

TOWN OF NEW BALTIMORE PLANNING BOARD
Public Hearing
Maxwell Horowitz – Altered Lot Line & Minor Subdivision Applications
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Location: 99 State Route 144
of Lots: 2 – Lot #1: 26.42 acres
Lot #2: 20.96 acres

The Public Hearing was opened at 7:15 p.m. by Chair Rob Van Etten. Other Board Members in attendance were Ann Marie Vadney, Bob Court, Pat Bruno; Bill Boehlke and Lee Salisbury. Jean Horn was absent.

Mr. Horowitz was present and came forward. He had forgotten to bring the green cards for certified letters sent. Since he lives nearby, it was suggested that he go get them.

At 7:17 p.m., it was moved seconded by to recess the Public Hearing to give Mr. Horowitz time to get the green cards..

Ayes: 6 Nays: 0 Abstained: 0 : Absent: 1

The Public Hearing was resumed at 7:25 p.m. Green cards were presented for certified letters sent to:

Barry & Deborah Gupstill
Robert Bennett
Louis LaFalce
Steven & Lisa Firstiun
Hektar Holding Co. LLC

White receipts were presented for letters sent to:

Paul Schiller
Ronald W. Rose Jr. & Veronica I. Stark-Rose.

All requiring notification had been contacted. Maps were laid out. As a result of discussion taking place a distance from the table, the Clerk reminded the Chair any of the discussion taking place would not be part of the record. The Chair advised those conversing if they wanted their comments part of the record, they would need to be addressed at the table and was advised they were just trying to orient themselves with the property.

Bordering property owner, Robert Bennett, questioned if there would be a period later on to make comments? He was informed this is the time in the Public Hearing. After the Public Hearing is closed, further comment will not be taken. It was clarified that this Public Hearing is for a lot line adjustment and a subdivision. Jennifer Suchey questioned if this was a lot line adjustment? Mr. Horowitz explained it is a subdivision and a lot line adjustment. Ms. Vadney explained it is two different things but we are doing them simultaneously.

Mr. Bennett questioned what about the proposed use of the land after it is subdivided? It was explained that that is another whole ballpark to be addressed at a later time. Mr. Bennett commented just for the record if I get a notice that there is a meeting for an altered lot line and subdivision application, was this applied for ahead of time? It was explained that it was and is why the Public Hearing was scheduled. Mr. Bennett continued he thought that he was personally uninformed. He thought this was the time when it was introduced and then he would have time to decide, analyze what he thought and make any comments at a later period. As far as it is right now, if the use is for solar, he could be selling it to anybody couldn't he. Mr. Van Etten explained but that is something else that would have to come in front of the Board.

Mr. Bennett commented it is his right to subdivide and sell a piece of property. Mr. Van explained he is subdividing; if he wants to sell it or not is not what we are determining. It has nothing to do with it. Ms. Vadney clarified we have nothing to do with what he is doing with his property. We only have the authority to approve what is before us now.

Ms. Suchey commented what I believe Mr. Bennett's concerns might be and what he is trying to say and they are partially the concerns and questions that I would have and that is why I want to say something about that. The landowner has the right to make decisions based on a potential

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sale down the road with Solar Generation and that sort of thing. My concern is with the fact that these solar panels can shift on different properties from what was described by the gentleman who is the developer of Solar Generation. There is going to be the possibility of three different projects for this particular solar facility; and with that being said, those panels can shift depending on whether he decides he wants to sell this lot or that parcel or that kind of thing. So the concern is if there are adjacent landowners to the north or however it may be, how that will effect neighbors or adjacent landowners depending on where these solar panels get placed, that is the concern I have.

Mr. Van Etten pointed out that the Board is not addressing that tonight. Ms. Suchey continued right, but it is a two-fold thing. It may not be addressed tonight but that decision of where that line gets made and what is approved and what is accepted will affect that decision. Mr. Van Etten explained we can't base our decision on what is going to happen in the future.

Ms. Suchey continued for lack of a better term, a jay-walking decision is to be able to kind of maneuver around a plan that is suitable more for the developer than it is for the landowners adjacent or even the property owner. Mr. Van Etten again responded like I have said, this is something that will have to be addressed down the road. The Board does not have a crystal ball. Ms. Suchey responded that she understood. She was not trying to turn it into something more in that we are going to plan ahead of time but that she felt it was something that had to be taken into consideration.

Ms. Vadney explained that will be taken into consideration when that developer comes in with his Site Plan for Site Plan Review. This is strictly being presented as a minor subdivision and a lot line adjustment so it is premature. We really don't know. He thinks he knows what he is doing with it and that is his prerogative to do it.

Ms. Suchey continued I am a citizen of the Town of New Baltimore. I am somebody who has invested in this area and I am a taxpayer. For that reason, I think the general voice of the public and community at large needs to be taken into consideration before some solid heavy decisions are made. Ms. Vadney pointed out that would come at the site development and of course we take everyone's input and try to balance it.

The Chair asked Mr. Bennett if he had any comments to make on the subject. Mr. Bennett responded as far as I understand it, it has nothing to do with—you don't care who buys this land or where it is going. You don't have to know anything about that to determine whether you can make a subdivision. You can make a subdivision. The Chair added whether it is done legal and properly and that is what we are looking at. Mr. Bennett added and if there are other concerns about a use later on, then that is the time to speak up about that.

It was noted there are no dwellings on the property involved. Referring to the map, Mr. Horowitz explained the subdivision consists of Lot #1 and Lot #2. New line was pointed out. It does not wrap around cell tower. Addition of right-of-way into the cell tower was pointed out. While still 46.14 acres involved in the subdivision, acreage of each lot had changed from that appearing on the application and he was asked to amend the lot acreage figures on application to match that on map and initial.

Discussion was held regarding the right-of-ways appearing on the map and what appeared to be new. It was noted the one road has been there for a long time giving access to the tower. Question was raised regarding the one section of the right-of-way, who it would be deeded to. Question was further raised regarding who owned the easement/road coming in from 9W? It was noted that it is the tower and that Mr. Horowitz already has a right of use of it and it is reflected in his deed. Mr. Court questioned if anyone else would have the right to use that right-of-way or would they have to go to the tower people to request such a right? Mr. Horowitz explained that he had the right of way to two pieces currently owned. It was explained to him the question was with regard to the new lot being created and Mr. Horowitz's new right-of-way is

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being tagged on to the existing right-of-way. Therefore, it would appear that the people who own the right-of-way for tower access would have to be the ones to say they will grant them access to it or allow them to use it. Mr. Horowitz has the right to use it but it is when he sells Lot #1 from the subdivision.

Question was raised with regard to who would be owning the right-of-way running along the west edge of Lot #2 to get to Lot #1. Mr. Horowitz indicated that it would have to come out of Lot #2 but as reflected on the map did not so indicate and that was of concern. The Board indicated it was a concern to them as well and they did not want to see him have a problem in the future. Mr. Horowitz then questioned if it could be done in language in the deed or if the map needs to be re-drawn. It was felt the map needed to reflect whether it was an easement or right-of-way and in a map note the access Parcel #1 would have, and the deed to Parcel #1 would need to also reflect what is granted for access. It was felt the final map should show the right of way all in the same color instead of listing it as proposed. It was then pointed out that the surveyor may have used the different colors for right-of-way and easement on the map before them.

Mr. Horowitz felt it would be best if he owned the easement and grant the buyer of Lot #1 the access to that. It was pointed out that the deeds are going to have to reflect that so there is guaranteed access. The Board has to know in some manner that the owner of Lot #1 is going to always have access to their parcel. It was suggested that he check with his surveyor and attorney as to how best handle it. Mr. Horowitz was cautioned that he might also want to check the easement granted for the cellphone tower. He doesn't want to think that he can automatically use that because it was initially on his property and then he granted it as a right-of-way to someone else. This should be checked with his attorney as well. Mr. Horowitz explained he had access to the easement because of the parcels he owns, as pointed out on map. It was pointed out, unless that was specifically stated when you made that easement, don't just assume you can use the right-of-way for other parcels created because it generally is not the case. He should check with his attorney.

Mr. Horowitz advised that his attorney should have the deed language in a few days with regard to the altered lot line and questioned if this would be tabled for another month. The Board felt it best not to move forward with any approvals this evening. We don't want to see a landlocked parcel. Ms. Vadney pointed out we combined this to expedite it for you but it had been mentioned last month about needing the deeds. Mr. Van Etten explained that would have been in the resolution approved, based on that but this is not the lot line part of it, it is the subdivision part of it.

To recap, we need to make sure that the right-of-way coming in from 9W is accessible to everyone and is extended to the new parcel from this subdivision; and second is the access to Lot #1. He was again urged to have his current deeds reviewed with regard to the access. Mr. Horowitz questioned if everything is good to go with that right-of-way, being able to use this right-of-way to gain access into Lot #2 so he can have an easement going up into Lot #1. In addition to finding out about the access road, the Board does not like the way this looks. Mr. Court clarified it is not the way it looks but rather notation is needed that this right-of-way belongs to Lot #1. The language should not only be in the deed(s) but reflected on the map as well. The easement can be kept on Lot #2 but there has to be the notation that it is for Lot #1.

With members of the public having commented tonight, it was felt the Public Hearing could be closed and Board discussion continued at the November 8 meeting.

At 8 p.m., it was moved by Vadney and seconded by Salisbury to close the Horowitz Public Hearing.

Ayes: 6 Nays: 0 Abstained: 0 Absent: 1

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