

**TOWN OF FORESTBURGH PLANNING BOARD**  
**MINUTES**  
**July 28, 2020**

The meeting was called to order at 7:00pm by Chairman Richard Robbins virtually, via Zoom.

Members Present:           Katherine Barnhart  
                                  Anthony Cardoso  
                                  Alan Devlin  
                                  Vincent Galligan  
                                  Susan Hawvermale  
                                  Richard Robbins, Chairman  
                                  Robert Sipos

Town Attorney:            Jacqueline Ricciani

Recording Secretary:      Billie Jean McGinnis

**Approval of Minutes**

Minutes for the June meeting were reviewed. Grammatical errors were identified.

Motion to Approve the minutes as amended made by S. Hawvermale, seconded by V. Galligan.

Vote: All in favor.

Abstain: K. Barnhart

**SEQRA Public Hearing for Forestburgh Pond**

The public hearing was opened, correspondence received was read and entered into the record. Comments from many members of the public were received. The public hearing was held open for an additional 30 days to allow the receipt of additional comment, including from the DEC, and then for this session, closed.

**Forestburgh Pond**

Alan Lord presented the application for Forestburgh Pond on behalf of New York Land & Lakes Development. Bob Lesperence, managing partner for New York Land & Lakes Development was also in attendance. There are 21 parcels. There will be a homeowner's association that will own about 15 acres including the lake, dam and cabin.

Mr. Lord responded to the comments and concerns presented in the public hearing.

As far as the lead at the shooting range, he stated to keep it in perspective. It's less than half an acre out of the 546 acres. Their engineer is going to test with a hydraulic probe to get soil

samples from below the surface. They're hoping to get better samples. He was told that when the soil was tested, if they swept up bullet fragments from the surface, that will result in a high level. They consulted with the DEC who agreed that they should do further testing and then analyze the results. The earliest they can schedule the hydraulic probe is September 7<sup>th</sup>.

There is a restriction of one house per lot with no further subdivision. Again, there are no plans to rent the larger lots to a hunting club. The shooting range crosses the property lines so that will be defunct. Neither owner could use that area.

Mr. Lord further explained that the engineer is working on the dam. He has some preliminary sketches of what needs to be done. He's waiting for more of a formal report to submit to the Board.

Any new utility lines that are being put in with this project will be underground according to the Town Code.

ATV trails will be left as they are. There will not be any right of ways or easements to go from one lot to another on the ATV trails except maybe in Lots 17, 18 & 19. They're going to work out a couple of easements to make them usable for access from Route 42.

With regard to adding driveways along Route 42, they can do that but Mr. Lord thinks it's a better scenario to improve the road. That's an improvement for everybody and for safety. If the Planning Board is interested, they will look into having private driveways and not improve that road.

The County commented about the common driveways off of the County Road. They plan to build those at least to where they split to the individual lots because you've got to cross Lot 21 to get to Lot 20.

Chairman Robbins asked if the applicant plans to amend the EAF to indicate that a portion of the existing land is used as a recreational shooting range and if they plan to indicate that hazardous waste has been generated. Mr. Lord wasn't sure if bullet fragments were considered hazardous waste. Chairman Robbins pointed out that in their report, they indicated that the levels were such sufficient quantity that the soil containing them had to be disposed of as hazardous waste. Mr. Lord stated they are going to get more testing to find out the levels before we before making a decision on that.

K. Barnhart has concerns about the dam and asked for a status of the inspection report and if specific repairs have been identified. Her concern is that the dam will not be in good condition at the time the HOA is not managed by the developers. Mr. Lord answered that they have sketches but they're waiting for more of a formal report to actually submit to the Board.

K. Barnhart responded to Ms. Toomey's questions submitted about waterways drying. The covenants provide that no water source will be blocked or diverted so as to cause material damage to any lot in the subdivision. It would prohibit anyone upstream from blocking water coming down into wetlands below.

A. Cardoso had questions regarding docks. He asked if there are provisions for homeowners to build docks. Mr. Lord explained that lots that front the pond can build a dock. Not every lot fronts the pond, so all 21 lots won't have docks. The covenants also specify size requirements.

A. Cardoso also asked about possible deed restrictions or covenants prohibiting future shooting ranges in case someone buys one of the big lots, even if it's not being rented to a hunting club, is that something that would be considered just to address that concern from some of the community? Mr. Lord said he would look into this further.

V. Galligan had concerns for shared driveways. The County brought up the fact that the shared driveway sometimes creates issues post-purchase in how they are maintained. The developer will be handling the actual frontage on Hartwood Road where you may have shared driveways. How is the applicant addressing the continuance of maintenance on shared driveways? To say they have to work it out is very minimal. Mr. Lord stated that the only other thing they could do is split them and put two driveways side-by-side. He was surprised with that remark from the County because it has been his past experience that the County required common driveways. V. Galligan further commented that shared driveways do present problems because if repairs are needed, there's someone who's not going to pay bills going forward. The County doesn't want more than one point of entry to the road, but the applicant may want to research how they're going to address it. Mr. Lord explained that they have driveway maintenance agreements written for some of the lots just not the ones that go off the County Road and split immediately, sharing only a common culvert. Mr. Lord will look into it further.

R. Sipos asked about the sight distance on Route 42. With the amount of driveways and increase in traffic, what's being done to make awareness of people coming in and out of new driveways? Mr. Lord explained that the state hasn't commented on this. The State said they would work with the individual lot owners at the time they want to put in their driveway. Existing traffic counts are very low on both the County Road and Route 42. R. Sipos added that there have been issues at that blinking light multiple times and even with low traffic you're going to have a more flow of vehicles coming up, on and off of that road. Mr. Lord wasn't aware that were any issues. The county nor the state mentioned anything about it.

#### **Determination of Who Will Preside over Robbins/Orr/LaFolie Merriewold LLC Lot Improvement**

Chairman Robbins indicated that this is an application that he and his wife are bringing before the Planning Board. As such, he is recused from participating.

S. Hawvermale offered to preside over this matter but with the proviso that she is a neighbor of Chairman Robbins.

Motion made to nominate S. Hawvermale to preside over this matter by V. Galligan, seconded by R. Sipos.

Vote: All in favor.

K. Barnhart has also recused herself from this matter because she is considering buying the home that is the subject of a lot distribution.

### **Robbins/Orr/LaFolie Merriewold LLC Lot Improvement**

Chairman Robbins and K. Barnhart have recused themselves. As this is a virtual meeting, they both have been muted.

Walter Garigliano, Esq. presented on behalf of the applicant, Richard Robbins, his spouse Nancy Orr and an LLC owned by Richard Robbins. This relates to a number of tax parcels and two homes located within the Merriewold Development. Those homes are located at 85 Merriewold Road and 105 Merriewold Road. Under the provision of the subdivision zoning law, this would be an application for a lot improvement where existing lot lines between the properties would be moved resulting in a pair of lots. 85 Merriewold Road would be 2.82 acres and the proposed lot at 105 Merriewold Road would be 6.5 acres. All setback requirements will be met.

A. Cardoso confirmed that this is currently 2 parcels. Mr. Garigliano explained that it's currently multiple parcels. One lot is a 3.56 acre parcel owned by an LLC of which Mr. Robbins is the sole member. That property was multiple tax lots that have recently been combined into a single tax lot. There's currently a 3.75 acre parcel owned by Mr. Robbins and his wife Nancy Orr. There are two lots today, a 3.56 acre and 3.75 acre lot. After the lot improvement there will be also two parcels; one being 6.5 acres and one being 2.82 acres.

V. Galligan clarified that there were originally three parcels as of the first of the year. Mr. Garigliano explained that there were three tax parcels which, with combinations, became two tax parcels. The applicant seeks to increase the size of one parcel and reduce the size of another. V. Galligan asked if the first combination was a lot improvement by combining the two the first 2 parcels. Mr. Garigliano did not recall if that was accomplished by an abandonment filed with the County Clerk's Office through the Real Property Tax Office or whether it was combined by the Town Assessor upon application by the property owner. That combination is not subject to any regulatory approval. It was simply a matter of removing and eliminating another unnecessary tax lot from the tax map.

V. Galligan commented that the map shows a shared or common driveway across the two properties. Is that driveway going to remain as is, a common driveway between the two parcels or is that going to be segregated? Mr. Garigliano responded that it will be subject to negotiation between the owner and the buyer. Both parcels have frontage on the existing road. The driveways loop around and currently the driveway is a U shaped driveway where you could go in one end and out the other end. He doesn't expect that there would be a plan until a buyer is identified and that it would be subject to negotiation.

A. Cardoso asked about the if the unopened road was ever conveyed to the Homeowners Association or with an easement or right-of-way. Mr. Garigliano explained that in the early 1900s, when this development was platted it has not been conveyed. It's subject to whatever rights people have based upon the plat maps that were filed but it's one of dozens of roads throughout the Merriewold property that have never been opened or used. Some of those other roads might be more of a concern than this one because this road goes to nowhere. This road goes through these two lots and then into the lot that's owned by Merriewold Club Property Co. LLC, a 1000+ acre lot. The road doesn't exist other than on paper. The map that showed that road and the plat associated with that part of Merriewold was filed in 1904.

A. Cardoso asked J. Ricciani if it matters that there is a non-conformity in terms of the front yard setback, or that you just can't create more non-conformity. The front yard setback is 50 feet. This is 51 feet. J. Ricciani advised that the definition specifies no greater non-conformity.

A motion to approve this application was made by V. Galligan, seconded by A. Cardoso.

Roll Call Vote:

A. Cardoso	Aye	A. Devlin	Aye	V. Galligan	Aye
S. Hawvermale	Aye	R. Sipos	Aye		

Chairman Robbins un-muted himself and returned to the meeting.

### **Planning Board Member Comments on Items not on the Agenda**

S. Hawvermale commented that Chairman Robbins is good about getting information to the Board in a timely manner. In the past, the Board would receive printed copies of everything but in the time of COVID, things have changed. It's a lot of information to take in at the last minute. She was wondering if there is any way to remedy this. Is there a way to get copies of things as they come in? Chairman Robbins responded that he gets everything out as fast as he can. COVID has slowed everyone down with respect to getting hard copies. He continues to get electronic versions and will continue to distribute electronic and in paper as fast as the circumstances enable. S. Hawvermale asked for consideration that if the Board receives things

at the last minute that they be carried over to the following meeting as opposed to being considered that night or within two days. Chairman Robbins stated that the rules, as they relate to public hearings, give the public the opportunity to submit up to 2:30 or 3:00 on the date of the meeting. He's not sure that he could have carried it over. This public hearing has been carried over so if there is any further comment to be made by the public or any Board members regarding late received material, we all have that opportunity. S. Hawvermale isn't concerned about public comment but is more concerned about any technical information.

R. Sipsos agrees with S. Hawvermale. The electronic format is harder to go through. It's a little easier to have the printed documents in front of him while it's being discussed.

### **Public Comment on Agenda Items & Items Discussed During this Meeting**

David Licht commented that Mr. Lord did not refer to the EPA and DEC testing of the aquifers. Also, he asked, with regard to the applicant's testing for the lead, are those results being accepted by the DEC or is the DEC going to qualify and verify that their those tests are correct? Chairman Robbins responded that the DEC has indicated that they are doing an analysis of the materials that have been presented in this application which would include the lab reports from the certified laboratories that the samples were submitted to, along with the chain of custody. He doesn't know whether they're going to recommend further or additional or other testing to be made. We will hear that when they respond.

Mr. Licht asked if the aquifers are actually being tested to be able to sustain extra water use and if there will be degradation to downhill properties, specifically properties that are now in existence? Chairman Robbins asked Mr. Lord to respond if he'd like to but he doesn't have an obligation to. Mr. Lord asked for the contact person at the DEC that Chairman Robbins is working with to see if they're working with the same person. Mr. Lord reported that with respect to the lead, they are working with the DEC. As far as the water and the septic, the septic designs meet and exceed all the Health Department regulations as far as setbacks and design standards. The DEC doesn't regulate septic, the Health Department does.

Mr. Licht asked if actual aquifers will be able to handle the extra used for the pumping and for these outflows. Mr. Lord advised that there is plenty of water in Forestburgh. All the well records submitted with the original SEQRA forms show that the aquifers can handle that. Again, it's going to go out through your septic which was designed in accordance with state health department standards.

### **Adjournment**

Motion to adjourn at 8:11pm made by S. Hawvermale, seconded by K. Barnhart.

Vote: All in favor.