the many subdivisions that it has approved over the years, you would see that it is not unusual to, how can I say this, to basically group all of the utility access in a single strip that serves multiple lots and the single strip may belong to a single property owner.

Ms. Farber: Excuse me but I would just like to question that comparison because that Cartier property on Main Street, the access you are talking about is where the Historical Society is, if I am correct...

Ms. Margolin: Yes ma'am.

Ms. Farber: Okay, so there really is no other option in that circumstance for the Cartier property, there would have been no other option for them to access their property behind the Historical Society property were they not to work out a negotiation of that access over the Historical Society property. This is an entirely different circumstance where there is more than sufficient property to look at alternatives.

Ms. Margolin: Well, when Mr. Fixel began constructing...

Mr. Wessberg: Let us focus on this piece of property...

Ms. Margolin: This was his only option.

Mr. Wessberg: Okay, Beth?

Ms. Baldwin: Yes?

Mr. Wessberg: We should close this hearing now?

Ms. Baldwin: You also have to address the SEQR, I do not know if you want to figure out what we are going to do about SEQR, we have not addressed SEQR yet either.

Mr. Ackerman: We addressed it today but why delay any further for SEQR purposes.

Ms. Baldwin: I do not think it is necessary if the Board, I do not think it is necessary to keep the record open just to have an updated map. I think that can be as a condition.

Mr. Cope: Let me, sorry to interrupt, but it is Oliver, I remain disturbed by discussion of sightlines and the rejection of not only expert reports from Nelson Pope on the subject of automobile traffic and bicycles as well as the rejection of the concurrence from the Village's own consultant Drew Bennett. I find it an unfortunate part of the world today that facts are being rejected and people are supplanting them with their own opinions, and while I value the opinions and input of the Board in terms of framing this whole discussion, the idea that you would say we value our own opinion, when you have no professional experience on this, over that of professionals in the context of the greater world is very unfortunate, and Lenny's letter makes the point that there are no other facts before the Board than those presented by the experts you should be careful...

Mr. Ackerman: Oliver, let them close the hearing and let them vote and it is what it is, okay. There is no point in lecturing here, let us have a vote and let us see where the vote is, let us see where the vote comes out.

Mr. Wessberg: Okay, any other questions before I close this hearing? Make a motion to close the hearing?

Mr. Siska: I will make that motion.

Mr. Wessberg: Now we need to poll?

Mr. Ackerman: I would like there to be a poll.

Mr. Wessberg: Okay, Pam?

Ms. Bennett: Is there a second to close the hearing?

Mr. Wainwright: Second, I thought I had moved to close.

Ms. Bennett: Am I polling the Board to close the hearing? Is that what you are saying?

Mr. Wessberg: Polling the Board to make the vote.

Ms. Bennett: Ken Wessberg?

Mr. Wessberg: No.

Ms. Bennett: Obron Farber?

Ms. Farber: No.

Ms. Bennett: John Tarbet?

Mr. Tarbet: Yes.

Ms. Bennett: Bruce Siska?

Mr. Siska: No.

Ms. Bennett: Walker Wainwright?

Mr. Wainwright: No.

Mr. Wessberg: There, you have your decision.

Mr. Ackerman: Okay, thank you very much.

Mr. Wessberg: All right. Is there anything else to bring before the Board before I make a motion to close the hearing and the Board meeting?

Ms. Farber: Can I ask a question?

Mr. Wessberg: Go ahead, I do not see you, but go ahead.

Ms. Faber: I do not understand what happened when Lenny Ackerman first came on, this is a technology question maybe, the survey map came up on my screen and the images of all the other Board Members disappeared. Did that happen to everybody?

Ms. Baldwin: Yes.

Mr. Siska: Yes. He shared his screen.

Ms. Baldwin: He shares his screen, people can share their screens to put up different documents and then you have, it shrinks the people, the number of people you can see.

Ms. Farber: Oh, okay.

Ms. Baldwin: I can see six people but when a screen is not shared, I can see a lot more.

Mr. Wessberg: Yes, that is correct, I did not know you were there Obron, I am sorry.

Ms. Farber: Once that happens, I was only able to see the person who was talking.

Ms. Baldwin: Right, you can still scroll through and see other people but what is actually displayed all the time will just be, depending upon what type of technology you are on, like I am on a laptop so I can see six people right now, if you are on your phone or something, you might be able to see only one or two, it depends.

Ms. Farber: Okay, thank you, sorry.

Mr. Wessberg: Is there anything else?

Mr. Siska: No.

Mr. Wessberg: Can I have a motion to close it?

Mr. Siska: I will make that motion.

Mr. Wessberg: Can I have a second?

Mr. Wainwright: Second.

Mr. Wessberg: All in favor?

Mr. Siska: Aye.

Ms. Farber: Aye.

Mr. Wessberg: The meeting is now closed. Thank you everybody, Happy Holidays.



FILED  
VILLAGE OF EAST HAMPTON, NY  
DATE: January 22, 2021  
TIME: 10:00 a.m.

