

**MINUTES OF THE TOWN OF FORT EDWARD PLANNING BOARD MEETING
HELD ON WEDNESDAY, JULY 10, 2019 AT TOWN HALL COMMENCING AT 7:00
P.M.**

Chairman Belden called the meeting to order at 7:08pm

PRESENT: Chairman Mark Belden
Valerie Ingersoll
Joseph McMurray
Frank Wells
Zachary Middleton
Max Fruchter

ABSENT: Donald Sanders, Jr.

OTHERS PRESENT: Russell Howard and Town Engineer Jim Houston

APPROVAL OF MINUTES: MOTION by Valerie Ingersoll, Seconded by Frank Wells to approve the minutes of the public hearing & regular meeting of June 12, 2019 **ALL AYES**

Minutes of the meeting of June 26, 2019 – TABLED

BUSINESS:

**Public Hearing
Lopez Minor Subdivision
174 North River Rd.
Presenter: Russell Howard**

The following notice was published in The Post Star on July 3, 2019:

PLEASE TAKE NOTICE, the Town of Fort Edward Planning Board will hold a public hearing on Wednesday, July 10, 2019 at Town Hall, 118 Broadway Fort Edward, NY 12828 at 7:05pm to hear comments regarding the Minor Subdivision application of Thomas Lopez and Marika Contompassis located at 174 North River Road in the Town of Fort Edward. The purpose of the application is to split 5 acres out of a 32.2 acre parcel to sell as a building lot. Tax map #203.-1-3

At the public hearing anyone who wishes to comment will be heard.

Max Fruchter recused himself

Chairman Belden opened the public hearing at 7:10pm

Russell Howard: I have the signed agent form as well as an updated map.

Chairman Belden: I had Aimee attach clarification on building in the flood plain to the minutes. Our old Master Plan did not consider area inside the 100 year flood plain buildable area but

when they changed the Master Plan they made it so you can build in the 100 year flood plain. If I understand correctly it's not just the house that has to be above flood level it's the septic system also.

Jim Houston: No, not per FEMA regulations and I don't believe there is a Town regulation for that either.

Chairman Belden: Does the State allow the septic system to be below flood level?

Russell Howard: FEMA is really the regulatory agency on that, they have the different zones and they will specify which zones are buildable.

Chairman Belden: I'm not talking about the house; I'm talking strictly about the septic system.

Jim Houston: They even have that at treatment plants; it has to be structurally stable during the 100 year storm event and functional during the 25 year.

Chairman Belden: When whoever buys this property comes in to get a building permit, how are we protecting the Town; does every Civil Engineer know to go through this process when they design a septic system for someone? How do we guarantee the Town is protected since we are now building in flood plains which we have not traditionally done?

Max Fruchter returned to the meeting for purposes of this discussion only

Jim Houston: The key thing is the elevation of the finished floor of the inhabitable structure and making sure there is no basement that would house electrical or mechanical equipment that could be damaged. There would have to be a minimum finished floor elevation determined and the Building Inspector would have to make sure it was constructed to that elevation.

Chairman Belden: The State would allow you to have a mound system that could be either completely covered by water during a flood event or could just wash away?

Jim Houston: It would have to be structurally stable.

Chairman Belden: How would the Engineer know or the people buying the property know that? My concern is now that we are building in these that nobody comes back on the Town and says that we didn't tell them.

Zachary Middleton: That is the buyers due diligence.

Chairman Belden: That is not what I mean; when we get a flood event and their septic system leaks during the flood and contaminates the well next door, how is the Town covered?

Zachary Middleton: Why would it leak?

Chairman Belden: If you put in a mound that's 3 feet below flood plain and you get a flood event, what is going to happen to that mound? Where is that stuff going to go?

Zachary Middleton: Nowhere, it's just going to be encapsulated by water and goes away. My backyard floods every spring, that area won't have a mound.

Chairman Belden: But, now that the Master Plan has been changed we are going to have a lot of people that will want to subdivide in the flood plain and these are questions that are going to keep coming up.

Zachary Middleton: It's not our responsibility, they have to get engineered plans and the Building Inspector will have to make sure it's done correctly.

Chairman Belden: Yes it is, if we as a Town let them do something that affects other people in the Town it's our responsibility. I would like clarification from the Town Attorney. When the church flooded recently, did you see what was floating in that water?

Zachary Middleton: Yes it was mud and sediment, where would the sewage come from? You are worried about the flood, every time the Hudson River floods the sewer plants north of here dump untreated sewage so until they worry about that issue, I don't know why we are worrying about this.

Chairman Belden: We can't control that issue, we can only control what goes through our Board. I asked our Attorney to come tonight and for some reason he didn't, but I don't think we should just breeze over it. If you guys want to vote to breeze over it and say it doesn't matter then you can do that. I think now that we are building in the flood plain which we haven't done since I got on the board in 2003 we should review it.

Max Fruchter: There are a few people that have built in the flood plain behind Brownell Electric. I believe that as long as the map shows the height then DOH has to look at it and our Building Inspector looks at it.

Chairman Belden: We haven't even been able to have our Building Inspector go out and do perk tests so my concern is how can we make sure that carries through.

Max Fruchter: That is not our issue; we are taking on fiduciary responsibility that is overboard.

Zachary Middleton: I really don't understand how the sewage is getting out because it's in a tank; it's locked in a tank.

Chairman Belden: Your affluent is in the mound and in theory the mound doesn't leak and in theory there is nothing bad in the mound. Can a regular septic system leak? If you are in the flood plain and all of your neighbors are not in the flood plain do your neighbors care if your septic system leaks?

Zachary Middleton: We live on the Hudson River and when the river floods it comes up over the bank and lays, there is no current to rip up tanks. We had a 100 year flood in 2011.

Max Fruchter: That whole property has a bank that is 15'-20' high so the 100 year is not even valid.

Jim Houston: You only need an engineered septic system if you have inadequate separation to ground water you need a specially designed system that requires a PE stamp. I haven't looked at the perk test or soil type out there. To answer your concern Mark, one of the key problems where they have had contamination of wells from septic systems is in Long Island. They had extremely sandy soils and the septic systems were too close. When the flood comes in there, what little nutrients that you are getting out of the system compared to the volume of water in the flood will make the concentration of the pollutant disbursement so low that it would be tough to trace. It is when you have dry conditions where you have potent wastewater going into the well and you drink it that's where the damage is.

Joseph McMurray: Wouldn't any concern be covered by having it on the map that's filed?

Chairman Belden: Hopefully; we have the applicants put the house, well and septic on the map every time on any smaller lot. If our Building Inspector looks at this when he issues a building permit then yes we are in great shape. If our Building Inspector doesn't look at it then we could have an issue.

Max Fruchter: That is not our responsibility; we are responsible for if the lot is buildable.

Zachary Middleton: If the lot is buildable per our Town Code then we have to approve it, I don't feel they should have to show placement of house, well and septic as long as it all meets setbacks when they build.

Chairman Belden: The drawing that I approve is for the health and safety, it's the one that gets your well and septic setbacks. When you don't achieve those setbacks you have problems.

Jim Houston: The applicant shows a configuration that fits on that lot and meets the code requirements and then it's a buildable lot and that's all you can say. If they want to move something around then that is a burden on them that they can take on.

Chairman Belden: They would have to get a new perk test and a new engineered septic system because they are changing their locations.

Max Fruchter: No they don't, all we are concerned with is that the perk test passed for us for the given location and if the Building Inspector later on says that a new perk test is required that's up to him not us.

MOTION by Max Fruchter, Seconded by Joseph McMurray to table this discussion until the Town Attorney sits with us and tells us yes or no **BOARD VOTE:** Max Fruchter – AYE

Frank Wells – AYE

Joseph McMurray – AYE
Zachary Middleton – AYE
Valerie Ingersoll – AYE
Chairman Belden – NAY

Max recused himself for the remainder of the public hearing

Russell Howard: I think it is very thoughtful of you to be having these concerns. As a board, when an applicant comes in it is the boards responsibility to be helpful and explain to the applicant that they know the property and it's in the flood plain so there are some FEMA requirements and engineering requirements in order to build there. You are talking about legal issues now; the Town is not liable for this. Your job is to make the applicant aware that they are in a flood plain and if they build below the flood plain that is their problem; it is not up to the board to enforce a building elevation or to enforce septic design. We do a lot of work for FEMA. They have the choice to build above the flood plain on this parcel and FEMA's whole point is insurance. If you don't build above the flood plain then your bank can force you to buy flood insurance.

Chairman Belden: I just don't want to put the Town in a bad spot. It's our first time doing this and I want to do it right.

Jim Houston: There are 2 key things about having a house in a flood plain, one is the elevation and the other aspect is how compact that fill is and the compactive efforts are very well prescribed by FEMA so that it can't wash away when the flood water comes. If the flood plain occupies the entire lot then there should be some statement on there that there be placement of structurally compactive fill that will be underneath the home to support the home and that the finished floor of the home be at least this because the base elevation is this. Development in the flood plain will require a letter of map amendment due to taking that house out of the flood plain; in order to do that you will be placing fill in there and structurally say that it will withstand a flood and then the perimeter of the house could be removed out of the flood plain and they won't have to pay insurance. That is the legal mechanism to physically remove it.

The Board went through SEQRA Part II:

MOTION by Zachary Middleton, Seconded by Joseph McMurray to declare the Planning Board lead agency for this unlisted action and to declare a negative declaration for SEQRA Review after reviewing all of the necessary application materials due to no significant adverse environmental impacts as a result of the project **ALL AYES**

MOTION by Zachary Middleton, Seconded by Joseph McMurray to close the public hearing at 7:55pm **ALL AYES**

MOTION by Zachary Middleton, Seconded by Joseph McMurray to approve the subdivision contingent on payment of fees **ALL AYES**

Max returned to the meeting

Lot Size Discussion

Chairman Belden: I have had some people question lot size recently and if they come in with 1/3 of an acre what are the chances they can get approved. I tell them it depends on their soil but just because our zoning code says 1/3 of an acre doesn't mean they can. We had talked a couple years ago about 2 buildable acres because I have yet to see anyone able to build on 1/3 of an acre in the R-Ag zone. Some Towns have 5 acre minimums. I think the lot size in our code is very unrealistic and I don't want to see people spend a lot of money for nothing.

Max Fruchter: I have always thought that we needed it higher, even 2 acres is not enough.

Zachary Middleton: If you re-do lot size then we will have to re-do our districts. We now have houses in R-Ag with water and the septic doesn't even come into play as much.

Chairman Belden: If we ever got a grant to make that water district longer, think of how many houses they would be able to stuff in there.

Max Fruchter: Rightfully so, if you have water then 1/3 of an acre is possible.

Zachary Middleton: If you are going to look at changing the lot size we are going to have to look at re-zoning.

Chairman Belden: Do we have to re-zone or could we say if you have access to Town water then your lot size is this, etc. That would make it move quicker because trying to re-zone would take a long time. Minimum lot size in R-Ag right now is 10,000sf, without public water and sewer is 20,000sf and without public sewer is 15,000sf so that is pretty small.

Zachary Middleton: The problem is that you have got to look at every area. I agree that in certain areas with clay you will have a hard time doing that but there are other areas in the southern end of the Town with sandy soil where you may be able to fit everything as it is now. I am very hesitant to make a large acreage change.

Chairman Belden: In the event that somebody had really sweet soil and they could fit everything on $\frac{3}{4}$ of an acre couldn't they go to the ZBA and ask for a variance?

Zachary Middleton: My original well, house and septic all sits on under $\frac{3}{4}$ of an acre.

Chairman Belden: The abandoned house on the end of Hunter Road has been foreclosed on twice and is a 3 acre triangle. The septic in the trailer across the road goes all the way to Hunter Road, the well in the house at the end of the road has an odor in it and their septic went out the back and it didn't work so they dug that big pond in the back. I did not go to the meetings when that was done so I'm not sure what happened. For all we know the Board did everything right but they just put the house, well and septic in the wrong place but even though they had 3 acres, because of the topography of the property they weren't going to make it work.

Zachary Middleton: I am 100% against changing it to 2 buildable acres. I feel if it changes at all it should change very little. We don't have any huge issues or huge growth; I feel if you buy a piece of property and you don't want neighbors close to you then buy more property. Don't make rules that everyone else can't subdivide and put more houses next to you.

Chairman Belden: We also have the Planned Unit Development (PUD) that we have done a few times and with a PUD, a house on a 10,000sf lot is fine because you have water and sewer as well as your roads laid out. My concern is that if the economy stays good and we get some development pressure are we going to be ready for it?

Max left the meeting due to a fire call

Zachary Middleton: When you look at the subdivisions we have done lately we haven't had any small 1/3 of an acre lots; we have done 5 acres and 3 acres.

Chairman Belden: We were always of the impression that we could only create buildable lots with a subdivision. I would like clarification from our Attorney on that.

ADJOURNMENT:

MOTION by Joseph McMurray, Seconded by Zachary Middleton to adjourn the meeting at 8:34pm **ALL AYES**

DATED: July 16, 2019

Aimee Mahoney, Clerk

