

TOWN OF NEW BALTIMORE PLANNING BOARD
Public Hearing
Lands of Bette Ann DeFine - Minor Subdivision Application
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Location: Sunset Hill Road
of Lots: 3: Lot #1: 15.32 acres
 Lot #2: 19.94 acres
 Lot #3: 23.02 acres

The Public Hearing was opened at 7:55 p.m. by Chair Rob Van Etten. Other Board Members in attendance were Ann Marie Vadney, Bob Court, Pat Bruno, Bill Boehlke, Lee Salisbury and Frank Orlando.

The Clerk advised the Board that the \$90.00. application fee due had been received and was given to the Board Secretary for issuance of the necessary receipt

Present on behalf of and filling in for the authorized representative, Surveyor Kevin Rounds who was out of town, was Surveyor Jeff Ostertag. Mr. Rounds had not provided Mr. Ostertag with the required notarized letter of authorization; therefore, he had no authorization to speak on behalf of the property owner or surveyor of record. It was noted the Board would go forward with the Public Hearing but could not take any action on the application this evening.

It was noted for the record that this property was subdivided into four lots in 1986 based on a map drawn by property owner but not properly filed in timely manner. Mrs. DeFine has now had it surveyed and the subdivision of three of the four original parcels were represented on map before the Board. The fourth parcel from original subdivision had been sold; the remaining three remained in her name.

The Board discussed boundary footage differences between the original map and what appears on the map before them at this time. Concern was expressed as to whether all surrounding property owners that could be affected by the footage changes received notice.

Karen DeBonis, daughter of Bette DeFine, came forward to address the Board and explain what had transpired. Last year, [2015] we were before the Board on the other side of the road where there was an issue. There were four parcels; it went down to three parcels so that was rectified. The map that Mr. DeFine had done when he was Planning Board Chair was not compliant because of the date when it was filed in 1986 [1987]. This year, my mother had this side re-done. Back then, the Planning Board members that went out with him measuring it were not surveyors. That is why the 1200 feet on other side ended up 800. My piece which was initially believed to be 17 acres; after survey was actually 13.

Referring to map before the Board, this is exactly what is out there now. Where my mother's house is, as pointed out on the map, it showed 29 acres and it ended up being 15. The deed for entire parcel [Kavicky to DeFine in 1967] stated 96 acres; and now properly surveyed, both sides of the road is a total of 106 acres.

Green cards were received for certified letters sent to:

Irving Smith & Doris Myers
Kevin Rounds & Karen DeBonis
William Spencer, Jr.
Elizabeth LoGuidice
Patricia Cleveland

And white receipts, for certified letters sent to:

Maria Mari
Gregory Reinhardt

The Board had no further questions regarding the map. Mr. Van Etten stated for the record that all needing notification had been so notified and the survey had been done by a licensed surveyor. Further noted that Mr. Rounds, per Mr. Ostertag and Ms. DeBonis, had gone back and worked off the old farm deed as it should be done. Ms. Vadney questioned and was advised the parcels, while they have Tax ID

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numbers, subject of this map do not currently have separate deeds. The legal deed descriptions that have been submitted for these three parcels are as a result of Mr. Rounds' survey which would be included in any new deed drawn up.

Ms. Vadney continued this brings us back to the issue discussed last month and perhaps should be part of our resolution that there should be deeds for these parcels. Ms. DeBonis added which there would be when she transfers them. Ms. Vadney pointed out you don't have them now; and if in the family for another 20 years, you do not have a deed for each one, which is unusual. There is just the original deed for the entire parcel. If we are subdividing this, we would want deeds filed for each parcel. Ms. DeBonis questioned if this was standard and was advised yes. Ms. Vadney continued we are approving a subdivision. It doesn't matter what happened in the past, when this map gets filed, you really should have a deed to go along with each of those parcels.

Ms. DeBonis explained when she and Kevin got the parcel, the attorney drew up a deed in their names with the legal description that was given to her. Ms. DeBonis questioned so you want them done before the Planning Board approves it? The Clerk explained if they went and filed separate deeds before the subdivision was filed, the red flag would go up at Real Property and I would soon have someone on the phone to me saying what is going on? Ms. DeBonis questioned so you want me to relay to my mother that you want her lawyer to draw up separate deeds? Mr. Van Etten cautioned I don't know if you can insist on that ahead of time.

After further discussion, Ms. Vadney pointed out this is a unique situation. We are correcting a wrong. These parcels already have Tax ID numbers. There is usually a deed that goes with the Tax ID number. It was noted that is true but back in the 1970's; Ms. Vadney pointed out we are dealing with what we are approving now as a Planning Board.

Ms. DeBonis pointed out right but you are also making a map that was filed in 1986 [1987] non-compliant because of the date it was filed. Ms. Vadney responded that is my point. Ms. DeBonis continued and she also paid taxes for 30 years on each parcel. Ms. Vadney continued exactly and she has no deed to these parcels. Is that correct? Ms. DeBonis responded no, why would she? Ms. Vadney explained normally, if you have a Tax ID Number, you have a deed. She then questioned am I wrong or right there? It was noted there is the one deed from when they purchased the property years ago. We are talking about three parcels now. It was noted that was a mistake that was made years ago. Ms. Vadney questioned the Planning Board members, do we continue the mistake?

Usually when you have a Tax ID, you have a deed that goes and is recorded. Is that not correct? Ms. DeBonis questioned then for 30 years, this was wrong. Ms. Vadney continued I can't deal with the 30 years. What I am dealing with is the fact we are the Planning Board now and we are approving three new parcels that already have Tax ID Numbers. We have descriptions and my question, I would think we would need deeds to be affiliated with the Tax ID Numbers. Now if that is not correct, I am fine with it; but I don't want to be approving and leaving a gap open again for your family. That is my point.

Ms. DeBonis pointed out last year when you approved the map for the other side of the road, four to three, you didn't require a deed then. It wasn't until my mother transferred it to me well after the map was approved and filed that I then paid for and had a new deed drawn up. Ms. Vadney continued, that is fine, if that is correct, I can't go back there either; but all I am saying is we should figure out what we are doing. Mr. Van Etten commented I know it would be nice to have one at this point but I think they can file the subdivision.

Mr. Ostertag explained the subdivision map you approve and that is going to be filed in the County Clerk's office is accessory information which evidences to the lawyers and County Clerk when she subsequently sells the property. You don't create a deed until there is a buyer. The deed is created when there is a seller and a buyer and that is recorded. You, as a Planning Board, are approving a map that recognizes the Town's rules for your land use are being honored. That map is filed as an accessory. That

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map does not transfer fee ownership of property. That map makes it possible for a future buyer to buy a piece of property and receive a deed which is then recorded. So the order of operation here, you would not have call for a deed until there is a buyer.

Ms. Vadney responded that Ms. DeBonis should check with the lawyer to cover herself. To be quite frank, I think we should also check because again when you transfer property. Mr. Ostertag pointed out she is not transferring property. Ms. DeBonis commented right now, nothing is getting transferred. Mr. Van Etten added we are approving the ability for her to do that. Ms. Vadney continued is it the chicken or the hen because we already have the Tax ID Numbers for three different parcels which we normally would not have.

Mr. Ostertag pointed out Tax ID Numbers do not represent actual surveys. There is a note on the map “Not for Real Estate Transfer purposes”. Actually that map, that subdivision map you are approving does not even need to have Tax ID Number(s) on it at all. Ms. Vadney responded that she understood that. Her point was this is a real unique situation and this family has been in and out, had some difficulties getting things approved and spending all this money so the fact this is unique and there are Tax ID Numbers on there. You have the description(s) now. You might want to check.

Ms. DeBonis question do you normally ask for legal descriptions on each lot that you approve? She further commented with regard to the expense to her mother getting deeds now. Ms. Vadney responded we don’t normally have a situation like this where there are already tax ID numbers. If the Board is fine with the fact that there are no deeds even though there are Tax ID numbers, that is my question to the Board Members. To you, I am saying ask your lawyer what is the best thing for you to do here.

Ms. DeBonis continued as long as there is a proper deed description. Ms. Vadney commented that she was not arguing with her. She understood all that; but if the Board approves it, she should still check with her lawyer to be sure she doesn’t end up with another problem. Ms. DeBonis proceeded to comment further and Ms. Vadney responded she was not going to argue the matter any further.

There were no further comments or questions. The Clerk advised that an Ag Statement was needed for this application as well.

At 8:20 p.m., it was moved by Vadney and seconded by Court to close the Bette Ann DeFine Public Hearing.

Ayes: 7 Nays: 0 Abstained: 0 Absent: 0

Respectfully Submitted
Marjorie Loux, Clerk