

STATE OF NEW YORK : COUNTY OF ULSTER
TOWN OF MARLBOROUGH PLANNING BOARD

In the Matter of

FRANCES FREMGEN

Project No. 23-1031
Clarks Lane, Milton
Section 102.2; Block 3; Lots 13.100 and 12

FINAL - LOT LINE

Date: April 1, 2024
Time: 7:30 p.m.
Place: Town of Marlborough
Town Hall
21 Milton Turnpike
Milton, New York 12547

BOARD MEMBERS: CHRIS BRAND, CHAIRPERSON
FRED CALLO
JAMES GAROFALO
STEVE JENNISON
CINDY LANZETTA
JOE LOFARO
BOB TRONCILLITO

ALSO PRESENT: PATRICK HINES, PLANNING BOARD ENGINEER

GERARD J. COMATOS, JR., ESQ., PLANNING
BOARD ATTORNEY

JEN FLYNN, PLANNING BOARD SECRETARY

APPLICANT'S REPRESENTATIVES: GEORGE SALINOVICH
DANIELLE CHERUBINI
KEN CHERUBINI

Stacie Sullivan, CSR
staciesullivan@rocketmail.com

FRANCES FREMGEN - FINAL LOT LINE

1 CHAIRMAN BRAND: I'd like to call the meeting
2 to order with the Pledge of Allegiance to the flag of our
3 Country.

4 (Pledge of Allegiance.)

5 CHAIRMAN BRAND: Agenda, Town of Marlborough
6 Planning Board, April 1st, 2024, regular meeting at
7 7:30 p.m. On the agenda tonight we have the approval of
8 the minutes for the March 4th, 2024, meeting and the
9 March 18th, 2024, meeting. Under Ongoing Application
10 Review, we have Frances Fremgen for a final of the lot
11 line on Clarks Lane and LynnDavid Properties for a sketch
12 of the subdivision at 397-407 Willow Tree in Milton. The
13 next deadline is Friday, April 5th, 2024. The next
14 scheduled meeting, Monday, April 15th, 2024.

15 Can I have a motion for the approval of the
16 minutes for March 4th and March 18th?

17 MR. TRONCILLITO: So moved.

18 MR. CALLO: Second.

19 CHAIRMAN BRAND: Any discussion?

20 (No response.)

21 CHAIRMAN BRAND: Any objection?

22 (No response.)

23 CHAIRMAN BRAND: So carried. Any
24 announcements? Anything?

25 (No response.)

FRANCES FREMGEN - FINAL LOT LINE

1 CHAIRMAN BRAND: Good. Next.

2 MR. GAROFALO: On Communications, I have a
3 request.

4 CHAIRMAN BRAND: Sure.

5 MR. GAROFALO: We have been getting letters on
6 Butterfield. I would appreciate it if my correspondence
7 on Butterfield, the review of their comments would be
8 posted and sent to New York State DOT.

9 CHAIRMAN BRAND: Okay.

10 MR. GAROFALO: Thank you.

11 MR. HINES: Buttermilk Falls you mean?

12 MR. GAROFALO: Yes. Sorry.

13 CHAIRMAN BRAND: First we have Frances Fremgen
14 for a final of the lot line. Gerry, you have the
15 resolution. Is there anything that you'd like to point
16 out for us?

17 MR. COMATOS: No.

18 CHAIRMAN BRAND: For the application of Frances
19 Fremgen for a lot line revision, the Resolution of
20 Approval by the Town of Marlborough Planning Board, Jen,
21 would you poll the Board.

22 MS. FLYNN: Chairman Brand.

23 CHAIRMAN BRAND: Yes.

24 MS. FLYNN: Member Lanzetta.

25 MS. LANZETTA: Yes.

FRANCES FREMGEN - FINAL LOT LINE

1 MS. FLYNN: Member Lofaro.

2 MR. LOFARO: Yes.

3 MS. FLYNN: Member Callo.

4 MR. CALLO: Yes.

5 MS. FLYNN: Member Jennison.

6 MR. JENNISON: Yes.

7 MS. FLYNN: Member Garofalo.

8 MR. GAROFALO: Yes.

9 MS. FLYNN: Member Troncillito.

10 MR. TRONCILLITO: Yes.

11 CHAIRMAN BRAND: All right. You're all set.

12 MR. SALINOVICH: That was it?

13 CHAIRMAN BRAND: That was it.

14 (Time noted: 7:31 p.m.)

15

16 C E R T I F I C A T I O N

17

18 Certified to be a true and accurate transcript.

19

20

Stacie Sullivan

21

Stacie Sullivan, CSR
Court Reporter

22

23

24

25

1 STATE OF NEW YORK : COUNTY OF ULSTER
TOWN OF MARLBOROUGH PLANNING BOARD

2 -----X
In the Matter of

3 LYNNDAVID PROPERTIES

4 Project No. 23-1025
5 397-407 Willow Tree Lane, Milton
6 Section 102.2; Block 5; Lots 23 and 26
-----X

7
8 SKETCH - SUBDIVISION

9
10 Date: April 1, 2024
11 Time: 7:32 p.m.
12 Place: Town of Marlborough
Town Hall
21 Milton Turnpike
Milton, New York 12547

13
14 BOARD MEMBERS: CHRIS BRAND, CHAIRPERSON
15 FRED CALLO
16 JAMES GAROFALO
17 STEVE JENNISON
CINDY LANZETTA
JOE LOFARO
BOB TRONCILLITO

18 ALSO PRESENT: PATRICK HINES, PLANNING BOARD ENGINEER
19 GERARD J. COMATOS, JR., ESQ., PLANNING
20 BOARD ATTORNEY
21 JEN FLYNN, PLANNING BOARD SECRETARY

22 APPLICANT'S REPRESENTATIVES: CARMEN MESSINA
23 KEVIN HARDY
24
-----X

25 Stacie Sullivan, CSR
staciesullivan@rocketmail.com

LYNNDAVID PROPERTIES - SKETCH SUBDIVISION

1 CHAIRMAN BRAND: Next on the agenda, LynnDavid
2 Properties for a sketch of the subdivision at 397-407
3 Willow Tree in Milton. Pat, we'll start with you.

4 MR. HINES: Okay. We received a revised Zoning
5 Board of Appeals determination addressing three
6 structures on proposed Lot 1.

7 We had a discussion at the last meeting
8 regarding the requirement for providing 50-foot -- or
9 25-foot right-of-way alignments. I cited the two Code
10 sections, the subdivision regulations, and the Zoning
11 Code chapter, and it is my opinion that those two
12 sections require that the area of 25 feet from the center
13 line of the roadway be provided for highway use.

14 And then our previous comments are outstanding
15 because I think Carmen was waiting for a determination on
16 that.

17 MR. MESSINA: Correct.

18 MR. HINES: So Carmen gave us an analysis of
19 highway use law, and I concur with that analysis, but I
20 do believe those two sections of the -- one of the Zoning
21 Code and one of the subdivision regulations require what
22 we discussed at the last meeting regarding the
23 right-of-way.

24 CHAIRMAN BRAND: Comments or questions from the
25 Board?

LYNNDAVID PROPERTIES - SKETCH SUBDIVISION

1 MR. GAROFALO: I have one comment, and that is
2 the -- in the ZBA letter, those dimensions don't match
3 the bulk table, and I think in the future, before we send
4 anybody to the ZBA, we should make sure that the bulk
5 table and the dimensions are shown on the plan and that
6 we agree with them before we send it over, because now we
7 have a discrepancy, which I think needs to be rectified
8 or discussed or made a determination on.

9 MR. HINES: I believe that once those center
10 lines are redrawn, that they'll be back at the ZBA
11 getting those variances again. They're going to change.

12 MS. LANZETTA: I also notice in the bulk table
13 that for Lot 1 it says that it's 3.15 acres and then on
14 the map it says it's 4.57 acres. So that's another
15 discrepancy.

16 CHAIRMAN BRAND: What was the other one, Cindy?

17 MS. LANZETTA: On the map itself it says 4.57
18 acres, but on the bulk table it says 3.15.

19 MR. MESSINA: Yes. That's true. We neglected
20 to change that. When we submitted the new maps to the
21 ZBA, it didn't reflect that new area.

22 MS. LANZETTA: But that leads me to my question
23 going back to what I brought up at the last meeting,
24 because we've run into this before, where because of --
25 you know, in this community we've had a lot of camps or

LYNNDAVID PROPERTIES - SKETCH SUBDIVISION

1 resort areas where you had multifamily housing in the
2 Rural Ag zones, and now some of those properties are
3 coming before us to be subdivided. And it was always my
4 understanding that if you had, like, a number of houses
5 in close proximity -- let's say they were on a 20-foot
6 property -- I mean a 20-acre property that they wanted to
7 subdivide; that as long as you allowed the minimum
8 acreage -- let's say for a single family house, one acre
9 per dwelling -- that they could set aside, let's say, a
10 four-acre area surrounding that multifamily residence,
11 you know, combination of residences, and still subdivide
12 off the other 16 acres. Now, is that -- is that the way
13 it is, or how would we handle that?

14 MR. COMATOS: That's your interpretation. I
15 don't know if that's the historical interpretation of the
16 entire Board.

17 MS. LANZETTA: Well, I'm not even talking about
18 interpretation. I'm talking about the Code. The Code
19 was changed at one point to say you needed one lot per
20 residence. But if you have a preexisting nonconforming
21 group of multifamily residences -- let's say even with
22 this. Now, I look at this, because of past practices, if
23 we're not making anything more nonconforming by allowing
24 them to have the four acres for those four properties and
25 then subdivide off additional properties, that that still

LYNNDAVID PROPERTIES - SKETCH SUBDIVISION

1 is legal under our Code.

2 MR. COMATOS: That's what I was getting at in
3 terms of interpretation, how you apply the principle that
4 as long as it is no long -- it's not more nonconforming,
5 then the preexisting nonconformity can continue.

6 MS. LANZETTA: But if you want to subdivide off
7 a portion of the property -- let's say you have the
8 20 acres. And would you be able to subdivide it off, but
9 you would want to allow, still, that acre for each of
10 those residence, so you would take off four acres from
11 the 20, allowing them to use the 16 other acres for
12 additional purposes?

13 MR. COMATOS: That's what I'm getting at. Is
14 that the historical interpretation?

15 MS. LANZETTA: Well, that's been my
16 understanding.

17 MR. HINES: But there's a section of the Code
18 that says, except in the C-1 and C-2 zones, only one
19 residence per lot.

20 MS. LANZETTA: But for -- because most of these
21 places are Rural Agricultural, because they were used by,
22 you know, Italian-American families that came up here to
23 summer. So if it's in Rural Ag-1, is that the way we
24 could interpret it, if it's already a nonconforming use
25 in that area?

LYNNDAVID PROPERTIES - SKETCH SUBDIVISION

1 MR. HINES: I'm of the opinion that when you
2 subdivide it, you lose your grandfathering protection.

3 MR. GAROFALO: And you'd have to go to the ZBA
4 then. So it's not us that's making the decision. That's
5 the ZBA.

6 MR. HINES: That's a question, I guess step
7 one, for the Code enforcement officer and then, step two,
8 for Gerry's office.

9 MR. MESSINA: I think there was one at one
10 time -- a long time ago, that that was true. You could
11 do it.

12 MR. HINES: It may have been. Then we had the
13 likes of "my road." I'll use that. It wasn't my road.
14 It was called my road, and it was a creeping subdivision
15 that, first, a certain person in town built five or six
16 houses on the lots, and then attempted to carve out legal
17 subdivisions, and it was a bit of a nightmare, which is
18 when that section of the Zoning Code that says, except in
19 C-1 and 2, which allows the commercial above, that only
20 one house per lot.

21 MR. MESSINA: Well, I mean, I was just pointing
22 out that she was correct in the fact that you remembered
23 that and I think it was true at one time.

24 MR. HINES: I think that event, the "my road"
25 off of Lattintown I think it is, caused the Town Board to

LYNNDAVID PROPERTIES - SKETCH SUBDIVISION

1 relook at how many houses you can put on one lot.

2 MS. LANZETTA: I was under the impression it
3 was more from the farmers in the area that were --
4 because they wanted to utilize their properties, and they
5 were putting their families like all together, but then
6 later on, when it came time to sell off the properties
7 that the farmers decided they weren't going to farm any
8 longer, now you had a real difficult situation. So I was
9 always under the impression that they tried to get away
10 from that -- demanding that new houses be built on lots.
11 But these, again, are nonconforming preexisting
12 situations, and they're on large parcels of property. So
13 to say that if you had 20 acres and you had that -- let's
14 say that you're using less than three acres for this
15 multifamily housing, that you can never subdivide that
16 larger area again?

17 MR. HINES: I'm not saying never. You can put
18 them on individual lots or you can go to the ZBA to get
19 relief from that section of the Code.

20 MS. LANZETTA: So it would have to go to the
21 ZBA?

22 MR. HINES: Yeah. Again, I'm not the arbiter
23 of the Code. It would be the Code enforcement officer.
24 If you want to get an opinion on that, I would ask him
25 that question.

LYNNDAVID PROPERTIES - SKETCH SUBDIVISION

1 MR. MESSINA: I'd just like to point out,
2 that's what we did. We went to the ZBA and we got that
3 relief.

4 MR. HINES: Right.

5 MS. LANZETTA: Okay.

6 CHAIRMAN BRAND: Mr. Messina, how big is the
7 parcel where the dwellings are?

8 MR. MESSINA: About nine acres.

9 CHAIRMAN BRAND: It's not saying that.

10 MR. MESSINA: It's going to go to four acres.

11 CHAIRMAN BRAND: 4.57 is the number, not 3.5?

12 MR. MESSINA: Yes, 4.57. Correct.

13 MR. HINES: This project already has that
14 relief, but I think Cindy is talking in general.

15 MS. LANZETTA: Yeah, because we had that other
16 property that came to us that was over on Ridge Road. Do
17 you remember the name of the gentleman that came to us?
18 It's a nice -- right over Schwartz's bridge and you start
19 up Ridge Road, on the left there's like a compound with
20 multiple houses and cottages.

21 MR. TRONCILLITO: That was what you call it's
22 summer facility up there. You're talking about that one,
23 on the left-hand side as you're going up the hill?

24 MS. LANZETTA: Yes. And he wanted to subdivide
25 a small parcel off for his son to build on, but it would

LYNNDAVID PROPERTIES - SKETCH SUBDIVISION

1 have made it even more nonconforming, so we told him he
2 couldn't, but at the same time when we discussed it at
3 that time, I was under the impression if he could have
4 put -- if he could have subdivided off a piece without
5 making the other part --

6 MR. HINES: With the bulk area complying.

7 MS. LANZETTA: Yeah. That he would have been
8 able to do that. So that's why I brought that up. And,
9 yes, I understand it has to go to the ZBA.

10 MR. HINES: Yes. I think it flows from that
11 example that I used, because we had a whole bunch of
12 houses built on one larger lot at one point, and then
13 they came in and pled their case, well, the houses are
14 here, you have to let us subdivide.

15 MR. TRONCILLITO: Cindy, what you're saying is
16 right now they're going to put those houses on that
17 four-plus acre lot, and that would be acceptable going
18 through the ZBA.

19 MS. LANZETTA: The way I had understood it,
20 that would be acceptable without going to ZBA, but now
21 it's been made clear to me that, no, we would still --
22 even though it's the four acres, it has to go to ZBA.

23 CHAIRMAN BRAND: Okay. Anything else on this
24 one?

25 MR. GAROFALO: Yes. On the side yards on the

LYNNDAVID PROPERTIES - SKETCH SUBDIVISION

1 bulk table, there's several numbers that are missing for
2 both. So if those could also be filled in, that would be
3 appreciated. Then identify with an asterisk or
4 something, a footnote, ones that do not comply with the
5 zoning both under the existing condition and the future
6 condition. Then you can really see, okay, here's the
7 change. Here's what's being made worse or here's what's
8 being made better. I think that's an important part of
9 any application where there is some kind of nonconforming
10 use. Like on that last project, there were eight items
11 that were nonconforming, and they were clearing up two of
12 them and making three of them better. I think that was
13 really the important part of the application, or any
14 application; that things are not getting worse, but
15 hopefully are getting more in compliance.

16 MR. MESSINA: I agree. I think what happened
17 in the transition of changing the maps because of the ZBA
18 issue, these dimensions are off, but we will correct them
19 to be correct by the time we get through with this
20 project.

21 MR. GAROFALO: As was mentioned before, if one
22 of the buildings is within the 25 feet, you know, there
23 will be an allowance made for that, because the Town does
24 not want to own part of the building.

25 MR. MESSINA: Well, I'd like to talk about that

LYNNDAVID PROPERTIES - SKETCH SUBDIVISION

1 25 foot. I mean, I understand that we are in agreement
2 that Mulberry Lane and Willow Tree Lane are prescriptive
3 roads, which means by use. And what basically that means
4 by law is that any road that wasn't laid out with a
5 specific width becomes a prescriptive road, which means
6 the Town has the right and the traveling public has the
7 right to use that road, and the Town has the right to
8 maintain what they've been using. And so we have located
9 that, and we have shown that boundary on this map. And
10 we have labeled it highway boundary by use.

11 These properties are deeded to the center of
12 the road, which means that the property owners own fee
13 title to that. And when you have a prescriptive road,
14 the Town has the right to use it, but the owners still
15 retain the ownership of that property to the center of
16 the road. Now, I understand we got the comments -- so I
17 think we all agree that they're prescriptive roads.

18 MR. HINES: Yeah, I'm fine with that. But
19 now -- and that would continue in perpetuity, but now we
20 have before us a subdivision.

21 MR. GAROFALO: I think that was more to protect
22 all of the municipalities in New York State against
23 having people who owned to the center line of the road
24 saying, no, you can't use this any more.

25 MR. HINES: Yes.

LYNNDAVID PROPERTIES - SKETCH SUBDIVISION

1 MR. MESSINA: If we could discuss this
2 situation, I think that will all become clear. So I want
3 to be -- have an explanation. When you say you want us
4 to put on the map 25 feet from the center line, that's
5 just reserving that for highway, or are you going to ask
6 our property owners to deed that over to you, to the
7 Town?

8 MR. HINES: Typically, it's offered for
9 dedication and cession and deeded to the Town.

10 MR. MESSINA: Okay. So this is where the
11 distinction comes. I know you specify Subdivision
12 Regulation Section 134-19B which states: Widening or
13 realignment of existing streets. Where the subdivision
14 borders an existing street and additional land is
15 required for realignment or widening of such street as
16 indicated on the Comprehensive Plan or where the Planning
17 Board deems such reservations necessary, the Planning
18 Board may require -- may require -- that such areas be
19 indicated on the plat and marked "Reserved for Street
20 Realignment (or Widening) purposes."

21 Now, reserved and dedicated are two different
22 things. And I want to point out at this point there is
23 a -- New York State has a law -- Highway Law Section 189.

24 And I'm going to pass these out. This is New
25 York State Right-of-Way Mapping Procedure Manual. I'll

LYNNDAVID PROPERTIES - SKETCH SUBDIVISION

1 pass these down so people can follow along.

2 This is the manual that tells New York State
3 when -- to ascertain what the highway boundary is.

4 MR. HINES: New York State who?

5 MR. MESSINA: New York State Department of
6 Transportation.

7 MR. HINES: Okay. So that's a very different
8 animal than a Town road, but okay.

9 MR. MESSINA: Okay. So if you follow along,
10 and this is chapter 4 of the Right-of-Way Mapping
11 Procedure Manual in New York State, which covers roads by
12 use, prescriptive roads. And if you look down under
13 Section 4.4.4, second paragraph, New York State Highway
14 Law -- does everybody see where I'm talking about --
15 states -- Section 189 states, and I'll quote: All lands
16 which shall have been used by the public as a highway for
17 a period of ten years or more shall be a highway with the
18 same force and effect as it has been duly laid out and
19 recorded as a highway, and the town highway
20 superintendent shall open all such highways to the width
21 of at least three rods.

22 Three rods is 49 and a half feet. So half of
23 that would be technically 24.75. So, in today's world,
24 in New York State law, the town has the right to widen
25 that road -- we'll just say 25 feet to make it simple --

LYNNDAVID PROPERTIES - SKETCH SUBDIVISION

1 exists today. So what the town -- and rightfully so.
2 They want to think about the future. They already have
3 that right.

4 MR. HINES: But we have the opportunity here
5 now to clean up that and depict it on a filed map, which
6 will then allow the Town to have that in fee ownership
7 and make it a nonissue.

8 MR. MESSINA: Well, it's never a nonissue
9 because you have the right by law. And, of course, what
10 good does it do --

11 MR. HINES: Okay. Then why don't we show it.
12 We have a subdivision before us right now. Both these
13 two subdivision sections say that the minimum front
14 distance -- the minimum distance from a front lot line to
15 the center of the road shall not be less than 25 feet.
16 So you have Zoning sections that are fairly consistent
17 with what you just told us.

18 MR. MESSINA: I don't think so, because it says
19 reserved and it doesn't say dedicated.

20 MR. HINES: It only says reserved in the
21 Subdivision regulations. On the Zoning regulations, it
22 says minimum front lot line distance, the minimum
23 distance from a lot line to the center line of the road
24 abutting the lot shall not be less than 25 feet.

25 MR. MESSINA: I think when you talk about that

LYNNDAVID PROPERTIES - SKETCH SUBDIVISION

1 section of the -- that's 155 you're quoting; correct?

2 MR. HINES: Yes.

3 MR. MESSINA: I think that's for when people
4 build houses. It's not for existing uses because --

5 MR. HINES: You have a subdivision here. It's
6 irrelevant whether the house is built or not.

7 MR. MESSINA: Listen, there are plenty of
8 properties in Marlboro that their properties called for
9 the center line of the highway, and the Town is not going
10 around telling them they have to deed over 25 feet of
11 their property to them.

12 MR. HINES: Until such time as they present a
13 subdivision.

14 MR. LOFARO: Until they change the application.
15 Once you want to change something, then you trigger that.

16 CHAIRMAN BRAND: Yes.

17 MR. JENNISON: I just don't understand, because
18 25 feet would be in my living room if I were to do
19 something with my property on Woodcrest Lane. It just
20 doesn't make any sense to me.

21 MR. GAROFALO: We make allowances for retaining
22 walls and buildings so that we're not taking --

23 MR. HINES: We've had this before --

24 MR. GAROFALO: -- the Town is not taking the
25 property.

LYNNDAVID PROPERTIES - SKETCH SUBDIVISION

1 MR. HINES: -- where you would jog around.

2 MR. HARDY: So where would you jog around my --
3 like, how can it be done? Like we have no problem up
4 here (indicating). How would it actually physically be
5 done to be jogged around these houses? I would just like
6 to know. I mean, we're not trying to fight this. I just
7 don't quite understand how if they ever wanted to widen
8 it where they would have to go. Like, it's nearly an
9 impossibility. I mean, you can't really jog around the
10 houses. You're coming into my property. You're going
11 back out. You're coming back in. It can't really be
12 done. That's really -- I don't quite understand that. I
13 understand the law. You know, if it's straight, we have
14 no problem up here giving the 25 (indicating). It's just
15 right here because it's not nonconforming (indicating),
16 how -- like, can anybody tell me how you would jog around
17 this?

18 CHAIRMAN BRAND: Pat.

19 MR. HINES: So we would leave it to your
20 designer to propose something, and sometimes common sense
21 has to prevail.

22 MR. GAROFALO: Part of it depends on how far
23 does that 25 feet go. Does it go into the building?
24 Does it go five feet away from the building?

25 MR. HARDY: It goes into the building.

LYNNDAVID PROPERTIES - SKETCH SUBDIVISION

1 MR. HINES: In that case, 15 feet may be
2 appropriate, but we're going to leave it up to your
3 designer to propose something.

4 MR. MESSINA: But you also have to understand
5 that there's an economic impact on these properties when
6 the highway boundary is 15 feet from your house as
7 opposed to being four feet from your house. Because
8 there are some buildings that we're not going to be in
9 the building. We're going to be four feet from them.
10 Now, there's an economic impact on that. That property
11 is worth less.

12 MR. HINES: Okay. But you're subdividing it.

13 MR. MESSINA: I understand. If you continue
14 down and reading from the Right-of-Way, I just want to
15 point this out to you. And if you go down to the section
16 under where all those dots are, the next paragraph, where
17 it says: The Legislature did not intend Section 189,
18 which means that the highway superintendent can widen the
19 road up to three rods wide, to allow municipalities to
20 deny property owners just compensation nor due process
21 while appropriating private property for public use. And
22 that's what you're doing. You're getting -- you're sort
23 of going around the law of New York State.

24 MR. HINES: I don't agree with that. This
25 occurs in every municipality I've ever --

LYNNDAVID PROPERTIES - SKETCH SUBDIVISION

1 MR. MESSINA: No. It may occur in every
2 municipality, but this is still --

3 MR. HINES: I'll defer to learned counsel here
4 when you're going to talk about the legal matters.

5 MR. MESSINA: Okay.

6 MR. COMATOS: These are arguments that I
7 haven't seen made before. You've applied this Code
8 consistently over the years, and the issue of whether an
9 applicant is entitled to compensation has never come up
10 as far as I'm concerned.

11 MR. HINES: They're often referred to as
12 gratuitous offers of dedication.

13 MR. MESSINA: Did you get a copy of this
14 (indicating)?

15 MR. COMATOS: No.

16 MR. MESSINA: I'm going to give you one. If
17 you turn to the last page, it's the opinion of three
18 Attorney Generals of the United States over the years
19 that they should get compensated. I mean, if you want to
20 read that -- I'll read it to you or you can read it for
21 yourself. In the opinion of the Attorney General, if the
22 prescriptive use of the road has been limited to a width
23 of less than three rods, which this is the case, the
24 municipality may not widen the road without either the
25 consent of the abutting owners or by following due

LYNNDAVID PROPERTIES - SKETCH SUBDIVISION

1 process and compensating the owners. 1962 opinion, 1995,
2 and 1999, by three different Attorney Generals of the
3 State of New York.

4 CHAIRMAN BRAND: That refers to them widening
5 the road, though.

6 MR. MESSINA: Yes. Acquiring the property
7 under Section 189 of the highway law.

8 MR. COMATOS: The difference between the
9 general application of the State highway law and the
10 opinions of the Attorney Generals that you referred to,
11 which I have not seen, is the fact that this applicant is
12 bringing forth an application for subdivision, and in
13 doing so, the application is going to be subject to
14 conditions. And this is one of the conditions. So if
15 you don't want -- if you want compensation or if you're
16 seeking compensation, then you're not going to get the
17 application granted. That's a condition of granting the
18 application.

19 MR. MESSINA: We're not seeking compensation.
20 We're just seeking to have the highway boundary by use.

21 MR. COMATOS: But you're the one who raised the
22 issue of compensation.

23 MR. MESSINA: Only if you insist on taking the
24 property.

25 MR. COMATOS: We don't insist. It's just a

LYNNDAVID PROPERTIES - SKETCH SUBDIVISION

1 condition. By bringing the application, you're
2 subjecting yourselves to all of the conditions, not just
3 the New York State highway law but the Town ordinance,
4 which applies this condition for subdivision approval.

5 MR. GAROFALO: There's two other things to
6 consider. Now, I had part of my property that DOT
7 purchased, and that made my property smaller, and that
8 gave me a very small decrease in taxes because the
9 property was a little bit smaller. It wasn't a whole
10 lot. And, you know, that's one issue. And the other
11 issue is, you know, I would be concerned as a property
12 owner if there were an accident to occur on that
13 property, even though the municipality is charged with
14 maintaining it, the owner might get dragged into
15 something like that also. So just on that basis, I
16 wouldn't want to own part of a road, because I would be
17 afraid, even if it was -- the court threw it out, that I
18 would be responsible. A lot of lawyers might try to drag
19 you into that situation, saying, well, you should have
20 made sure that the Town was properly maintaining the
21 road. So that's another separate issue to consider. And
22 I haven't seen too many lawyers go after people for that,
23 but I would -- if I owned a piece of property like that,
24 I think I might be concerned about the lawyer coming
25 after me because I physically own the property, just like

LYNNDAVID PROPERTIES - SKETCH SUBDIVISION

1 if you were renting out a piece of property to somebody
2 and you told them they were in charge of maintaining it,
3 you know, you might still get dragged into something.

4 MR. MESSINA: Mr. Garofalo, I'm familiar with
5 that thing you're talking about, the school road, because
6 I represented the people at the very end of that road,
7 and when they were trying to take property from them --
8 you got compensated for the property that they took from
9 you; correct?

10 MR. GAROFALO: No. They didn't -- I had a
11 right to use the road, but this was a separate issue with
12 Route 9W and not with Young Avenue.

13 MR. MESSINA: They acquired property by a map;
14 correct?

15 MR. GAROFALO: Yes. But it was different
16 because it was the State purchasing the property and I
17 had no application. I had nothing --

18 MR. MESSINA: I understand, but when they took
19 your property -- I worked in this department for many
20 years, so I know how it works. They prepare a map. They
21 take property from you. And the real estate division
22 comes to you, and they negotiate a price of what that
23 property is worth. That's how it works.

24 MR. HINES: But that's not the same facts
25 before us right now.

LYNNDAVID PROPERTIES - SKETCH SUBDIVISION

1 MR. MESSINA: Well, you say it's legal. I
2 don't know. I'm saying it's not fair. I'm not an
3 attorney.

4 MR. HINES: Me either.

5 MR. MESSINA: But it doesn't seem right that
6 you could take somebody's property for that reason.
7 Because the road exists --

8 MR. COMATOS: The only basis for the
9 implementation of the Code provision is the fact that
10 your client is seeking the benefit of subdivision
11 approval.

12 MR. GAROFALO: He's getting something.

13 MR. COMATOS: That's what he's getting.

14 MR. JENNISON: But you're holding the carrot
15 over him.

16 MR. MESSINA: Thank you. That's the truth.

17 MR. COMATOS: There's all kinds of sticks and
18 carrots in this process.

19 MS. LANZETTA: Yeah, because we're trying to
20 better maintain the roads in our town. And if we don't
21 have additional area for drainage and --

22 MR. GAROFALO: Snow storage.

23 MS. LANZETTA: It makes it more difficult for
24 the rest of the community.

25 MR. MESSINA: Well, to that point, that's my

LYNNDAVID PROPERTIES - SKETCH SUBDIVISION

1 point. You have, by law today, the right to do that.
2 You don't need to have this Code. The State of New York
3 allows you to widen the road up to three rods wide. So
4 what you seek, which I think is smart for the future
5 development -- because we all know it's very unlikely
6 that these roads will be widened to four lanes, two lanes
7 in each direction. And if it was, you would only have
8 one piece of it widened. You still have to go to that
9 Section 189 of the highway law to get the rest of it from
10 wherever you wanted to go to widen that road.

11 MR. HINES: It's the argument of why put
12 sidewalks in because they're nowhere. Well, you gotta
13 start somewhere.

14 MR. MESSINA: You can always start -- but
15 that -- I don't know the rules about sidewalks.

16 MR. HINES: I'm just using that as an example.
17 Everyone tells us, I'm not putting sidewalks in because
18 they don't go anywhere, but then the next guy comes in,
19 the next guy comes in.

20 MR. MESSINA: Put them on your property; right?
21 You're not taking their property.

22 CHAIRMAN BRAND: I think it's our understanding
23 that's the way that we have to do it. I mean, I
24 understand your discussion.

25 MR. MESSINA: I understand. We have other

LYNNDAVID PROPERTIES - SKETCH SUBDIVISION

1 property owners here -- I mean not here, and we'd have to
2 check with them. But I would like to have a vote to see
3 if this would pass, get sketch approval based upon the
4 map that we presented. You can vote yes or no.

5 CHAIRMAN BRAND: We don't do that.

6 MR. MESSINA: What do you mean, you don't do
7 that?

8 CHAIRMAN BRAND: We want to see the map. We
9 want to see everything that you have. We have to have
10 the corrections. We have to have the final map. And
11 then we make the decision.

12 MR. MESSINA: Well, you can say to me, no, we
13 won't approve this the way it's presented; right?

14 CHAIRMAN BRAND: We absolutely could say that.

15 MR. MESSINA: But that has to be done by vote.

16 CHAIRMAN BRAND: Yes.

17 MR. MESSINA: Well, I'd like to have --

18 CHAIRMAN BRAND: By this Board, not by you.

19 MR. MESSINA: I'd like to have that vote.

20 CHAIRMAN BRAND: That's not your prerogative,
21 sir. We decide when to vote. You can make the
22 corrections to the map and come back to us with a revised
23 copy of the map, and then we will make a decision based
24 upon that.

25 MR. MESSINA: So what you're saying is you

LYNNDAVID PROPERTIES - SKETCH SUBDIVISION

1 never take a vote where you say we won't approve it the
2 way it's presented? You do that all the time.

3 CHAIRMAN BRAND: We don't.

4 MS. LANZETTA: We don't deny it. We refer --
5 we explain why we have issues and then we refer to the
6 Zoning Board.

7 MR. GAROFALO: Or we refer it back to you and
8 say these are the issues that we see. You don't have
9 your wells shown. You don't have this shown. You don't
10 have that shown. We tell you what we want to see in
11 order for us to approve it.

12 MR. MESSINA: I guess I don't understand why
13 you would object to having the vote to say that we don't
14 approve it because of these reasons. Lots of times you
15 don't get final approval, and you say, no, we're not
16 giving you final based on you don't have these things.
17 But if you don't want to take a vote, I can't force you.

18 MR. HARDY: Okay. So it's my understanding the
19 biggest issue is the 25 foot; correct? That is --

20 MR. HINES: Well, it's an issue, yeah. We
21 don't have topography. There's a lot of things that
22 Carmen has put off based on waiting for this decision.

23 MR. MESSINA: Exactly. We will comply with all
24 those things. I think it says that in your memo. We've
25 explained at the last meeting that we don't like to

LYNNDAVID PROPERTIES - SKETCH SUBDIVISION

1 expend our clients' money before we get some kind of
2 sketch approval, because it would be -- if we never could
3 get sketch approval, then all that money would be wasted.

4 CHAIRMAN BRAND: I don't think that's the case
5 here.

6 MR. MESSINA: I understand. But we deferred
7 doing those -- because it has to get done. We understand
8 that. Like the driveway, the sight distance, until --
9 did you get the highway superintendent's comments back
10 about the driveway locations?

11 MR. HINES: I don't think it's gone there yet.
12 You don't have the sight distance shown yet. I don't
13 think it's even gone there yet.

14 MR. MESSINA: Well, if you read my answers to
15 the questions, I presented the plans and the form that
16 Jen gave me, the Planning Board secretary, to Mr. Alonge,
17 and he and I went out there, and I staked out where the
18 driveways were going to be. And he said he would look at
19 it.

20 MR. HINES: I don't know if we received that.

21 MR. MESSINA: Just for one example, we're not
22 going to put the sight distance on there until we know
23 we're going to get his approval.

24 MR. GAROFALO: I would disagree with that
25 procedure. I think that they should be put on the plans

LYNNDAVID PROPERTIES - SKETCH SUBDIVISION

1 so that when he goes out there and looks at it, he has a
2 number. He knows what the sight distance is. Not that
3 he goes out there and thinks, oh, that looks like it's
4 good. Then you give us a plan, and suddenly it isn't
5 good enough. I think it's much more important that he be
6 given those sight distances as part of his review.
7 Otherwise, we really should be sending it back to him and
8 saying, okay, these are the sight distances. Do you
9 still agree that this is a good location? I think it's
10 better if he has those sight distances. And I think I
11 would feel more comfortable with the highway
12 superintendent having those before he even goes out
13 there.

14 MR. MESSINA: Okay.

15 MR. GAROFALO: Because he may look at them and
16 say, a hundred feet? No, I'm not even going to go out
17 there and look at it. I know looking at your plan that
18 it's no good. You need to move it over here or there.

19 MR. MESSINA: But that is why you send him
20 there, to take a look for this reason, isn't it?

21 MR. GAROFALO: He doesn't survey it, though.

22 MR. MESSINA: I understand. But why does he go
23 there? I mean, to see that the -- I mean, that's the
24 main issue about where driveways should be. You can't
25 have them over the crest of hills. So, I mean, other

LYNNDAVID PROPERTIES - SKETCH SUBDIVISION

1 than that, the driveways are in the right place.

2 MR. GAROFALO: There's vegetation that might be
3 in the way. You may have an outcropping that blocks it
4 that may not be shown necessarily on a plan. So there
5 is --

6 MR. HINES: Vertical and horizontal curve
7 alignment issues.

8 MR. GAROFALO: I do this all the time and --

9 MR. MESSINA: I understand. Okay. That's a
10 fair point. So where do we stand -- so we're not going
11 to have the vote?

12 CHAIRMAN BRAND: Not tonight, no.

13 MR. MESSINA: So you're telling us if we don't
14 give you the 25 feet from the center line, you will never
15 approve this project?

16 CHAIRMAN BRAND: I'm not saying that, but it's
17 part of the Code that's there. That's what you need to
18 do. So I would think that it's part of the requirements
19 that would be there. Obviously, you're going to have to
20 adjust it where those structures are.

21 MR. MESSINA: So do you want to give me some
22 guidance as to how I would structure this?

23 MS. LANZETTA: Just show it. Show the 25 feet.

24 MR. MESSINA: When it goes through the
25 building, what do I do?

LYNNDAVID PROPERTIES - SKETCH SUBDIVISION

1 MS. LANZETTA: You stop, jump over it, and then
2 do the dots afterwards.

3 MR. MESSINA: Okay. So is ten feet enough to
4 go around it? Is it five feet? I mean, if I come here
5 and I say ten feet, what are you going to say? Well,
6 it's too much. So you could give me some guidance, so we
7 could get this done.

8 MR. GAROFALO: I think it would help if we knew
9 exactly how far the building is from the center line.

10 MR. MESSINA: Well, I could tell you that. I
11 have that information for you.

12 CHAIRMAN BRAND: How far is it?

13 MR. MESSINA: Okay. Let's talk about the lot
14 that's the lot A that we're -- that's going to be another
15 issue, but we'll get to that. Lot A that we are giving
16 .85 acres to make it conforming use, that building is
17 32.7 feet from the center line.

18 CHAIRMAN BRAND: How many feet?

19 MR. MESSINA: 32.7. As we go to the east, the
20 building on Mr. Hard -- Kevin's property is the first
21 building to the left of that lot A building is 29.6. And
22 the last house towards the intersection of Willow Tree
23 and Mulberry Lane, the distance from that center line is
24 20.8. So that would be 4.2 feet into the building,
25 25 feet.

LYNNDAVID PROPERTIES - SKETCH SUBDIVISION

1 MS. LANZETTA: From the center line, you're
2 saying?

3 MR. MESSINA: Yes. And that's the other issue
4 we're going to have. When we give 25 feet from the
5 center line for lot A, we're not going to be able to say
6 that we have eliminated a nonconforming use, because the
7 standard is only one acre, and now we're going to deduct
8 a certain amount of acreage.

9 CHAIRMAN BRAND: Pat, is that used in the
10 calculations?

11 MR. HINES: It's removed from the lots, yes.
12 So that could easily be modified by the changing the, I'm
13 going to say, easterly line.

14 MR. MESSINA: Well, you know, we've worked very
15 hard on these plans, and sometimes there's things that we
16 need to have that's not currently viewed by just looking
17 at a picture. There are septic systems. There's wells.
18 There's separations for certain things. There's side
19 line distances from buildings that we -- when we put new
20 lines. So there's all that.

21 MR. JENNISON: Is there an acceptable distance,
22 Pat? Like, if it's --

23 MR. HINES: Normally, in this case --

24 MR. JENNISON: -- ten feet off of his building?
25 I mean, would we give eight feet? I don't know what the

LYNNDAVID PROPERTIES - SKETCH SUBDIVISION

1 past practice is here.

2 MR. HINES: So in the past we have jogged it
3 around there. Oftentimes, there were stone walls or
4 clearly defined ditches. There were things in the field
5 that made sense where that was. And that's the kind of
6 thing -- you know, I can't sit here looking at a
7 two-dimensional map and say, okay, this works. Now, you
8 may know that there's something out there that makes
9 sense.

10 MR. JENNISON: Is there something out --

11 MR. MESSINA: Well, there's ditch lines.

12 MR. JENNISON: There's what lines?

13 MR. MESSINA: Ditch lines. We included that in
14 the highway boundary by use. So where you see the
15 highway boundary by use is where there's ditch lines,
16 there's shoulders, there's guide rail.

17 MR. GAROFALO: What distance was that from the
18 center line? Did you follow a prescribed distance from
19 the center line to put that ditch line?

20 MR. MESSINA: No. I actually located the ditch
21 line, and that's how I came up with the highway by use,
22 because that's what the Town has been maintaining.

23 MR. JENNISON: So from the corner of the most
24 east house, where is the ditch line from the corner of
25 that house?

LYNNDAVID PROPERTIES - SKETCH SUBDIVISION

1 MR. HINES: There's a blue dashed line.

2 MR. MESSINA: There's a guide rail there.

3 MR. JENNISON: How far is that?

4 MR. MESSINA: From the center line?

5 MR. JENNISON: No. From the corner of the
6 house.

7 MR. MESSINA: I didn't have that number.

8 CHAIRMAN BRAND: Why don't you just use the
9 guardrail as your line?

10 MR. HINES: Use the rear of the guide rail.

11 MR. MESSINA: Okay. That's what I did when I
12 said highway by use.

13 MR. HINES: In that vicinity. The rest of it
14 would be 25 feet.

15 MR. MESSINA: So can I use the highway by use
16 line in front of all those buildings, and when we get
17 past that lot, lot A -- because now we're going to run
18 into a problem with the area use. We were trying to have
19 three properties that were nonconforming, and when we got
20 done, only one would be nonconforming. That's what the
21 ZBA allowed us to do. So if we could get a highway by
22 use up until it reaches lot number 3 and then jog it to
23 make it 25 feet from the center line -- we proposed
24 possible house locations. I made that 77 feet from the
25 center line, knowing that the Town may widen it. So that

LYNNDAVID PROPERTIES - SKETCH SUBDIVISION

1 would make it within the right setbacks for the front, 50
2 feet. So if we could use the highway by use up until we
3 get to lot 3 --

4 MR. HINES: I don't think we can agree to that.
5 There's an important area at that intersection there that
6 would be very valuable to the Town in the future.

7 MR. JENNISON: Are you talking most east?
8 Mulberry and Willow, that corner?

9 MR. HINES: Yeah.

10 MS. LANZETTA: So we should just allow for a
11 jog?

12 MR. HINES: Typically, we have worked around
13 existing structures, retaining walls, stone walls, guide
14 rails when we went through this.

15 MS. LANZETTA: And that would get to 25 again.

16 MR. HINES: Yeah, it would widen back out.

17 MR. JENNISON: On the easternmost house. Then
18 we go back to 25.

19 MR. MESSINA: When we get past the guide rail,
20 widen it out to 25?

21 MR. JENNISON: Yes.

22 MR. MESSINA: So, going the other way, to avoid
23 me making that lot A -- a new lot A be nonconforming, if
24 we got past the line that separates lot 3 from lot A, can
25 we use the highway by use there and then widen out once

LYNNDAVID PROPERTIES - SKETCH SUBDIVISION

1 we get to that dividing line?

2 MR. HINES: No. It defeats the purpose there.
3 I would think that you would run it back in. Taking into
4 consideration the existing house, you can very easily
5 modify one of those lot lines to keep it one acre.
6 Project this straight out here (indicating). This way --
7 I mean, I don't want to design it for you.

8 CHAIRMAN BRAND: You can just shift the one
9 separating lot A and 2 and 3 from 4. You could pull that
10 line down.

11 MR. MESSINA: Well, I guess this is where I
12 started out when I said, well, give us some guidelines.
13 So now we do. Before you said I could design it, but
14 apparently that's not a hundred percent true.

15 MR. HINES: Well, we were looking for you for
16 suggestions.

17 MR. MESSINA: Well, I gave you my suggestion.

18 MR. HINES: And I think -- and I gave the Board
19 my suggestion.

20 MR. MESSINA: I mean, is it such -- because
21 there are other considerations about where that rear yard
22 is of lot A.

23 MR. HINES: I don't see them. I see where the
24 septic and wells are.

25 MR. MESSINA: Well, you know, we have done

LYNNDAVID PROPERTIES - SKETCH SUBDIVISION

1 preliminary tests for septic systems, but we don't know
2 exactly where they're going to be until we actually do
3 them and do the deep tests.

4 MR. HINES: So that may change drastically
5 anyway.

6 MR. MESSINA: Yeah. So we'd like to leave
7 ourselves all the possibilities that we can get.

8 MR. HINES: I'm not suggesting you change any
9 of the areas where you have a potential septic. I'm
10 suggesting that lot 1 needs four acres. Three houses?
11 Four houses?

12 MR. MESSINA: Three houses.

13 MR. HINES: Three houses. So under Cindy's
14 theory, three acres would be plenty. So I think there's
15 some flexibility in the size of lot 1 to adjust the lot
16 line for new lot A and still come up with a reasonable
17 offer of dedication along the Willow Tree Road.

18 MR. MESSINA: Do you have something?

19 MR. HARDY: No.

20 MR. MESSINA: I mean, I don't think it's
21 unreasonable -- I don't think it's unreasonable to ask
22 that.

23 MR. HINES: We do a lot of subdivisions, and
24 this is the longest I've ever had a conversation
25 regarding --

LYNNDAVID PROPERTIES - SKETCH SUBDIVISION

1 MR. MESSINA: Well, maybe this conversation was
2 necessary. Maybe not conclusive, but maybe necessary.

3 MS. LANZETTA: Do we have to include the
4 highway superintendent on this?

5 MR. HINES: I would, yes, as we're going to jog
6 around buildings, and after Carmen gives us his take on
7 this, we would definitely include the highway
8 superintendent as the arbiter of this.

9 MR. MESSINA: So now that we're here and so we
10 can get this in a form that you would approve, you want
11 to tell me about lot A? We already discussed we're going
12 to give you the highway by use in front of all those
13 other buildings on lot number 1 because it has the guide
14 rail and the buildings are affected. Am I correct, we
15 can use that?

16 MR. HINES: Uh-huh.

17 MR. MESSINA: When we get to -- when we get to
18 lot A, can we use the highway by use in front of the
19 building?

20 MR. HINES: I don't know the answer to that.
21 If there's some significant reason why, possibly, but if
22 you can provide additional right-of-way there to make it
23 beneficial to the Town in the future.

24 MR. GAROFALO: You noted that was 32.7 feet.

25 MR. HINES: Right. It's 32.7 feet to the house

LYNNDAVID PROPERTIES - SKETCH SUBDIVISION

1 you said.

2 MR. MESSINA: Yes. There's no guide rail in
3 front of that house.

4 MR. HINES: But it seems like there's plenty of
5 room to meet the standard in the Code.

6 MR. MESSINA: So to the front of that house --

7 MR. HINES: I'm not saying they're ever going
8 to construct it. It could look the way it is today, but
9 it could potentially in the future be a great benefit to
10 the Town if they're going to do roadway improvements
11 there or drainage improvements or road widening or
12 straightening out that curve.

13 MS. LANZETTA: You got the driveway there too.

14 MR. MESSINA: Well, I'm looking for guidance
15 when we talk about lot A.

16 MR. HINES: I have a two-dimensional plan in
17 front of me. I can't give you that right now. You know
18 better than us what it looks like out there.

19 MR. MESSINA: Well, what I'm trying to avoid is
20 we come here, and then you say we don't like that. I
21 mean, let's get it right, and we'll do it, because we
22 won't get a vote.

23 MR. JENNISON: Can't we do a field visit?

24 MR. MESSINA: Huh?

25 MR. JENNISON: Are you requesting a field

LYNNDAVID PROPERTIES - SKETCH SUBDIVISION

1 visit?

2 MR. MESSINA: I don't know what you -- your
3 procedure to be, but we'd like to get it right the next
4 time.

5 MR. JENNISON: Pat, can you go out?

6 MR. HINES: Yeah, we can go out.

7 MR. JENNISON: Okay. There you go. Pat will
8 meet you out there.

9 MR. HINES: Bring the highway superintendent.

10 CHAIRMAN BRAND: Sounds reasonable. All right.
11 So we will see you at a later date. Pat, you'll arrange
12 that with them and the highway superintendent.

13 MR. HINES: Yes. Carmen can contact me, and we
14 will go out.

15 CHAIRMAN BRAND: Great. Thank you.

16 MR. HARDY: Thank you.

17 CHAIRMAN BRAND: Anything else from the Board?

18 (No response.)

19 CHAIRMAN BRAND: We're adjourned.

20 Time noted: 8:18 p.m.

21 C E R T I F I C A T I O N

22
23 Certified to be a true and accurate transcript.

24

Stacie Sullivan

25

Stacie Sullivan, CSR
Senior Court Reporter