



**Planning Board**

**TOWN OF POESTENKILL**

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**PLANNING BOARD  
December 4, 2018 Minutes**

**Attendees:**

Tom Russell, Chairman  
Jeffrey Briggs  
William Daniel  
Steve Valente  
Robert Dore  
Harvey Teal  
Don Heckelman

**Non-Voting:**

Robert Ryan, Esq.

**Absent:**

Judy Grattan  
Lynn E. Kane

Chairman Russell called the meeting to order at 7:30 pm with the Pledge of Allegiance and introduces the Members of the Board.

**Public Hearing:**

**Kevin Fahrenkopf**  
**126.00-1-3**

**2 Lot Minor Subdivision**  
**86 Hinkle Road**

Mr. Fahrenkopf's father Edward appears on behalf of Kevin Fahrenkopf. Chairman Russell reviews the plans to subdivide property located at 86 Hinkle Road, using the existing road as the divider. Board reviews the Rensselaer County Department of Health notice regarding the site lacking appropriate separation between the well and septic. Mr. Fahrenkopf says that Kevin Fahrenkopf had spoken to Richard Elder at RC DOH to advise him of current hook-up to public water. Submitted site plan is lacking this information. Chairman Russell reads the Public Notice into record.

**SEQRA Hearing:** The SEQRA portion of the public hearing began with Chairman Russell reading the Environmental Assessment Form (EAF) into record and the Board responded to all questions. A motion made by Member Teal that the proposed action will have no significant environmental impact and therefore a negative declaration should be issued. Member Briggs seconded the motion and it was approved by a vote of seven (7) ayes, zero (0) nays, and zero (0) abstentions. Chairman Russell asked for comments in favor or in opposition of this portion of the application, none given. Chairman Russell states the proposed action will not result in any significant adverse environmental impacts and closes this Hearing. Chairman Russell states site plan will need to be revised to show the existing connection to public water.

**Minor Subdivision Hearing:** Given the negative declaration, the final public hearing on the approval portion of the application was conducted after the SEQRA Hearing, Chairman Russell asked for comments in favor or in opposition of the final portion of the application, none given. Chair closes the public hearing with “There being no further comments, the public hearing is closed.” Member Briggs makes “motion to approve the proposed 2 lot minor subdivision for the property at 86 Hinkle Road, Poestenkill, NY be approved, motion seconded by Member Daniel and it was approved by a vote of seven (7) ayes, zero (0) nays, and zero (0) abstentions.

*Resolution: 2 lot Minor Subdivision Approved*

**Returning Applicants:**

<u>Ronald Levesque</u>	<u>Lot Line Adjustment</u>
124.8-3-4	1 Saddle Hill Road
<u>Ronald Levesque</u>	<u>Special Use Permit</u>
124.8-3-5	1539 Spring Avenue Ext.

Applicant not in attendance this evening’s meeting. Chairman Russell states there have been many discussions in recent weeks regarding the requested Lot Line Adjustment at 1539 Spring Ave. Chairman Russell asks Attorney Robert Ryan for his input. Attorney Ryan states are two (2) issues at present ó the Lot Line Adjustment before the Planning Board and the Use Variance that would be needed from the Zoning Board of Appeals. Further, the Planning Board does not have the authority to address the use of the property unless the Code was changed. The Applicant’s desired use is prohibited at this time. Member Briggs advises the Board of the existence of NYS Department of Conservation wetlands west of this property, that would need to be delineated, with possible mitigation options available prior to building any structure and should the Applicant get through all the other processes, the issue of wetlands would then need to be addressed. Member Valente questions that the Application to add approximately one (1) acre to the former Talbot property and why this request is deemed more than a minor request.

Board Members discuss various issues related to the property. Attorney Ryan states the Applicant acquired the 1539 Spring Ave. Ext. parcel at a Rensselaer County tax foreclosure sale and the issue at hand is that the Applicant’s personal property is part of a previously approved major subdivision that required the undeveloped land be given to a homeowners association or a nature conservancy, of which he is neither and that the Applicant is looking for the Planning Board to approve Lot Line Adjustment by taking some of this property to attach to the other parcel when it’s supposed to be owned by homeowners association or nature conservatory. Attorney Ryan states that acquiring the parcel at a tax foreclosure does not invalidate the provisions, easements, covenants, etc. and are all still applicable and a title report would have shown these items. Member Heckelman states that there were others interested in bidding for the property and didn’t because they were told there were restrictions that wouldn’t allow any development of that property, then the question is that if

we as a Board approve the application, are we liable to the other prospective bidders who could say "We wanted to buy the property and were told could not develop it and now you are allowing someone to develop it." Attorney Ryan states there is nothing on the plans indicating development can not happen and a legal nuance would be to create a homeowners association and the homeowners association that could then modify the provisions. Chairman Russell asks if there are any other comments from the Board Members, there are none. Chairman Russell questions whether the Planning Board could/should refer the Applicant to the Zoning Board of Appeals for a Use Variance, as an Advisory or should we table the matter. Attorney Ryan states that since the requested use of the property is not currently permitted by the Code, yes, Applicant can be referred to ZBA. Chairman Russell makes a motion to refer the Applicant to the ZBA for a Use Variance, there is no second. Member Valente requests discussion.

Discussion regarding prior commercial use does not mean that future commercial use would be "grandfathered in". ZBA Chairman Paul Jamison joins the discussion and states any Use Variance would be difficult to obtain due to very stringent provisions of law, not personal feelings of the ZBA Members. Member Briggs questions Supervisor Jacangelo's thoughts/intentions of comments he made at recent Town Board meeting and Chairman Jamison states that Supervisor Jacangelo would want the Planning Board to be able to approve such changes in commercial uses provided certain elements could be met. Member Briggs recounted the comment as "that if parcels can't have new use, they could become derelict". All agree changing of the Code would take some time, that the Town Board always has the ability to change the zoning, to have some flexible zoning. Town Board Members Butler and Van Slyke join the discussion to provide additional details, state that the Town Attorney was to draft something for distribution to the Planning and Zoning Boards and they haven't received said draft yet. Board Members agree to table the referral to ZBA pending information on the wetlands, etc.

*Resolution – Request remains open at this time, tabled.*

### **Public Comment Period:**

There being no comments from the public, the public comment period was closed.

**Minutes:** Meeting minutes of November 7, 2018 were reviewed. Corrections on page 7 under Levesque on line 7<sup>th</sup> should be "personal property", not "person property". Attorney Ryan stated that a title report would reveal the conditions on the property, not that Zelenke attorney Gilchrist be contacted. Motion to accept the Minutes with corrections was made by Board Member Daniel, seconded by Board Member Dore and approved by a vote of seven (7) ayes; zero (0) nays and zero (0) abstentions.

### **Old Business:**

Chairman Russell reports the following:

- 1) He hasn't heard anything negative regarding Waste Management.
- 2) There is talk of possible solar farm on the Dzembo land, approximately 20 acres, would be behind property by Flint Drive, would run line up to Garfield Road for connection.

- 3) Also, there is a possible 17 acres on Rt. 355, west side of DSI and across from Shuhart home, possible development this Spring.
- 4) Lochvue has potential problem with road work.
- 5) Quail Meadows Drive has been accepted by the Town and is taking care of it. Project Owner Kronau remains responsible for condition and/or any repairs for three (3) years from final acceptance next Spring, when final coat of asphalt is put on.
- 6) There was some discussion among attendees regarding cable and cell phone coverage up on mountain and the significant expense to individual homeowners.
- 7) to receive better service from towers.

**Organizational:**

Alternate Valente apologizes for not attending last meeting but announces there is a new baby in his home, many congratulations given. Chairman Russell confirms with Alternate Valente that he wishes to stay on as Alternate, answer is yes!

A motion to adjourn the meeting at 8:35 pm was made by Chairman Russell, seconded by Board Member Dore and approved by a vote of seven (7) ayes, zero (0) nays, and zero (0) abstentions.

Respectfully submitted,

Lynn E. Kane,  
Planning Board Clerk