

**TOWN OF EDEN - PLANNING BOARD MINUTES**

**TUESDAY, August 28, 2012**

**MEMBERS PRESENT**

**MARK AGLE, CHAIRMAN**

**WILLIAM MAHONEY, VICE-CHAIRMAN**

**WILLIAM ZITTEL**

**KEVIN O’GORMAN, M.D.**

**MEMBERS EXCUSED**

**JUANITA MAJEWSKI**

**TONY WEISS**

**FRANK MEYER, D.D.S.**

**ANDREW ROMANOWSKI**

**GUESTS PRESENT**

**DAVID JOHNSON- NUSSBAUMER & CLARKE (TOWN OF EDEN ENGINEER)**

**MR. NICHOLAS GALATI – SUBDIVISION OF LAND ON SOUTH MAIN STREET**

**MR. MICHAEL BOLO – SUBDIVISION OF LAND ON SOUTH MAIN STREET**

**MR. EDWARD KRYCIA – TOWN COUCILMEMBER**

**MRS. DAUN BAUER**

**Chairman Mark Agle called the August 28th, meeting to order at 7:07 pm and asked the board if there were any changes to the July 31st, 2012 minutes as printed. William Zittel made a motion to approve the minutes, seconded by Dr. Kevin O’Gorman, all “ayes” motion approved.**

**NEW AND UNFINISHED BUSINESS:**

- 1. Mr. Nicolas Galati – Subdivision of land at South Main Street – PreSubmission**

**Overview of Gal-Cor Industry: Mr. Galati owns about 40 acres of land in a single parcel; the new public road comes into the land and dead ends in the property. There is a three acre exception parcel and you are looking at some way to divide up the balance of the property to make it more saleable. I know you have some proposed lines drawn upon the preliminary sketch that you provided along with your pre-submission information. Some of the resulting proposed sublots, like subplot 6, would not be sufficient enough in size to support development. Mr. Galati acknowledged that it is just a preliminary sketch. He went on to confirm that we have been trying to market this property ever since the main tenant we had, Multi Industries, occupied about 100,000 square feet of the building. However, after spending a lot of money, about \$750,000, to accommodate their needs, after 3 years they were gone, and left us with an empty building. We do have one tenant that takes up about 35,000 square feet. This is a storage company for R.V.’s. And in our efforts to market this building, we have come to the conclusion that 9 out of 10 interested parties are looking to acquire smaller spaces areas and not in acquiring the whole building. Additionally, because of the economy today, it is more feasible to buy then to rent. The parties who have shown interest in the property, don’t want to acquire the full 40 acres.**

Mark Agle explained that we understand your intent; however you have to follow the code, and thus can only create lots that fulfill the requirements of the zone. However, in this zone, the minimum lot sizes are often dependant upon the proposed uses for the lot. If you don't know what the lot is going to be used for then you don't know how much land you will need on a given lot until you know what use it will be intended to support. But, one way around that is to create lot sizes that offer you the most flexibility so that different uses may be considered.

Mark asked about the buildings condition on the property. Mr. Galati answered that structurally the building is very sound. There are a couple of leaks in the roof, in the area that wasn't replaced. There is also new roof decking in the area replaced. The value of the building is the roof. Between each section we have fire doors that can easily be closed off. Agle stated the fire code issues would be overseen by Mr. Henry.

Mark Agle – The problem is that we cannot draw property lines through existing buildings nor just create substandard lots for the sake of convenience to make the property more marketable.

Mr. Galati said that it would be for their benefit to create several smaller lots. We put up \$100,000 dollars towards that road, the Town and Erie County also did their part. We were hoping we would be able to do something with that road in place but the likelihood of someone coming in and wanting all 40 acres along with the entire building is very slim.

Dave Johnson added that he understands what they are trying to do and it's a great idea but it doesn't conform to the code. The proposed lot lines that go through the building are not allowed under our Town Code; we don't have any mechanism to approve such a concept.

Ed Krycia commented that the Town Board is looking for guidance as to what we would need to do make this possible. Mr. Krycia asked if the duplexes in town share a common wall.

Mark said that this is proposal is for commercial/light industrial purposes and there is such a thing as a condominium concept that have shared walls, however Eden doesn't have anything like that in our Code.

Mr. Galati explained that most people would want to own their own parcel outright rather than rent; this is one reason they come to small towns. This would certainly help us market this property. We have been working with a buyer and this is why I submitted the other map here tonight as they only want 100,000 sq ft. I have proposed creating a six or seven acres parcel by drawing a line parallel to the road although there may be an issue with an entranceway from Rt. 62 in the southeast corner due to the steep grade. Therefore, I thought that possibly we could provide an access easement from the end of the new road to the property and the interested party was agreeable. So, I'm asking right now if this is possible since they are prepared to make an offer on this based on this concept plan. The prospective buyer would like everything except the six or seven acre parcel and the 28,000 sq. ft. remainder of the building. The building remainder is adjoining another 130,000 sq. ft. of the existing building but the buyer only wants about 100,000 sq. ft. of the building. Mr. Galati said the reason is that part of the building needs a lot of updating. If the larger parcel is purchased they would like to take the profits from that sale and put it into the 28,000 sq. ft. section, plus the buyer said that if that separate parcel is renovated he may want to purchase it but only if renovations done.

Mark Agle again questioned the property line being drawn through the building. Mr. Galati said he would keep that portion since it needs work and where the line is drawn on the plan is where it has a new roof. Kevin O'Gorman asked how they would access the 6 acre parcel that is to be retained by Mr. Galati. His reply was that he would ask for an access easement to the continuation of the new road. This is all a sketch plan at this point, and I just wanted to hear comments and ideas from the Board. Mark told Mr. Galati that he should have his conceptual layout done by a design professional to ensure that it complied with our Code. Mr. Galati said that he just wanted that he wanted a preliminary meeting and then he would spend the money to have it done. Mark said, the reason you want to have a design professional lay out the plans is because you can't create lots that do not conform to the requirements of the Code. It would be different if you owned a piece of property and would want to put a building on it. If it was closer to the property line than it was suppose to be you could go to the Zoning Board and apply for a variance. But when you are actually creating the lots, you

are in control and thus must create conforming lots. Otherwise, you would have people creating just to fit their needs irrespective of what the code requirements. The Planning Board is obligated to work within the framework of the code as it currently exists. Mr. Galati questioned Mr. Agle about when you say it's not in the code; you must have some common walls in your code? Dave Johnson said that we are talking about property lines as opposed to common walls. Your concept plan proposes property lines going right through the existing building. Building codes and zoning codes are two different things. A commercial condominium approach may be a possible way to do this here. However, right now we do not have a provision for commercial condos within our Code.

Mr. Krycia from the Eden Town Board asked Mark if that would be an avenue we [the Town] may possibly pursue?

Mark said that it is up to the Town Board and the applicant, but as you know, changing the zoning does not happen overnight.

Mr. Krycia replied that it is a small zoning area and a very particular type of zoning area.

Mark added that you have to be very careful about "spot zoning" for making special rules for just those forty acres.

Mr. Galati asked if the Town could make any special by-laws for this situation. Mark replied that to create "special by-laws" for a specific parcel could be subject to an Article 78 challenge.

Dave Johnson told Mr. Galati that perhaps a good local land use attorney might be able to help you through this process. There are a couple of good attorneys in the area that would be able to guide you. There is something done downstate called contract zoning; it's kind of like spot zoning but it's a legal way to accomplish this.

Mike Bolo – the concept of Industrial Condominiums, which we don't have provisions for in our code, what if we [the Town] chose to create that; what would be the approach to accomplish this?

Dave Johnson – Just to be clear, even if such a code provision were to be adopted, lot lines would still not be allowed to go through the buildings.

Mark – when you implement a condominiums approach, the concept is that you have a parent parcel of land upon which the contiguous buildings are constructed. Those buildings would then conform to the requirements of the zone, side yard, road frontage, front yard, lot, width, etc. Then the ownership of portions of the buildings can then be owned by separate entities. Just like a residential condo, you don't own the parent parcel as that is common property. You just own the footprint of your building to the center of your "party wall" .

Mr. Bolo – if we had that in place the footprint on the ground conforms to the setbacks and so on the building Industrial Condominiums, the parcel is the parcel, the building is the building and this piece of the building is one condominium this 28,000 sq. ft. and this piece of the building is another condominium and it just so happens that the people who own the 28,000 sq. ft. piece also own the property.

Mark – that's not a problem, for example, you would have a forty acre property with plenty of road frontage and then you can divide up the building. The ownership of portions of the building accordingly. It would be one lot as it sits right now and then you would have separate ownership of portions of the building.

Mr. Bolo – this would accomplish your purpose which is that this be available and this other part not drag it down and then after the other section is updated be sold off as a Industrial Condominium of 28,000sq. ft. with proper access.

Mr. Galati asked about lot lines, even condos have lot lines? What kind of plot line would you give that?

Dave Johnson – whatever you are going to sell.

Mark told Mr. Galati he should really discuss this with a design professional that advise you of your options, to accomplish your objectives while also being mindful of our Code requirements, and thereby help you put together a proposal that marries the two.

Mr. Galati – I would like to get some sort of idea if it's worth his while and if it's not he is not going to spend the money. We have already spent a million dollars on this building and we are never going to get our money out of this.

Mark – all we [the Planning Board] can say is that we would like to see something viable at that site and we have brainstormed several concepts here tonight. Just so we are all on the same page, nothing we have said should be construed as being a basis for some future approval. Once we have a bonafide submission before us for consideration, we will review and act upon it accordingly based upon its merits. I think it is incumbent upon you at this point, if you really want to do it, to engage a design professional. I think that if changing the class of zoning is something the Town Board would like to consider, perhaps checking with other towns may yield sample zoning codes.

Dave Johnson – Ellicottville does do commercial condominiums.

Mr. Galati – I have owned the property for 22 years and have had mixed opinions about the Town...Does the Town really want to create industrial potential here at this site or not? This is the reason we put out \$100,000 dollars on the road, we didn't need the road.

Mark – I think I am speaking for everyone here when I say that we would love to see this site become a viable property but we can't circumvent the current Code to make it happen.

Mr. Galati – thank you for your time, what is my next step?

Mark – We have given you a possible avenue to pursue that may lead to getting things changed in a manner that will benefit your plans. If that's still what you want to pursue, then it's up to you to apply to the Town Board and let them decide. They are the elected officials and as such changes of zoning falls into their purview. The Town Code is online and there are certain sections that deal with subdivision of land and zoning. Mr. Henry can give you the sections that your design professional can look at and then come up with something and the Town Board will have to consider it

## 2. Guest (Dawn Bauer)

Mark – Recognized a person (Dawn Bauer) in the audience who wishes to address the Board. It is made clear that Ms. Bauer is not on our published agenda for tonight and thus she is advised that whatever topic she wishes to discuss cannot involve any action by this Board. As these are public meetings, you are obviously welcome to attend and you can address the board but we only take up matters that are on our published agenda because we have to conform to the Public Meetings Law of New York State. However, the public has a right to know what we are going to discuss at our meetings. For example, imagine yourself, if we passed something tonight that could have a direct impact on you without first publishing it on our agenda. Likely the first thing that you would say is that "nobody told me about it". Thus, we cannot act upon things that are not on our official agenda.

Nonetheless this is a public meeting and so we will allow you a brief minute to address the Board. Be advised though; that depending on your topic, we may need to stop you and either refer you to a future meeting date or to another Board having the proper jurisdiction. Proceed.

Dawn Bauer – Ok, well I was confused on whom to go before. What's happening with this property and what I have heard?

Mark – what property?

Dawn Bauer – Church Street Farms is getting together with three other people and form some kind of merger is the rumor in town. She said that she had a problem at her property because of those new fans there is constant noise and vibrations.

Mark – First of all this Board does not deal with rumor nor are we the general “complaint” department.

Kevin O’Gorman – This is out of line! We are volunteers and this matter is not on the agenda. Therefore we should not be subjected to listen to this any further. I am leaving and then you will need to adjourn the meeting as you will not have a quorum any longer!

Mark- Ms. Bauer we only have jurisdiction or discretion over specific matters as set forth in our charge. Things such as proposed new development plans or site alterations requiring site plan approval under the Code. You need to take your complaint up with the Town Board. I now have to adjourn the meeting as Dr. O’Gorman has left the meeting.

**REPORTS: NONE**

**ANNOUNCEMENTS: REQUIRED TRAINING NEEDS TO COMPLETED**

**ADJOURNMENT: Chairman Agle asked for a motion to adjourn the meeting, William Zittel made the motion to adjourn the Planning Board Meeting at 7:45pm, seconded by William Mahoney, all “ayes”.**

**\*Next Planning Board meeting is scheduled for September 25<sup>th</sup>, 2012 @ 7:00pm**

**Respectfully submitted,**

**Diane Herzog, Secretary Planning Board**