

CHILI PLANNING BOARD
January 8, 2013

A meeting of the Chili Planning Board was held on January 8, 2013 at the Chili Town Hall, 3333 Chili Avenue, Rochester, New York 14624 at 7:00 p.m. The meeting was called to order by Chairperson James Martin.

PRESENT: Richard Brongo, Karen Cox, David Cross, John Hellaby, John Nowicki, Paul Wanzenried and Chairperson James Martin.

ALSO PRESENT: Michael Hanscom, Town Engineering Representative; Michael Jones, Assistant Counsel for the Town; David Lindsay, Commissioner of Public Works/Superintendent of Highways and Building Department Representative.

Chairperson James Martin declared this to be a legally constituted meeting of the Chili Planning Board. He explained the meeting's procedures and introduced the Board and front table. He announced the fire safety exits.

PUBLIC HEARINGS:

1. Application of Melissa Pernesky, owner; 95 Sheffer Road, Scottsville, New York 14546 for renewal of special use permit to allow a private animal kennel for four dogs. Applicant is requesting approval to allow up to ten dogs; at property located at 95 Sheffer Road in AC zone.

Melissa Pernesky was present to represent the application.

MS. PERNESKY: Hi. I'm Melissa Pernesky. I reside at 95 Sheffer Road. I'm asking -- applied for my kennel permit for the first time about two years ago. At the time, they granted me -- I had only asked for the four-dog limit because I owned four dogs.

In the last two years I have realized it would be more beneficial just to go for a 10-dog limit in the event I had friends or family that came over to play or if I needed to care for a dog if they went on vacation or if I decided to adopt more pets. I do not at all -- it is not a business, just my personal enjoyment.

I have 33 acres. My largest neighbor is the property that borders the New York State Thruway. I am the only house on a dead-end road. I do not have passing traffic. So I'm asking at this time for a 10-dog limit.

JAMES MARTIN: The dogs you have on your property are all currently personally owned at this point?

MS. PERNESKY: Yes.

JAMES MARTIN: As they were back in 2010 when you were before us the last time?

MS. PERNESKY: That's correct.

JAMES MARTIN: You had indicated then invisible fence was still in place. Is it functioning properly?

MS. PERNESKY: Yes. I have invisible fencing and two large kennels.

JAMES MARTIN: Now, you had stated in your letter that you were thinking about providing temporary shelter for --

MS. PERNESKY: My parents live in New Jersey and right before I applied for this, I realized with obviously Hurricane Sandy I was unable to go and bring one of their pets back until they had electricity. At the same time, when my sister who lives in New York wanted to go down to help my parents, I realized I couldn't even take her dogs while she was away visiting them.

Then it occurred to me, I really couldn't have friends or family over for their dogs to even play because simply for one person to see a fifth dog, I would be in violation. So it just occurred to me just simply go with the 10-dog.

Again, it would not be boarding for money. It would only be helping friends or family, if necessary, or if I desired to get another dog or two to rescue, to adopt, to, um, take any other dog.

JAMES MARTIN: Um, I did check with the Dog Warden today.

David (Lindsay), you can verify. There are no active complaints on the property regarding the dog situation.

DAVID LINDSAY: That's correct. The most recent complaint we had was dated in 2010.

JAMES MARTIN: I drove by there. I couldn't see where there were any significant changes to the map that you have provided. There is -- you know, there is nothing that has been changed as far as the property and the buildings on the property.

MS. PERNESKY: Right.

JAMES MARTIN: That's all I have.

PAUL WANZENRIED: How many dogs can you put on your invisible fence?

MS. PERNESKY: I believe it's unlimited. As long as I buy the collars.

PAUL WANZENRIED: Okay. You stated you have three acres of that --

MS. PERNESKY: No, I have -- what is invisible fenced in?

JAMES MARTIN: Yes.

MS. PERNESKY: 3 to 5 acres. I have never had that portion measured.

PAUL WANZENRIED: Is that all to the northwest of the cobblestone house?

MS. PERNESKY: It would be surrounding the house.

PAUL WANZENRIED: Surrounding the house.

I don't have any questions at this time.

JOHN HELLABY: Are all these dogs housed in that one garage that is kind of off to the side --

MS. PERNESKY: Actually, all of the dogs come in at night. There is a barn, um, the carriage barn. There is two, um, kennels which are also within the invisible fencing area, so that is kind of like double confining them. But from the, um, chain link fence they can get into the barn to get out of the weather, but the dogs do come in at night.

JOHN HELLABY: So they're housed in this barn, however, correct?

MS. PERNESKY: They can get into the barn to get out of the weather.

JOHN HELLABY: And when they spend the night, are they in that barn?

MS. PERNESKY: No. They come into the house.

JOHN HELLABY: All four of them.

What would you do with ten of them? These are big -- these are big dogs.

MS. PERNESKY: I -- like I said, I have no plans to get ten dogs, but I -- at this time I'm asking for a 10-dog limit.

JOHN HELLABY: I guess I'm trying to envision in my own mind, you know, does other family members -- how many other family members own these type of dogs? Would these dogs get along with, you know -- say if one of your family members had a Cocker Spaniel or something -- I don't know how well they interact with other breeds.

MS. PERNESKY: They're German Shepherds. They get along great with other breeds. It is all a matter of if you know dominance, you establish hierarchy. If -- you know, training. My one dog is an AKC registered show dog. My other two males, which are brothers, they came from a kennel in Hamburg, south of Buffalo. Great family of dogs. My daughter is ten. She has all sorts of friends. We have play dates, birthday parties.

The dogs get along. The female Shepherd is spayed. She was a rescue. Several years ago I added her on, so I now officially own her.

I have the rabies shots for all of them. Like any dog, as with -- of course, you have the bad name breeds. You have good name breeds. But it is all in the ownership and your dominance. You have to establish that pack leader. They're going to get along how you treat them and train them.

JOHN HELLABY: Four would belong to you and the other six would be on a short-term basis?

MS. PERNESKY: No, not necessarily. If I wanted to adopt more and own more, that is what I'm asking for. I'm not saying I am going to do it today, and I don't have plans, but I want to have the right, especially down with the seclusion that I have down there -- I don't know if you have driven by.

JOHN HELLABY: I have been by there. It just sticks in my mind because 20 years ago we went through the same thing in this Town where somebody wanted to raise these type dogs and, you know, it got pretty hairy. It ended up getting blown out of the water.

MS. PERNESKY: I was unaware of that. But no. If I want to adopt one or two more, it would be easier just to go for the 10-dog limit now than just reapply later.

JOHN HELLABY: And as far as, you know, they are one of the biggest deterrents in homeowners' insurance. Is your homeowners' insurance aware you have those dogs and the number of these dogs? Because should one of them, you know -- granted you're secluded. Nobody is necessarily going to be jogging down your street. If one of these dogs breaks through that invisible fence and bites somebody or, you know, or whatever, I mean, do you have enough insurance in the back of your mind to cover of that type of liability?

MS. PERNESKY: As far as I know, I do. I can double check.

JOHN HELLABY: That would be something I ask the Town to make sure we have if this goes through. That is all I have for you now.

JOHN NOWICKI: The last time you were here we had conversation and discussed the compost -- composting of manure from all these dogs. How will you handle all this dog manure with all these additional dogs?

MS. PERNESKY: I have quite a bit of land behind some of the barns that backs up to the Thruway. Honestly, they don't create per se manure. Yes, there is dog waste, but it disintegrates into the ground with the rain and the snow, just like the leaves.

I have a neighbor that has several cows. My other neighbor has pigs. I mean, I have a neighbor down on Morgan that has horses. I mean, that's considerably due to the size of the animal and the waste would be a lot more than what I would have.

JOHN NOWICKI: So you just leave it on the ground?

MS. PERNESKY: Well, now I can pick it up and dispose it and put it in the trash or put it in the grassy area that is between me and the Thruway. Or it disintegrates within the next rain.

JOHN NOWICKI: What do you normally do?

MS. PERNESKY: Depends on the season. With the snow it is harder to go and pick it up. Often by spring whatever has been planted onto the ground by the dogs mostly is disintegrated.

But on the -- on the gravel area, it is easier to pick up and I put it in the waste receptacle and I have weekly trash.

JOHN NOWICKI: Okay. Are you aware of the fact that if the Planning Board renews the special use permit, allowing more than four dogs, you have to go back to the Zoning Board of Appeals for a variance?

MS. PERNESKY: Yes. I spoke with, um, this gentleman, Michael Hanscom; is that correct, on the phone at length the other day, and he basically phrased it to me that I understand I would have to, um, ask for a change -- an updated variance, making an amendment to the change in the number of animals, yes.

JAMES MARTIN: That's correct.

Because when they approved your variance for the setback, part of that approval, a condition of that approval was with -- the Planning Board had imposed the four-dog limit, so they go together.

JOHN NOWICKI: Just one more question then.

Do you have a veterinarian service you can go to if you have an emergency for your dog?

MS. PERNESKY: Yes. I had in-home veterinary service, but I also take them to the Brighton Animal Hospital is where my preferred vet is.

JOHN NOWICKI: Thank you. That's all I have.

DAVID CROSS: You stated you -- you're not doing this as a business?

MS. PERNESKY: No.

DAVID CROSS: Family and friends?

MS. PERNESKY: Yes. In fact, it has just been my personal dog. Just came to light more recently when my parents had a problem in New Jersey. They were without electric, and I thought, "Gees, if I could go help them. But then my sister went, but she has a couple Golden Retrievers. She lives out of the County. I thought I couldn't even help her with her dogs to be in code. It seems kind of ridiculous in the seclusion and privacy and the amount of land that I couldn't have a fifth dog or sixth dog on the property for even 24 hours and I would be non-compliant.

So if, for an example, I chose a 10-dog limit, because if I chose to adopt another dog or rescue another dog or my daughter maybe got another dog as a show dog, be it a different breed or whatnot and I assisted my elderly parents or my sister or if a neighbor went away, just seemed ten was a good number. I mean, I am in contact with friends that own kennels; they have 50 dogs. They don't have problems and they have half of the size of the property that I do.

DAVID CROSS: Okay. I understand.

MS. PERNESKY: Thank you.

PAUL WANZENRIED: I -- I have one I'm thinking. Um, the -- the private -- this states a private kennel, right? You're looking for a private animal kennel.

Michael (Jones), can you tell me what the difference between a private animal kennel and a commercial kennel is, per code?

MR. JONES: The -- the private animal kennel cannot accept fee for service, and, um, deals with domesticated animals, not more than six months in age are housed, bred, trained or sold; provided, however, that private animal kennel does not include commercial animal kennels. So my -- my take on it is we're not talking about a fee for service.

JAMES MARTIN: How many -- getting back to invisible fence, how many collars do you actually physically own for your four dogs?

MS. PERNESKY: I purchased three collars.

JAMES MARTIN: So you can allow three dogs to be running within the invisible fence limits at any time, right, and not the fourth?

MS. PERNESKY: Um, I chose that number because they were really trained anyways to stay on my property. It was a matter of securing, um, their -- um, to continue with their training as -- I don't know if you're familiar with the invisible fencing. The dogs start training because they see the tags planted in the ground approximately a foot within the boundary. So I can train a dog with the collar on, but then once they know where that boundary is, they are not going to cross it, you know, 98 percent of the time, so they really don't need the collar past that point.

But once in a while I will put the collar on to, um, reinstate or resecure that they're aware of where their boundaries are. So I can have plenty of dogs in there, but I only have three collars. It doesn't mean I don't have a dog that I just worked with say a month ago and he knows his boundaries because he is a very submissive dog. He won't challenge that boundary. Where maybe I have one dog that challenges it more often, he will wear the collar all of the time.

Then I have another dog and, um, you know, he -- he is my little baby, and he doesn't run far from me, because he wants to stay within shot of me. He won't, you know, challenge it either. So it just depends. I mean, any new dog I brought on the property, if I were only going to have them use invisible fencing, then I would -- I would put a collar on them and train them, but I still often work with a leash with my dogs. That's how you continue your dominance. That is how I show my one talent. You have leash work. I have gone to obedience school in the past with some of these dogs. Um, my female dog, she got top in her class when I took her years ago. We went to Chili Community Center at the time.

They have -- I would love to just have friends come over and we could do other sorts of training. I mean Labradors can do training, bird work or fetching or whatnot.

So getting back to your question, I have the three collars, but it doesn't mean I can't have more dogs running as long as they stay on my property. And the border, if you looked in the back for the property, I mean my borders are way out in the forest land. So I'm -- I would still be

within compliance to have the dog loose running to the pond, even though that is outside of the boundary.

JOHN HELLABY: Can I ask one --

JAMES MARTIN: Wait. I want to ask -- ask one more thing and then I will let you. We have a house two houses away from us that has a dog that has invisible fence, okay, and he -- he lets out a loud yelp as he goes through it, okay? Then he doesn't want to go back.

MS. PERNESKY: See --

KAREN COX: Wasn't trained right.

JAMES MARTIN: Then he is running around the neighborhood loose, okay? So sometimes, you -- I'm not sure whether they didn't have the intensity of the shock up high enough to stop him from going through, or --

KAREN COX: They probably didn't train him right.

MS. PERNESKY: Right.

JAMES MARTIN: -- or wasn't trained correctly. I'm not sure what the issue is or whether he is just a stupid dog. But anyhow, so I know invisible fences do work, because my son and daughter-in-law have one, with a big Setter and she never goes through it.

So I'm just a little concerned about the effectiveness of it and if you had more dogs on the property, how you would interact them with the invisible fence, because, yes, it can be a good deterrent, but on the other hand, it can be violated easily, too.

MS. PERNESKY: I only had invisible fencing a few years. I have lived there 15 years.

JOHN HELLABY: I got a curiosity question for Michael (Jones), because an awful lot of faith is put in this invisible fence. It is my understanding there is a leash law in this Town and regardless whether somebody has invisible fence or not, that doesn't that still override the fact that these dogs are supposed to be on leash or chain.

MR. JONES: Yes. So we do have a leash law and it was going to be one of my comments that actually we had more dog complaints this year that we had to prosecute as either a dangerous dogs or dogs at large. But in either one of those cases, the supervisor -- the dog would be off the property.

So you could have an electric fence and allow them to run free on your own property. The problem only happens when they come off the property. They don't have to be on a leash on your own property.

MS. PERNESKY: Mind you, I own both sides of the road.

JOHN HELLABY: I realize that.

MS. PERNESKY: The Thruway will be fenced in.

JOHN HELLABY: Like I said, just a curiosity question.

MR. JONES: In the Code Enforcement Department, we are concerned about the confinement with the dogs and invisible fence works most of the time, but we have had a few cases where they come out and you have to deal with that.

PAUL WANZENRIED: You use the example a couple of times of having friends over with dogs. Is that the case, if she has a friend over with a dog for the day, that she is in violation? Wouldn't the dog need to reside there? Or be licensed to -- she would want to license it to reside there?

And one more question for you, ma'am.

The -- if you take in a rescue dog, you don't necessarily know what that dog is capable of, do you?

MS. PERNESKY: The one dog I rescued, I, um, knew the history of the dog and the person was ill with a brain tumor and I found that the person could not care for the dog, after watching the interaction between the dog and the family.

So I would never take in a dog where me and my daughter or my pets would be at risk. So I suppose some people that are irresponsible that could happen to. I'm not irresponsible.

And getting back to one of your questions, the only complaint I had in the 15 years I have lived there from 2010, was my ex-husband, who lodged several complaints all of the way from my falling down barn to the fact that he thought he saw a fifth dog on my property for a moment of five minutes. And so Kristen Yackett came. She investigated. She looked at my property. She looked at my dogs and obviously it was not lodged as a violation, but it could have been, because I'm not allowed a fifth dog on the property currently. Which is again, why I'm going for a 10-dog limit to prevent any of this nonsense.

PAUL WANZENRIED: Okay.

MR. JONES: So in answer to your question, the way -- David (Lindsay) and I were just talking. The way the statute reads is no person or persons living in the same household, da-ta-da, shall keep more than two dogs. So it really would be interpreted that these dogs are kept by the people living in the household. So I wouldn't interpret that as a visitor couldn't bring their dog that would create a violation.

PAUL WANZENRIED: That is the way I would understand it, as well.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

James Martin made a motion to close the Public Hearing portion of this application, and John Hellaby seconded the motion. The Board unanimously approved the motion.

The Public Hearing portion of this application was closed at this time.

JAMES MARTIN: For the record, I do have a note from the Fire Marshal that -- that -- pertaining to this application, there is no violations existing in the Fire Marshal's Office.

She is asking for six more dogs on the property at this point.

KAREN COX: Permission to have six more, not -- not that she is going to --

JAMES MARTIN: Well, if she is asking permission -- you're right. Permission to have six more.

KAREN COX: I just -- it is semantics.

JOHN HELLABY: Seems like a very excessive number for those large of dogs, but again, same thing. She has -- where do you cut it off? Do you say six are okay? Ten is not. Is eight okay? Ten not. I don't know. I really don't know.

KAREN COX: I would say just -- just being a dog owner, knowing how some of the dog owners are in my neighborhood, the applicant seems to come across as somebody who is knowledgeable about dogs and how to train them, especially with the invisible fence. One of my dogs didn't have a collar, never went out because she followed the other one. So I would think that if -- if there were more than six dogs, they would be well trained.

DAVID CROSS: By virtue of lot size, location to neighborhood, the Thruway and the end of the cul-de-sac, I wouldn't have a problem with ten dogs.

PAUL WANZENRIED: We already know she is up to almost seven because mom and dad have two and the sister has one, so there are seven or eight there, so.

JAMES MARTIN: But there is a difference between coming for a weekend visit and leaving as opposed to ten dogs being there for a long period of time. You have to --

JOHN HELLABY: Well, as I stated. I mean, if the thing is approved to move forward, I would make it conditional on the fact that this -- this -- this Town get some sort of documentation that her liability insurance covers it, because like I said, that is one of the biggest problems with homeowners' insurance policies is dog bites. And granted, they can be the greatest dogs in the world, but all it takes is that one time and then have you nothing but constant problems.

JAMES MARTIN: From a liability standpoint, it would be the owner's liability. I don't know where the Town would be in jeopardy in a situation like that.

PAUL WANZENRIED: Can they put us on as an additional rider?

MR. JONES: Let me just say -- what is similar to this is when we deal with a dangerous dog situation, one of the things under the Agricultural Markets Law, the Court will typically require an owner of a dog to secure \$100,000 policy for what you're talking about. But that is only when the dog has demonstrated that -- a propensity. So you don't usually do that in the first instance. So there is a basis for it, but we usually don't jump right to that. It usually has to have a basis that the dog did something before we would require that.

JAMES MARTIN: Any other opinions over here?

PAUL WANZENRIED: We could always limit the time on the special use permit.

JAMES MARTIN: Well, yes, we could certainly do that. And -- and if there are issues, you know -- I know that -- you know, it's -- it's a fairly significant increase, and I just -- but I agree with Al (Hellaby). Is it six, is it eight?

JOHN HELLABY: I don't know.

RICHARD BRONGO: I don't have any problems with her having ten dogs. She is not my next-door neighbor. (Laughter.)

JOHN HELLABY: That's not the attitude to take.

MS. PERNESKY: I'm not really anybody's neighbor. If you have driven by the property, you have been down the street --

KAREN COX: Like I say, I wish some of my neighbors had dogs that knew what they were supposed to be doing.

JOHN HELLABY: Well, in this barn where they're housed, all right, do you have ten separated cages that you put --

MS. PERNESKY: No, no.

JOHN HELLABY: They all go in a big mass?

MS. PERNESKY: No.

KAREN COX: They're pack animals.

MS. PERNESKY: They sleep in the house and I have kennels in the house. A lot of -- having German Shepherds may bring on different opinions. Actually, I believe the Golden Retriever is the number one bite dog listed in the nation.

JOHN HELLABY: But have you room to put ten of these inside your house?

MS. PERNESKY: Yes. My house is 3300 square feet. I have a cobblestone house. I can put one or two in the kitchen, shut the door. One or two in the dining room, shut the door. My laundry room is the original kitchen. I have probably ten rooms in the house. I have three attics. I mean, I have a complete basement. I'm just saying, I have a large house. It's 3300 square feet.

RICHARD BRONGO: You know, we have a lot of dog owners in the Town that have three and four dogs that are licensed, and our code says you can't have more than two. And yet, we have approved them to go ahead and have extra dogs and they are on much smaller lots than her 33 acres are.

JAMES MARTIN: Well, I guess I'm hearing that raising it to ten is something we can do. Put a time limit on this to make sure we don't open up a bag of you know what here.

But you do know if we do this, you will have to go to the Zoning Board.

MS. PERNESKY: That's fine.

JAMES MARTIN: And that's -- they may not like ten dogs. So they may not go all of the

way through, any ways. So I can't -- I can't guarantee if this Board were to approve this tonight, that you would still get that relief.

MS. PERNESKY: The Zoning Board is, um -- could you just clarify, that is more about the structure being 200 feet from the property border, though, right? Because I'm not moving a structure. I'm not changing a structure.

JAMES MARTIN: When they granted your setback relief, back in 2010, I believe it was, part of that approval was that they carried with that the Planning Board decision to limit you to four dogs. So it became a condition of their approval at this time.

MS. PERNESKY: Okay.

JAMES MARTIN: So it -- that would have to be changed in addition to this Board approving the 10-dog limit.

MS. PERNESKY: Right. Right.

JAMES MARTIN: Michael Jones, we did SEQR back in 2010 with the original special use permit. Does that still carry forward with us? Should we do SEQR again tonight?

MR. JONES: I would suggest that you make another determination of significance tonight, given the increase being requested.

JAMES MARTIN: So I think I agree with you. All right.

James Martin made a motion to declare the Board lead agency as far as SEQR, and based on evidence and information presented at this meeting, determined the application to be an unlisted action with no significant environmental impact, and the Board all voted yes on the motion.

JAMES MARTIN: If we go ahead and approve them, open to suggestion for timeline. A year like the previous one and see how it goes?

JOHN NOWICKI: Keep it short.

PAUL WANZENRIED: Two years.

RICHARD BRONGO: Two years.

JOHN NOWICKI: You had two years on the last one.

JAMES MARTIN: If it goes through.

Conditions? ZBA approval.

JOHN NOWICKI: I just have a strange question to ask. If there was any kind of an incident that would happen where one or two of these dogs did get out somehow and attack somebody, is that -- is there any way you could bring the person back here to say we wanted to review this and make an adjustment to it? Is that something that could happen?

MR. JONES: So let me understand your question. You want to put a condition on it, this is subject to review in the event of an incident such as a bite or an escape or something?

JOHN NOWICKI: Or escape or attack.

MICHAEL JONES: If you want to do that, I don't think that is a problem, but I would like for you to clearly define what incidents you're talking about. I don't want it to be vague, just the word "incident."

JOHN NOWICKI: I'm just saying, if it is something that could be considered. I don't necessarily want to put it on here, you know, but I'm just saying if something did happen.

MICHAEL JONES: The answer is yes. Because with the authority that the Board is reviewing the special permit, is it to determine. So -- the use is a right, but you're determining where the use as a right fits in the neighborhood. So this directly does relate to your authority.

JOHN NOWICKI: I just wanted to know if down the road something did happen, that we would have that authority.

JAMES MARTIN: As far as the previous approval, basically it was approved for two years. Need to get ZBA approval and four dogs is the maximum number.

So I believe what I am hearing is a consensus from the Board that what we're voting on is to allow her to go to ten dogs, so that will be the limit, again.

KAREN COX: Right.

James Martin reviewed the conditions of approval with the Board.

DECISION: Approved by a vote of 5 yes to 2 no (John Hellaby, James Martin) with the following conditions:

1. Applicant shall obtain Zoning Board of Appeals approval for the increase in the number of dogs granted by this Board as part of the Special Use Permit renewal.
 2. The maximum number of dogs allowed on the property shall be ten (10).
 3. This special use permit is approved for a period of two (2) years.
2. Application Faber Construction, 3240 Chili Avenue, Rochester, New York 14624 and Archer Road Vista LLC, property owner; 783 County Road 42, Fishers, New York 14453 for resubdivision of three lots into one lot in the Vistas at the Links Subdivision at properties located at 230, 232, 234 Archer Road in PRD zone.

Bernard Iacovangelo, John West, Gary Pooler and John Shields were present to represent the

application.

MR. IACOVANGELO: Good evening, Mr. Chairman, members of the Board, my name is Bernie Iacovangelo and I'm the President of Faber Construction Company, Inc. doing business as Faber Homes. And along with me this evening is John West, my assistant at Faber. And also Gary Pooler and John Shields from Archer Road Vista LLC, co-applicants in this.

Mr. Pooler's organization has the development known as Vista Villas; and that organization -- that subdivision has been approved since 2004. They have been in operation with sales there since 2005 or 6, and recently we became involved in an agreement to have them sell us lots and we were going to build homes at that location.

As we got into the purchase of lots from, you know, the Vista Villas organization, we have come to realize -- we were going to buy these two lots first, Lot 1 and Lot 2. We -- we purchased six lots all together, but we didn't -- we didn't purchase Lots 1 and 2 because of the significant easements that are on them. We don't know what went on during the original preliminaries and finals, but if I can just move away for a minute, there is -- this here yellow line here (indicating), is an easement that goes right onto Lot 2 here (indicating). To the -- it's a utility easement to Rochester Gas & Electric. They have got a major National Grid power line that comes down through here.

These poles here have guy wires and anchors that come down into Lot 2. Okay? So we had determined from review in talking to the RG&E, we asked them if these poles could be moved, and they said at the approximate cost of \$200,000 because of we're dealing with National Grid and major power lines. So that was just not a feasible alternative.

So we decided that -- they couldn't be used. The first one has an easement over the whole lot. The second Lot 2 has an easement across the front of it that is, um, approximately 22 feet across the 60 foot wide lot. And then the guy wires go right into it, so you couldn't even get in there with a driveway and so on. So what we discussed with Mr. Pooler and his organization is, the fact that since these lots aren't of any value to -- for building purposes, would he want to resubdivide them into one lot, number 3, which we purchased, and we're building currently a -- a spec model on. And he agreed because currently he is paying taxes on these two lots, and they just can't be built on.

So we make -- we're making this application to resubdivide these three lots into one. Couldn't be done administratively because the administrative calls for two lots maximum. So we're coming here before you this evening seeking your assistance in the resubdivision of the resubdivision into one lot being the Lot 3 and the elimination of Lots 1 and 2 because of the fact they cannot be used under their current easement criteria.

That's our application. We -- we did see the note from Lu Engineers. They really didn't have any comments other than the fact that in PRD, there is a zoning restriction of maximum of 24 -- or 20,000 square feet, but one lot was already -- or 20,000 square feet. One lot is already 24,603. So that got exceeded in the original application. And they're indicating that we either got to get a rezone or a variance from the Zoning Board of Appeals. I just like to mention the fact that, you know, under 96-6 of the resubdivision, it says that if there is a proposal for resubdivision consists solely of a simple lot -- simple alteration of lot lines, this could be done at the discretion of the Planning Board. Um, I understand the criteria of PRD. I -- you know, I don't know if there is a necessity for a variance based upon 96-6 of the resubdivision section, but our application this evening is to rezone those three lots into one lot. And I'm -- that's our presentation.

JAMES MARTIN: Yes. As I went down through the PRD code and Section 500-15 (D-1b) does say 20,000 maximum for a lot size. The section you were citing, um, the subdivision, there is a -- it would be -- I think it would be classified under the minor subdivision definition this there, rather than the major.

MR. IACOVANGELO: Major, correct.

JAMES MARTIN: It does give discretion to the Planning Board for that minor subdivision, okay, if I am read it correctly. And so at this point, I think we're still dealing with a major subdivision, which I think is in my mind going to require the variance application. That's all I have.

PAUL WANZENRIED: Was -- how active was Mr. Pooler? Did he -- was he aware that these two lots were pretty much undevelopable?

MR. POOLER: No, sir. What -- when we purchased the subdivision, it was already approved, and we were unaware they were unavailable. And also, a couple of the power poles, the lines -- it is a -- transmission line comes across didn't show on the map. People kept saying they're unbuildable. You look at paper, they were buildable. They were approved. We thought they were approved lots, buildable.

PAUL WANZENRIED: Did you -- Mr. Iacovangelo, before you put your house up, did you -- were you aware of this? Did you -- did you have any idea of this?

MR. IACOVANGELO: When we were doing -- we were originally supposed to buy Lots 1, 2, 3, 4 and then two lots on the other side of the street. When we began our due diligence, that's when we discovered the easements on that, and, you know, part of that due diligence was the -- you know, to identify the locations and to discuss it with RG&E. That was all part of our due diligence prior to purchase. That is when we brought it to Mr. Pooler's attention. Mr. Pooler was not the original developer of this project.

PAUL WANZENRIED: Right. I'm aware of that.

KAREN COX: So the idea, just so I understand it, is the idea you want to put a spec house

in the area that is labeled Lot 3, and then --

JOHN HELLABY: Already there.

MR. IACOVANGELO: That is a buildable lot which we already purchased.

What we're trying to do, Karen (Cox), is say look, if these are not buildable, just add them to this one lot, because currently, he has got -- different tax account numbers for both lots, paying taxes on them and he can't utilize the property.

KAREN COX: So that Lot 1 and 2 just become --

MR. IACOVANGELO: Part of 3. One large 3.

KAREN COX: Would there -- would there have to be some kind of language in the deed or something to keep somebody from building within the easement?

JOHN HELLABY: You can't build on it. If you try to build there, it will get shot down.

KAREN COX: I mean, if somebody decides to, I don't know, put up a barn or something, in the back part.

JOHN HELLABY: Has to come here.

KAREN COX: Yeah.

PAUL WANZENRIED: Is that -- does this skew your price points, because you're going to sell -- I assume that you will sell the lot as a one-acre lot.

MR. BERNARD IACOVANGELO: We'll just sell it -- it will not improve the value of the property at all, because it is not usable.

JOHN NOWICKI: Just curious what you brought up, Bernie (Iacovangelo), in regards to -- does the Planning Board have an opportunity here to approve this without him going to the Zoning Board or is that something our attorney can answer? If we ask that question.

JAMES MARTIN: We can approve the subdivision, all right, but you know, the variances, because of the area --

DAVID CROSS: Has to go to Zoning.

JOHN NOWICKI: Has to go to Zoning?

JOHN HELLABY: Uh-huh.

MR. JONES: Actually, Mr. Iacovangelo, I'm trying to locate that section of the code where -- that you referred to that the variance isn't required.

MR. IACOVANGELO: 96.6.

DAVID LINDSAY: Is that the old code?

JOHN HELLABY: He has the old code.

MR. BERNARD IACOVANGELO: Yes.

JOHN HELLABY: Doesn't line up with the new one.

MR. JONES: I can't locate that.

JOHN NOWICKI: That's shows my age.

MR. BERNARD IACOVANGELO: Works for me. Wait a minute, guys. You know. These are expensive. I don't want to buy new books all of the time.

JOHN HELLABY: It's all online now. You just go in there and get it.

JAMES MARTIN: I think, Michael Jones, that this -- since we decided that this is a major subdivision, okay, and according to Section 439 in our code, all right, that, you know, it classifies this as a major subdivision and then you go through zoning, which is PRD, which says 20,000 is the maximum allowable square footage for a lot. So this is going to exceed that if we approve the subdivision.

MICHAEL JONES: Correct.

JOHN NOWICKI: So he has to go to Zoning.

JAMES MARTIN: I think it has to go to Zoning.

MR. JONES: I -- that -- that on its face seems right. Let me just check something and I'll be right back to you.

MR. BERNARD IACOVANGELO: You want to use the old code? (Laughter.)

JOHN HELLABY: Nice try.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

James Martin made a motion to close the Public Hearing portion of this application, and John Hellaby seconded the motion. The Board unanimously approved the motion.

The Public Hearing portion of this application was closed at this time.

MR. BERNARD IACOVANGELO: I just want to add, we did receive copy of the County Planning comments. They had reviewed it and they don't have any comments at this time.

JAMES MARTIN: Mostly boilerplate.

I do for the record have a -- a comment from the Fire Marshal's Office that there is no violation. This came from the Fire Marshal's Office pertaining to this application. I wish Dorothy (Borgus) was here to hear that.

MR. JONES: Mr. Chairman, I was just looking to see if there was something in the PRD that would provide a way outside of going back to the ZBA, but I don't see that there is. I think we need to do that. I think it is burdensome for doing, but I think technically the way code is you have to do that.

MR. BERNARD IACOVANGELO: Mr. Chairman, can you approve it subject to approval from the Zoning Board?

JAMES MARTIN: Yes.

James Martin made a motion to declare the Board lead agency as far as SEQR, and based on evidence and information presented at this meeting, determined the application to be a Type II action with no significant environmental impact, and the Board all voted yes on the motion.

JAMES MARTIN: Conditions of approval would be to obtain ZBA approval for what I believe would be an area variance.

DECISION: Unanimously approved by a vote of 7 yes with the following conditions:

1. The approval of this resubdivision creates a lot that is not in compliance with Section 500-15 (D-1b). The applicant will need to obtain a variance from the Zoning Board of Appeals for the oversized lot.

The 12/11/12 Planning Board minutes were approved.

The meeting ended at 7:48 p.m.