

The Town of Gates **Planning Board** held one (1) Tabled Request for one Prelim. Site Plan & Subdivision Approval AND (1) New, Prelim. Site Plan & Final Approval, on Monday, February 26, 2024 at the Gates Town Hall Meeting Room, 1605 Buffalo Rd., and beginning at 7:30PM

MEMBERS PRESENT:

Mike Wall	Chairman
Joseph Argenta	
Ken Martin	
Brandon Stuhler	Alternate

MEMBERS ABSENT:

Kirk Kettinger
Juan Ruiz

Dan Schum	Town Attorney
Kurt. Rappazzo	Director of Public Works
Mike Ritchie	Costich Engineering, P.E
Cosmo Giunta	Town Supervisor

Chairman Mike Wall called the meeting to order at 7:33 PM and began with the Pledge of Allegiance and a Moment of Silent Prayer.

Chairman Wall asked for a motioned to approve the January 22, 2024 Planning Board Minutes as sent to the Board.

Joe Argenta motioned Ken Martin second All in Favor...Aye Opposed.... None

MOTION CARRIED

PRELIM. SITE PLAN & FINAL APPROVAL
Re-Subdivision Map of Lot 1 of Home Pride Builders 3-Lot Subdivision
OWNER: Town Gate LLC
ENGINEER: Nick Montanaro, L.S.
LOCATION: 3399 Lyell Road
District: R-1-11

Chairman Wall asked if the applicant was present to speak on the project.

Town Attorney, Dan Schum verified that the Legal Notice was properly published as required by law.

Nick Montanaro, surveyor for the project which was originally part of a 3-lot subdivision that was created in 2005. They are looking at sub-dividing lot 1 of the sub-division. The back portion would remain as is, with no intentions of development and the front portion which contains the house and driveway would get improvements. The access to the back portion of the lot is a fifteen (15) foot easement, it looks like a land lock piece of property, and in fact is, but he checked with the County and was told this easement for access is allowed.

He received comments back from the town engineer; <read off the letter> #1. The applicant shall coordinate with all County agencies, having jurisdiction to confirm that the proposed sub-division will comply with all applicable requirements. Which they have done. Mr. Montanaro spoke with the county surveyor and confirmed the fifteen (15) foot easement to access this landlocked piece of property is acceptable, allowed.

There was a comment by the county highway department stating fifteen (15) feet is not sufficient for a driveway per their specs, however if the back portion will never be developed and a note is added stating “No future driveway will be permitted in the access easement due to insufficient width” which he did add. So, in essence the back portion is undevelopable as it stands. #2. The proposed fifteen (15) foot wide access easement is to be filed at the Monroe County Clerk’s office and a Liber and Page of the filed easement is to be added to the map, all prior to the town signing off.

Chairman Wall, asked that if the Board signs off on the easement, knowing the land is undevelopable, what would the purpose be for sub-dividing this land off?

Steve Licciardello, property owner, it is very common for excess property to be owned by a separate entity for liability Reasons, for example a large sub-division might have a retention facility as part of the actual sub-division, but the facility itself is owned by a separate entity for liability reasons in case someone gets hurt or something of that matter not wanting the owner of the building or structure to be responsible. They have had one claim with his insurance company and when they found out this is a conservation easement, they requested he do something to mitigate the exposure to alleviate someone going back there and getting hurt. This is strictly for liability reasons and if there was anything in the future he would need to come before the Planning Board to seek approval.

He clarified he actually does have a legal driveway coming off Lyell Rd. that he could technically access his property through. The road cut he currently has and could potentially develop there at a later date with planning board approval, but currently his only reason for this application is for liability and insurance.

Attorney Schum directed to Mr. Licciardello on his last comment that from what he gathered from the County, they wouldn’t give him a curb cut for a driveway, but he is saying he could use his existing curb cut that service the front developable piece to have access.

Mr. Licciardello responded, yes, he has plenty of a wide curb cut to easily access, which he could look into doing in the future, but, right now it’s just cutting a piece of the pie, simply administrative.

Mr. Argenta, looking at the survey, when was field work done on this, recently?

Mr. Montanaro, field work was done with the original survey in 2005.

Mr. Argenta looking at the aerial view, there seems to be some structures like sheds, do they belong to the property owner?

Mr. Montanaro some of the sheds were encroached by the neighbors and they are not asking for them to be removed.

A map was shown and shared for all to be able to see the property.

Mr. Martin asked what measures have been taken to limit access to the surrounding neighbors with people just walking across the property, are there signs posted?

Mr. Licciardello has not posted signs. He didn’t want neighbors to have to look out their window and see a red posted sign. The neighbors have encroached onto this property with gardens and sheds

Mr. Martin, understands the liability part, but feels as the property owner, he should secure it.

Mr. Licciardello it’s hard to secure this type of property, especially when people have been using it for years and will continue using it.

Mr. Martin, understands, but stating somewhere could help. He also clarified with Mr. Licciardello, using the current curb cut at some point, but in order to build on this, a thirty-four (34) easement would be required which he believes is separate from the current driveway. It would not be able to access from the current curb cut. It would need to be a separate entrance if it was subdivided.

Mr. Rappazzo responded, possibly.

Mr. Stuhler if you own the land, why not just take of it and make it safer. Possibly add a fence and cut down trees, again you own the land.

Mr. Montanaro, in theory that sounds good, but is it practical really, a fence isn't really going to help.

Mr. Martin it kind of sounds like you're going to sub-divide this and then just let it go and as dangerous as it is, sounds like it's already like that, so not sure what the reason would be for the board to approve something like this, knowing you're letting it exist and it exists? His thought is the owner would take care of the lot and try to mitigate any kind of issue that may be safety related or liability related prior to trying to sub-divide it.

Mr. Montanaro cutting down all the trees and vegetation can't be done because it's a conservation easement

Mr. Licciardello in speaking with the assessor, found he could lower his taxes if he reduced the footprint, which is another reason.

Chairman Wall added in the Town Code, Section 174-8, there is a whole section on dangerous trees. He understands that most of the people in the audience are probably here about the trees, but there is a whole process for addressing this in the Town Code. The Planning Board is considering the Subdivision request.

Mr. Rappazzo added that it's important for the audience to recognize that this is an application being heard by the Planning Board, which follows very specific steps. The applicant presents their case, the board asks questions and there may be some sidebar discussion. Once the Board's questions are satisfied, the public is given the opportunity to speak to the board and done in an organized way to ensure the application is heard in an efficient matter without any outburst, giving everyone an opportunity to speak and be heard. He continued, knowing everyone is upset and wants to be heard, but asks for everyone to please be patient and wait their turn.

The town has a tree ordinance and that ordinance has a dangerous tree rule in it, and it says, if a resident has a concern with a tree in a neighbor's property and they think it's dangerous, they would come into the Town Code Enforcer's office and then the town sends out the arborist to review the tree and if it is deemed dangerous, the owner of the tree gets notified and has sixty (60) days to remove the tree or have it reviewed by their own arborist and refute the town's determination and then the town board makes the final decision. If neither happens after the sixty (60) days, the town has the right to go onto the property, remove the tree and back charge the property owner for making the dangerous tree safe. That process is going to exist and be valid and be followed through.

Attorney Schum agreed with Mr. Rappazzo that is exactly what the code requires and is not an inexpensive process for the town, but does have the right at the cost to the property owner.

Chairman Wall as a Board feels it can't support or approve this plan as submitted right now and recommended that the applicant reexamine the parcel to show the Board what development would be possible if the Conservation Easement was removed. This would be heard by the Town Board to modify, or possibly remove, the Conservation Easement, and / or have the option of the property owner selling some of the property to the adjacent neighbors.

Side Table

Mr. Rappazzo, none

Mr. Ritchie, none

Supervisor Giunta, none

Open to Public

Hailey Simms, 44 Snowberry Crescent, since purchasing her home in 2020 has had three (3) incidents of dead trees falling over and damaging her personal property. She has spent an excess of over \$2000.00 and has taken Mr. Licciardello to Ogden Court (3-30-2023) and was awarded by Judge Murante \$1000.00 of which he has not paid her yet for the damages. During that court hearing the subject of conservation came up and with the conservation she was told that Mr. Licciardello does not need to abide by the town code because it is a conservation and that he would be the only one to come to the town and ask to remove the dangerous trees. Now the big problem she sees with this land being separated at some point in the future is, he is separating the liability of the dead and dangerous trees that line all of her and her neighbors' properties that back up to. Almost all the trees are dead and the judge did say it would be a large ask, a large amount of money, to do something like that, but not impossible, and as a property owner if there are dangerous trees on his property that could cause damage to someone else's, he would have them removed before the damages. Ms. Simms has all the paperwork if the board wants. It is very important for her that her property is safe (she also has photos of her property).

Ms. Simms noticed in the eighteen (18) page documents with the application that it was stated the entire property was listed as residential and brush and woods labeled, but nothing about the condition of the trees on the property. She added there are also poisonous plants that have grown over the fence and made her dog sick, the property is very poorly maintained. She had gone house to house and spoke to each neighbor and found others who have had damage as well. She has followed the proper procedures, gone to the town, made the complaints, waited the sixty (60) days to see if Mr. Licciardello does anything and then at that point if she chooses to take him to court, she is responsible for making a claim against her homeowners' insurance policy as well as pay her deductible and then sue him in small claims court, but he won't take her mail or pay her and back in November 2023, he was at her property, when she served him the piece of mail with the judgement and he told her in a couple weeks he would see what he could do to make it safer, now it's the end of February 2024 and was told maybe in the Spring because he doesn't want to cause damage to the lawns with heavy machinery. She sent him as well as the town supervisor, links to "how to take down trees without heavy machinery" as well as a link "on how an arborist can tell which trees are alive or dead in the winter", so this is something that can be resolved now, in not impossible and is his responsible.

Anthony Arbori, 11 Annmarie Dr., is his Mom's house wants to know if this is landlocked, where is the access? Mr. Rappazzo **used the rendering to show**. His concern is with heavy storms/rains, his mom's and the two neighbors' properties are completely flooded, so wants to know what would taking out all that vegetation do? Would it create more issues? The existing sewer has always been said to be too small to handle the volume of water. Just doesn't want to look at an eyesore or have water issues.

Celia, Mr. Arbori's sister, just wants to know what does Mr. Licciardello plan to build back there? She has heard homes or storage units, but would like to know what?

Mr. Licciardello is only here to make a sub-division, nothing else.

Attorney Schum addressed the question on what does Mr. Licciardello is proposing to build on the property and the answer is absolutely nothing. The parcel itself is presently subject to a conservation easement, which was compelled by the town at the time of development of the front parcel, so the people of the neighborhood could be assured that nothing would be built back there. The county is saying it is not a buildable lot because there is not sufficient width to allow for another curb cut for access to the rear parcel, so for at least two (2) reasons the parcel is and would be unbuildable, if, this subdivision was to be approved.

Carmelina Vernon, lives in Spencerport and has forever wild in the back of her home and the county takes care of it, she asked if this is a possibility for this property? Her Mom lives at 7 Annmarie Dr. and has lived there fifty-one (51) years, why not just leave it as is?

Mr. Licciardello again this is a liability thing to reduce his taxes and reduce his insurance, which he already has acclaim against. It's not going to change the procedure of what is in front of the board, whether a tree comes down or not, he will

still be notified as he is currently. He is not changing the conservation easement, nor building anything, just reducing liability and hopefully his taxes.

Jeff Secora, 19 Annmarie Dr., Mr. Licciardello mentioned it's a conservation and that it's probably not going to be lifted, but wants to know if there are any details that could actually lift that conservation?

Attorney Schum the conservation easement runs in favor of the town, so nothing could happen with respect to that easement which is recorded and documented for the benefit of the town and could only be adjusted, modified or removed with the consent of the town.

Mr. Secora to second the comment of making it forever wild of giving it back to the town

Attorney Schum, as the person who spoke earlier on the parcel behind her being forever wild, the county takes care of that and is spending county tax dollars to do so. The Town of Gates is not in the business of owning and maintaining land except for parks. This is why the conservation easement was put in place, so the ownership and obligation of maintaining the land stays with the owner and not the town and its taxpayers.

John Caccilio, 5 Burning Bush Dr. asked if landlords who own buildings they rent have a building tax at a lower rate than single family homes?

Attorney Schum, it's taxed at the rate per thousand that the assessor believes the building is worth. There are three (3) methods of assessment, one of which is called income approach, they look the money that comes in and the money that goes out and there is a formula they apply to come to what it's worth

Mr. Caccilio looked up the taxes on this property on Lyell Rd., the building is four times the size of his house and Mr. Licciardello is only paying twice the amount of taxes he pays, not four times and is here looking for a tax reduction. He feels this needs to be looked at by the town because he feels Mr. Licciardello is being under taxed.

Casandra Smith, 36 Snowberry she is here because of the safety issues. There are trees that are leaning onto her trees. She has children and an in ground pool. All the trees as dead and need to be cut down. She also asked about Mr. Licciardello having sixty (60) days to respond and within that time has an Arborists come and disputes, how much time after that?

Attorney Schum the dispute would then go to the Town Board to resolve and they meet once a month on the first Monday of every month.

Chairman Wall asked if there was anyone who wanted to speak on the sub-division of the property and not the trees.

Mr. Montanaro out of curiosity, the conservation easement that the town requested, does the town have any liabilities within that conservation easement?

Attorney Schum, No. The conservation easement was drawn up to provide that the town can enforce the provisions of the conservation easement if it's violated, but doesn't obligate the town to address violations of conservation easement, it's taxpayer money.

Mr. Montanaro asked what was the purpose on requesting a conservation easement?

Attorney Schum, the people in the neighborhood, when the front piece was proposed for development were very concerned with what was going to happen to the rear. So, to give some assurance to the neighbors and address that legitimate concern of not seeing what would happen to the whole piece with the initial proposal, the developer didn't have plans for the rear piece, so as a condition to the approval of the front piece, the town compelled the developer to grant as conservation easement to the town assuring that it could not be developed until/unless the developer came with a plan that addressed all the development concerns.

Mr. Montanaro: so basically the conservation easement really benefits all the adjacent neighbors because now there is never going to be anything built back there. But, what they are proposing at this meeting, meets all of the zoning and legal requirements.

He understands all the emotions and that there are some issues, but all the requirements are being met and is asking for that to be kept in mind.

Attorney Schum, it's this Board's obligation as the development arm of the town to assure that what is being proposed for development of any nature is a sound plan, not only for the present, but for the future.

Joe <in audible>, 37 Annmarie Dr. understands this is all about taxes and liability. He had a fire at 33 Annmarie Dr. and a lot of damage was done. The fire investigator for Gates never found any negligence on the kids' behalf and had to take the kid to court to sue him. He won, but has a mark on his insurance company and will get dropped. With that being said, he has been in the house since 1969, he bought it from his parents and loves this town, but wonders why Mr. Licciardello doesn't go door to door and just donate to each one. He is sure the people would like that. There is deer, fox, nature back there and has never seen Mr. Licciardello there.

Mr. Licciardello if he donates or sells the property for a \$1.00 it is still a sub-divide. He at one-time did try to give a sliver of the property to each, but none of the neighbors wanted it, they were already using it for free, so why pay.

Chairman Wall, yes, but that would require other specific plans to present to the board

Ms. Simms commented on the Arborist thing, she began making complaints back in November 2020 and has never seen an arborist on the property and has even spoken with Cosmo, Mic and Kurt and is a bit confused on this piece of land, after all these years, why now?

Mrs. Vernon, LeChase owned that land for years until Mr. Licciardello bought it and there has always been an unwritten rule with LeChase who was not going to build or do anything with the land and so allowed the neighbors to have gardens and sheds and it was never an issue. Then Mr. Licciardello bought the property and wanted to put eight townhouses in and everyone attended the meetings back then and came up with an agreement and thought it was done and here we are again.

Mr. Arbori if there is no intention on developing the land then why bother sub-divide? Steve replied insurance.

At this point everyone was speaking at the same time.

Attorney Schum, what is before the Planning Board is a fairly simple decision, should they allow this sub-division happen into two (2) pieces. It had been made clear it is not developable. The neighbors have spoken. The board needs to look at all the evidence that has been presented and people are not interested in owning it, which come with a cost that people don't want to do. Points have been made. He understands the issue of the dead trees falling down and there is a process that has not been followed. The town is obliged to follow the process and if not the resident need to follow up on the complaint to be sure something gets done. Dead trees are a no-win situation for everyone.

Chairman Wall, there is a provision in the town code, per dangerous tree rule section 174, for whatever reason it was or wasn't adhered to, can't change the past, but can move forward. His thought is to table the application as is, which gives the town and applicant and residents time to go through the dangerous tree rule and address the dangerous trees that may be out there. That said if this application comes before the board after that process of the sixty-days and removing the dangerous trees it could make this plan approvable. He feels this is a fair compromise

Attorney Schum feels it will be July/August/September before an arborist goes out and looks a half a dozen trees and then make a decision that's going to come to the board after. It'll be six-months down the road and no further ahead. He understands the thought in mind, he hasn't been to the property (he apologized) but understands there are a lot of dead trees, but doesn't know how many are dangerous and could fall of the neighbor's properties or just fall on themselves, but it really is up to the board.

Executive Session 8:36pm-8:48pm

Chairman Wall motioned to **Denied Without Prejudice** the application from **Town Gate LLC to Re-Subdivide Map of Lot 1 of Home Pride Builders 3-Lot Sub-division at 3399 Lyell Rd.**

The Board exercised careful-consideration of the both testimony of the Applicant and the residents from the Public Hearing, reviewed the Town Code, and review the request under the best-planning and engineering practices. As a result, the Board could not support the approval that would ultimately cause an unbuildable and landlocked-lot.

Mr. Martin...seconded.

All in Favor...Aye

Opposed...None

The meeting was ADJOURNED at 8:49PM

Respectfully submitted,
Lily Alberto
Recording Secretary