

The Planning Board of the Town of Cicero held a meeting on **Monday, February 25, 2013 at 7:00 p.m.** in the Town Hall at 8236 Brewerton Road, Cicero, New York 13039.

Agenda:

- Pledge of Allegiance
- Notes from the Chairman
- Minor Subdivision Preliminary and Final Plan, Set Public Hearing Date, Burdick Ferguson, Ferguson Road, Tax Map# 051.4-05-13.2, 1 Lot **(Public Hearing: 3.25.13)**
- Approval of the Planning Board Meeting Minutes from February 11, 2013 **(approved)**
- Site Plan, Charles Mattes Storage Building, Whiting Road (Tax Map# 080.-01-01.2), Proposed Storage Building **(to return)**
- Site Plan, Cicero Dumpster Service, 6188 South Bay Road, Proposed Dumpster Service **(to return)**
- Site Plan, Cicero Equestrian Center, 7863 Kneeskern Road, Proposed Horse Barn and Indoor Riding Area **(to return)**

Board Members Present: Bob Smith (Chairman), Joe Ruscitto, Chuck Abbey, Pat Honors and Mark Marzullo

Others Present: Neil Germain (Esquire, Germain & Germain), Mark Parrish (P.E., O'Brien & Gere), Steve Procopio (Code Enforcement Officer), Doug Wickman (C&S), Jessica Zambrano (Town Board Member) and Tonia Mosley (Clerk)

Chairman Smith opened the meeting by noting the three emergency exits. He asked that all cell phones be silenced. Mr. Marzullo led the Pledge of Allegiance.

NOTES FROM THE CHAIRMAN

Mr. Smith reminded Board members of the up coming SOCPA symposium for their continuing education requirements.

**MINOR SUBDIVISION PRELIMINARY AND FINAL PLAN, SET PUBLIC HEARING DATE
BURDICK FERGERSON, FERGERSON ROAD, TAX MAP # 051.4-05-13.2
1 LOT, JONATHAN & MARIANNE BURDICK**

Mr. Smith moved for the adoption of a resolution calling a public hearing for March 25, 2013 commencing at 7:00 p.m. to consider the application known as Burdick Ferguson, Ferguson Road tax map# 051.4-05-13.2 for subdivision approval. **Mr. Marzullo seconded the motion.** The Chairman asked for a vote.

Ayes: 5 Nays: 0 Abstained: 0 **Approved**

APPROVAL OF THE PLANNING BOARD MEETING MINUTES FROM FEBRUARY 11, 2013

Mr. Abbey made a motion to approve the Planning Board meeting minutes from February 11, 2013.

Mr. Ruscitto seconded the motion. The Chairman asked for a vote.

*Ayes: 5 Nays: 0 Abstained: 0 **Approved***

**SITE PLAN, CHARLES MATTES STORAGE BUILDING, WHITING ROAD
TAX MAP# 080.-01-01.2, PROPOSED STORAGE BUILDING
CHARLES MATTES/LJR ENGINEERING**

Representative: Charles Mattes

Mr. Smith noted the application was not back from the County and so the Planning Board will only be able to do a general review tonight. If you will give your name and generally cover what you are proposing the Board can ask questions.

Mr. Mattes introduced himself as the owner of the property. We have an agricultural process where we grind brush. We needed some storage for the machinery on site. All of the machinery that goes in the building has to do with what goes on there.

It is a 60' x 140' building. It is pretty basic.

Mr. Smith asked if the driveways have been located with a driveway permit from the County.

Mr. Mattes explained that all permits and fees have been paid to this point. Like I said it is a very, very simple building.

Mr. Honors asked if this was in addition to the one that Mr. Mattes already built.

Mr. Mattes responded no, that is the same building. We are just clarifying the use.

Mr. Smith: This is not the only location that we have this issue with. This should have a site plan. Charlie wants to comply with the law. We have another person coming in tonight that should have come in for review before hand.

Steve has put a lot of work into this. We are just trying to get the property into compliance so that Steve has something to work with. Indeed the building is already there. I drove by it. It looks nice. The

mulching activity has existed for many years.

Mr. Mattes: We started prior to October of 2003, so it has been a long time coming for a building.

Mr. Smith: A lot of this equipment was stored at your residence on South Bay and Route 31. You have gotten that off of the corner. It is a very, very good thing.

Mr. Procopio: From a setback issue for the building, Charlie has proposed a lot line adjustment. They would have to submit a simple subdivision application to the Zoning Office to get that lot line 27 feet so that the building's setback is compliant. It is currently at 23.1 feet. It needs to be at least 50 feet from the property line.

Mr. Mattes: I own that property as well. We will simply adjust that lot line. It is a 44 acre piece.

Mr. Parrish explained that he would do a review and get comments to the applicant's engineering consultant.

Mr. Smith: I appreciate the fact that you have worked with us.

Mr. Mattes: It is the right thing to do. And it is the right thing for the Town.

Mr. Smith: We should receive the County's review soon and should be ready for the next Planning Board meeting. It will be our intention to review it and make a decision at that time.

**SITE PLAN, CICERO DUMPSTER SERVICE, 6188 SOUTH BAY ROAD
PROPOSED DUMPSTER SERVICE, AMRIK SHERGILL**

Representative: Amrik Shergill

Mr. Shergill introduced himself noting the screen showed his proposed site plan as requested by the Board.

Mr. Smith: You have added some greenspace along both roads.

Mr. Shergill: On three sides, Thompson Road, South Bay Road and to the end of the property along the backside of the south section.

Mr. Smith: Have you had an opportunity to get a copy of the easement for Niagara Mohawk to our

attorney?

Mr. Shergill: I spoke with two people. They both said if I stay 10 feet away from the tower they would not have any objections.

Mr. Germain: We talked about this during the work session. We need to see the actual easement to make sure that what you are planning is consistent with the dictates of that easement.

Mr. Smith: For us to move ahead, we need to get a copy of the easement—which is filed and is easy to get—to our attorney. Mr. Germain will review it. If it appears there are any issues with the use we would need a letter from Niagara Mohawk—who you granted an easement to—to say that they are okay with the use.

Mr. Germain: That's correct. We can not simply rely on a conversation. If something is required in that easement to be changed or amended or altered I am not sure a simple letter would do it. You need something of the same legal enforcement as the easement.

Mr. Smith: As a Board we can not approve a use that is prohibited by an easement.

Mr. Germain: Correct. The applicant is promising you certain things. If the applicant is not able to do those things because they fail to comply with the easement, that would be a problem for this Board. In this case it is a NIMO easement. I think that it is fairly likely that they might take issue with some of the things proposed.

Mr. Shergill: You need to look at the deed or the easement.

Mr. Germain: The easement. If you look in your title history you will see that anything that affects the property will be in that history which will be in your abstract. There will be a book and a page number. You can get that information from the County Clerk's Office. The book and page is also mentioned on your site plan.

Mr. Smith: Did you have any signage included in the site plan?

Mr. Shergill: No, no signage.

Mr. Smith: The number of dumpsters is?

Mr. Shergill: I believe 27.

Mr. Smith: So, you do understand that if we approve 27, that is what the use would be for.

Mr. Shergill agreed. I have 15 there now.

Mr. Smith: And you understand that you can not store things in the dumpsters over night?

Mr. Shergill: That is true.

Mr. Smith: Those were some of the issues we covered in the work shop.

Mr. Parrish: I have not had a chance to review this yet to provide comments. I would like to ask about the greenspace provided around three sides of the property. Would the Board like something also along the north side or the fourth side which abuts his adjacent parcel? Does the Board feel that is appropriate as greenspace or do you think, as it is shown, the gravel up to the property line is acceptable?

Mr. Smith: That's the existing property where you have the carwash.

Mr. Shergill: I would keep it gravel.

Mr. Smith: But you are going to skirt the entrances? You were going to skirt the entrances with 20 feet of asphalt so that you don't track gravel out onto South Bay or Thompson.

Mr. Shergill: That's true.

Mr. Parrish: That is not necessarily reflected on this plan, but I do have that comment down.

Mr. Smith: What did we determine off of the Thompson Road entrance?

Mr. Parrish: It looks like it is part of the Niagara Mohawk access way. It cuts a corner of Mr. Shergill's property. It does look like it is actually removing that.

Mr. Smith: The entrance will be in and out of South Bay. The gravel is good for this use because we are not creating anymore pavement. He is not allowed to wash or clean the dumpsters on site. He has agreed to wash them in his car wash which is connected to the proper sewage. There shouldn't be any leakage out of any of his dumpsters.

Mr. Honors: You are pretty much using them for construction debris, C&D materials? I think that any organization to the lot would be an improvement to that corner, along with the new greenspace, etc.

Mr. Smith: Does anyone feel that we need greenspace between the applicant's car wash and the site? I think adding it on South Bay and Thompson was important. To answer Mark's question, I don't. Are there any other comments?

Mr. Ruscitto: I think this will be an improvement.

Mr. Abbey: On the site plan coming in next to the car wash you have an asphalt pad as an entrance onto the gravel. You don't show the same asphalt skirt off of South Bay Road. I suggest showing that on the plan.

Mr. Marzullo: I'm happy that the plan is back in front of us. I'm glad that you are moving forward getting site plan approval or stopping the operation.

Mr. Smith: So, you have a couple of things that you have to do. You want to get the asphalt pad off of South Bay Road noted. You have to communicate with Mr. Germain about the easement. He needs to look at it. If he has any questions about what NIMO will allow you need that conversation to be in written form. He will explain to you what we need for that.

**SITE PLAN, CICERO EQUESTRIAN CENTER, 7863 KNEESKERN ROAD
PROPOSED HORSE BARN AND INDOOR RIDING AREA
CYNTHIA GRIFFO**

Representative: Greg Griffo

Mr. Griffo introduced himself noting our site plan indicates the location of our house. It is all adjoining for a total of almost 38 acres. We would have one horse barn with 25-28 stalls and space for storage. The indoor area is attached to the building. Riders can leave their stalls and go right out into the arena.

These are show horses so they are not going to be walking around the neighborhood. They would be in small fenced-in areas for 2-3 hours per day. Then they go back to their stalls. So for now to keep within our budget, everything will be done within the arena. Eventually there will be an outdoor arena but we have not gotten to that point because of the budget.

I have been in contact with Steve to start all of this.

Mr. Procopio: I don't have any real comments right now. There are some issues that need to be addressed by the Board. Mark will have some comments on those. I do think that the site is appropriate for this use.

Mr. Parrish: We do need some clarification on what is being done here. I noticed this site is two tax parcels. I believe the building is off set about 5-10 feet from the property line. There will be an issue with the building's location. There is also the question if an operation can occur on two separate properties. The tax parcels could be combined into a single lot to eliminate the lot line set back issue and the one operation on two parcels issue.

Mr. Smith: The driveway that serves the house would also serve the operation. Do we need to be concerned about an easement there?

Mr. Parrish: That depends upon how this issue gets resolved. I think that the cleanest thing to do would be to combine the parcels. That is up to the applicant.

Mr. Griffo: Steve and I talked about this. My business is separate from our home life. My wife owns both parcels and both are in her name.

Mr. Parrish explained even if you own both parcels the building still needs to meet the correct setbacks.

Mr. Smith: He might have to move the building. If he chooses not to combine the parcels don't we have to have the driveway situation addressed?

Mr. Germain: They are saying it is the same owner on both parcels.

Mr. Smith: So she can't grant herself an easement.

Mr. Germain: Correct. In effect the owner would have the right to travel an easement whether or not it is on either property. From the setback perspective, I agree the way to clean it up would be to adjust the lot line or make this one parcel. I am sure that there are reasons that you might want to explore on your own as to why you might want them separate or why you might want them joined.

One thing is sure. You will not be able to get site plan approval if you have a setback violation.

Mr. Parrish: It is not just the access drive. You also end up with the paddocks being on a separate parcel, the other pen, the parking area for the trailers, etc. You have the barn on one parcel and all of these other things associated with the operation on the other.

Mr. Honors: Are you dead set on that location for the building?

Mr. Griffo: No. When I initially set this up we did have the building 50' off the line. Unfortunately the gentleman I worked with drew it here. Maybe because the Bank required us to keep it separate for funding. So there is still a possibility that we might have to keep the two separate. Steve did say that was one thing that would need to be addressed.

Mr. Honors: So the two answers are eliminating the lot line or move the building.

Mr. Smith: You do understand that one or the other has to occur.

Mr. Griffo: Yes, definitely.

More discussion occurred.

Mr. Griffo: My question to you is what is the best way to handle this if we do set the building back 50 feet? What do we do with the other stuff that is on the other property? How do we address that legally, talk to a lawyer?

Mr. Germain: It would not be appropriate for us to give you that advice. There are too many things that impact the decision about how you want to set up your site. You should consult your own attorney giving him a better picture of exactly what you want to do and your future goals for the rest of the property.

Mr. Griffo: I have been doing this for a while. When it comes down to it you people have all of the answers. I would rather have you say to me, this is illegal or set it up this way and we are good with it.

Mr. Germain: The problem is the Board's answers are based upon what you give them. You aren't presenting the Board with a plan that even you are comfortable with.

More discussion occurred.

Mr. Smith: You understand the difficulty we have determining what ever you are going to do with the lot line. That's really a legal issue and a codes issue. As far as whether we would allow one business operating on two different parcels---is it within our rights to approve that Neil?

Mr. Germain: It could be done.

Mr. Smith: From what I understand from Mr. Germain, it does not create a legal issue for us but it could present a legal issue for you down the road if you were going to sell the business and the business is on two different parcels. That is a decision that you have to make. I personally don't see an issue with it, but you have to get a consensus from the Board.

Mr. Honors: I'm fine with it. I'm assuming that you are planning to stay there for a little while.

Mr. Marzullo: I think the cleanest thing from our perspective is if that lot line goes away. If you can work that out with the bank I think that is the avenue that you should pursue.

Mr. Griffo: That's perfect. That is one hurdle taken care of.

Mr. Abbey: Start right there then.

Mr. Smith: But I don't think this plan is impossible if you can't make that happen. I don't think the Board is saying that we would not approve this.

Mr. Ruscitto agreed. We want to work with you but we don't want to set a precedent that we have to maintain in the future if you have other alternatives.

Mr. Parrish: The next item is looking at the National wetland inventory it does show the presence of federal wetlands on the site. I think that if you were to take them and overlay them on the site plan that you are going to find that it encroaches into those wetland areas. You can't do that without getting a permit or going through the appropriate process. It is likely that you would need someone to come in and do a wetland delineation to confirm whether that mapping is correct and then follow through on whatever permitting is required. You have state and federal wetlands.

Are you proposing any type of sanitary sewer facilities? Do you have a need for that?

Mr. Honors: Are there any bathrooms on site?

Mr. Griffo: Just one. In that small off-shoot of the building there will be a utility room in there, a bathroom and a sink. That is the only thing else that we will have to my knowledge. The storage facility will have to be covered for all of the manure. We will do a septic system because the sewers are too far away.

Mr. Parrish: You will need to show the details and location of that on the site plan.

Mr. Smith: That septic system needs to be approved by the County.

Mr. Parrish: The plan really doesn't have any information on grading or stormwater so we will need information on that. If you have over an acre of disturbance as part of your project we will need to get into the SPEDES requirements.

Mr. Smith: Are you going to go over an acre?

Mr. Griffo: Not at this time.

Mr. Parrish: They are showing a covered manure storage dumpster. The Board would like more details on that. Basically it is located off of the back corner next to the property line. You might want to look at moving it away from the other property.

Mr. Griffo: We are using a dumpster service. The dumpster is closed. It would have a cover on it. Depending on the material we use in each stall---shavings or pellets---the service would come every two weeks.

The truck drives into a covered system. It will have a coverall on it. The dumpster goes in like on a concrete pad.

Mr. Parrish: We need to find out whether this would be exposed to storm water. Are these dumpsters water tight?

More discussion occurred.

Mr. Parrish: Will this be open to the public?

Mr. Griffo: Not necessarily, no. My daughter is a member of a team that has 17-20 riders. Pretty much her team will be there plus some other stalls that we will board out to people that actually ride with our team or assist our team.

Mr. Parrish: I guess I would consider that to be the public. It is not just an operation for your own family. You will have other people coming onto the site.

Mr. Smith: We are thinking about parking and how traffic would move around the site.

Mr. Parrish: Correct. How many parking spaces do you need? Will you be holding any events? The

access drive shows that it is 12' wide. At least up to the portion where you are going to have this operation in place, I would recommend that it be a minimum of 22'-24' wide.

Again, I will give you more detailed comments.

Mr. Smith: You are going to have an arena. Will you be doing any shows there?

Mr. Griffo: Not at this time but we could in the future. We have another access point from Kneeskern. But again, not at this time.

Mr. Smith: Would we want the site plan to specifically have a note on it stating they are not going to do that activity? If you should decide to start holding shows, etc. you would have to come back before the Board.

Mr. Germain: If that is what he is proposing it should be on the site plan so that we have some kind of record of what was actually approved.

Mr. Smith: Getting that language on the site plan should make your next visit easier.

Mr. Marzullo: I think that you need to describe to the Board the activities that you want to have there, whatever they may be.

Mr. Germain: I think what you were trying to say when you said it was not a public facility is that it is not open to the general public. That it would be open to a select group of members. I think the best way to say that might be to limit a number.

Mr. Griffo: Our trainers might board three or four of someone's horses. They might even come in just to ride them. But again, they are part of our operation.

More discussion occurred.

Mr. Marzullo made a motion to adjourn. Mr. Honors seconded the motion. The motion was approved unanimously.

IN AS MUCH AS THERE WAS NO FURTHER BUSINESS BEFORE THE BOARD, THE MEETING WAS ADJOURNED AT 7:55 P.M.

Submitted by Tonia Mosley, Clerk