

“Minutes are not official until approved by their respective board.”

## **TOWN OF FALLSBURG ZONING BOARD MEETING**

**February 16th, 2023**

Larry Zierler, Chairman, Neil Sapolsky, Mike Bensimon, Ellyane Hutchinson, Stephen Altman, Jennifer Lishansky, Board Members, Gregg Pitula, Code Enforcement, Dylan Harris, Town Attorney

- Larry Zierler called the meeting to order at 7:00PM
- Meeting minutes from previous meeting accepted with amendments
- Larry Zierler: Please be aware that while the town of Fallsburg Planning Board will continue to review all applications based on merits and zoning code and other stipulations, Planning Board approval does not guarantee the issuance of water or sewer permit by the Department of Public Works due to the current and expect future constraints on the water and sewer system. This was discussed at an open public discussion during a joint Town Board, Planning Board, and Zoning Board of Appeals meeting on May 9th 2022. All water and sewer applications will be accepted or denied based on the existing facts and circumstances. Each application connection or extension to the water or sewer district will include a review by the town engineer and will be guided by the town engineer’s expertise and knowledge about the town’s water and sewer system. The public health, safety, and welfare for publicly available water and sewer systems information will be posted on the Department of Public Works. The Town Board is taking reasonable measures to address the water and sewer.

### **OLD BUSINESS:**

**1. MOSDOS KLAUSENBERG – SBL# 21-1-34** – Requests a 6 month extension of a previously approved variance. Zone: REC. Acres: 41.09. Location: 218 Firehouse Rd., Woodbourne.

- Joel Kohn represented.
- Joel Kohn: They received Planning Board approval in October subject to the town engineer review of the site plan. We are still waiting for that approval and that is why we don’t have a signed site plan. We are working at the same time on

the building plans. Hopefully once we have a signed site plan we can submit the building plans.

- Larry Zierler: Timeline they have given you for plan approval?
- Joel Kohn: With the town engineer sometimes the timeline can be difficult. It is a workload for the town engineer but we will bug him again.
- Larry Zierler: Okay but you are keeping your eye on the prize. Any questions? Motion?
  - MOTION:
  - Mike Bensimon motions to approve. Ellyane Hutchinson seconds. All in favor.
- Dylan Harris: Starting in January the state passed new regulations as far as members voting electronically or by phone. The town would have a local law passed and a written plan to allow for voting via Zoom or any other means. Technically if a Board member is attending via Zoom they can't actually cast a vote because the town of Fallsburg doesn't have a local law in place yet.
- Stephen Altman: Thank you.

## 2. CAMP BNOIS SPINKA – SBL:39-1-86.1 – Requests a 6 month extension on several previously approved variances.

- Joel Kohn represented.
- Joel Kohn: This is still in front of the Planning Board. There were some back and forth with the Zoning Board and the Planning Board. I am doing the master plan and phase 1 and 2. The engineer is working on the plans. We are before the Planning Board in March. We don't expect approval in March. This will be a 3 or 4 month to get it fully approved. I may be back in 6 months for another extension.
- Larry Zierler: We have made that request for a master plan so when we revisit this we will get a total.
- Joel Kohn: We already provided the ZBA with the master plan.
- Larry Zierler: Oh okay. We made this request a couple of times.
- Joel Kohn: This is all completed for the ZBA.
- Larry Zierler: This is the shul and the hut right?
- Joel Kohn: That wasn't a master plan.
- Larry Zierler: We needed better graphics.
- Joel Kohn: We submitted everything to the ZBA. Now we want to go to the Planning Board.
- Mike Bensimon: So it is moving forward.
- Joel Kohn: This one is taking some time. I expect to be back in 6 months for another extension.
- Larry Zierler: 6 months won't be enough time?

- Joel Kohn: When it comes to site plan approval for any project it takes more than 6 month to get approval. You have to get through the Planning Board. The SWPP takes times to approve. Then get it to the town engineer. Then the DEC. Get your water approved by the DOH and sewer by the DEC. I hope it will be approved by that time. We still have building plans to get moving.
- Larry Zierler: So these are circumstances that are beyond your control largely.
  - MOTION:
  - Mike Bensimon motions to approve. Ellyane Hutchinson seconds. All in favor.

NEW BUSINESS:

1. ORCHARDS OF HURLEYVILLE SBL: 12-1-11.6/11.1 – Requests a use variance to allow the use of a manufactured home park in the AG zone. Zone: AG Acres: 63. Location: 189 Labaugh Rd, Hurleyville.

- Joel Kohn, Abue Grunhut, and Ivan Gunger represented.
- Larry Zierler: This was note an AG zone always. It was REC. With the comprehensive plan as we extended AG this fell into it. It is contiguous to another development and there is a desire to increase the size of that development.
- Joel Kohn: This is a manufactured home project in its final phases. This is on LaBaugh Road. It received its original approval in 2014 as an 84 unit manufactured home project. The top portion of the project has been completed and they have COs. The rest of the units are in place and should have COs before next season. The applicant is looking to construct 22 additional units which are all highlighted. This will also include an additional 2.01 acre parcel which is surrounded by the Orchard project. Just one thing to note is the originally approved project they were allowed to have 103 units but didn't ask for that approval at that time. Most of the additional units are based on the original acreage. Only 3 additional units are added because of the additional acreage we are acquiring now. The applicant engaged the project engineer to alter the site plan. It went to the Planning Board in December and got a public hearing for February. It was only a few days before the February Planning Board meeting that it was noted that the zoning had changed in 2018. When we went first to the Planning Board nobody was thinking about it because it was a project approved in the REC zoning. We didn't have any objections at the public hearing. We think the neighbors will be okay tonight. We are here tonight to ask to grant us a use

variance to allow the use of both properties as they were to be under the original zoning.

- Dylan Harris: Was there a change in the wetlands that allows you to have more units as well?
- Joel Kohn: Yes. We had a biologist come out and he provided a letter to the Planning Board as well basically stating this is not a wetland. The Planning Board consultant came out there as well.
- Gregg Pitula: Do you have the mailings for this one as well?
- Joel Kohn: I have the mailings.
- Gregg Pitula: I just don't have wetlands so I want to verify.
- Larry Zierler: Originally this couldn't be built in the first two rings but they expanded out.
- Joel Kohn: Yes. Do you want to speak to financial hardship?
- Ivan Gunger: I am now the manager. It all started out in 2016 when I was approached by the prior developers. They wanted to start building but needed to raise capital. The projections was to set up these homes for 22 million dollars. The cost for the project would be 18 million. It was supposed to be a 3 or 4 million dollar project. It was supposed to be a 2 year maximum project. The original developer put the main focus on engineering a very nice project. He did a lot of stuff to add beauty but he wasn't focused on the financial part. Instead of maximizing which was originally allowed under the REC zone he tried to build 104 homes. It was 103 but there is 1 existing on the property. Instead of 103 he spread out the projects more than he needed to. He had pathways and walkways and parking spaces. After spending close to 7 million dollars then Covid hit. The first few months you were not allowed to build. Even after that people didn't want to come to work and there was a shipping shortage. We went way beyond schedule and the costs went up. He basically gave up the project. I stepped in a little over 2 years ago in November 2020. We hired new engineers and a new architect Mike Reilly. He started looking to redesign. He made the water and the sewer treatment plan are good to provide over 100 units. We redesigned the shul and the theater to accommodate more people. During Covid everything was double priced. I put down some notes. Instead of going to the little items I will go to the big items. The community building said \$100,000.00. I am down to the penny at 1.6 million dollars. I ordered the lumber at the height. The lumber instead of \$100,000.00 was \$250,000.00. Everything was a lot more. The original 14 homes were \$70,000 per house. The other 60 I bought were \$150,000. Now after Covid it has settled down to \$140,000. That is the difference with just the 2 line items. On top of that the road and fencing and tunnels. The tunnels are good because the kids don't have to cross the roads. The tunnels and roads are close

to a million dollars. Everything went up. Couple that with the last thing that happened in the last 6 months. We tried to finish it. I have 2 site managers all day long trying to push the project. The last year things have moved pretty well. We are opened the phase for the four units and will occupy this summer. We are just looking to finish up and setting them. The originally projected interest was 2 or 3 hundred thousand dollars on a \$70,000 house. Now we have loans. These houses over here we spent \$150,000 per house. 6 months ago interest rate was 5%. Now it is 9 to 9 and a half percent. We want to start selling these units but we cannot sell them enough to cover the cost. We are trying to pay off and keep this project viable. We need to find a way. We came up with this. We buy this parcel which is literally a sliver inside. We are talking about 2 acres inside. We bought that property and with that we can get the original house we could have had approved. We are not expanding. The 2 acres are within the boundary. We want to go back to the original approval where we didn't use it but it is an attached parcel. Even though the town has a plan for the agricultural zoning but this is already a manufactured park as it is. All we want to do is use the existing density which is usually applicable. That extension is only getting another 2 units.

- Discussion.
- Ellyane Hutchinson: You don't have to move anything?
- Ivan Gunger: No.
- Mike Bensimon: So you have the ability to build because you don't have the setbacks because that piece of property is jutting out into the main property. You couldn't build around it so by purchasing the property you don't have the setback issue but you have the use.
- Ivan Gunger: Right.
- Joel Kohn: It is basically 2 more units.
- Ivan Gunger: There was 103 permissible.
- Larry Zierler: The shaded in up top. Those two rows of added in houses. That wouldn't be possible.
- Joel Kohn: Correct. Mostly because of the setbacks.
- Mike Bensimon: They would have had to come for an area variance.
- Larry Zierler: Or put them somewhere else.
- Joel Kohn: With the proposed use variance we aren't asking for any kind of area variances. We are going anywhere past setbacks. We are keeping the minimum separation requirements. All requirements for the manufactured home will be satisfied.
- Dylan Harris: Do you have an original cost estimate compared to the current that we can look at?

- Ivan Gunger: Down to the penny. This is the original budget. That is what I got when things were supposed to be 20 million dollars.
- Jennifer Lishansky: My understanding whether you lose money or make money with the old units you lose money but with the new.
- Ivan Gunger: I have to correct you. It is a win for the project. The owners are not going to make money. We want to cut the losses.
- Larry Zierler: What are you selling the homes at?
- Ivan Gunger: We sold these at an average of \$275,000. This one could be like \$350,000. Even with the \$350,000 projected that is all the numbers.
- Mike Bensimon: A highest point for those houses
- Ivan Gunger: We don't know if this is going to go.
- Dylan Harris: The cost per unit were 6.1 million now that they are at 9.8 million.
- Ivan Gunger: That is the cost of most manufactured.
- Dylan Harris: Of that additional 3.7 million how much is the cost of the units?
- Ivan Gunger: This is not the new units. This is the old project.
- Discussion.
- Jennifer Lishansky: There are 44 units left to sell?
- Ivan Gunger: Yes.
- Discussion.
- Larry Zierler: They will be sold at the new price of \$350,000?
- Ivan Gunger: We hope so.
- Jennifer Lishansky: So for a total revenue of 15.5
- Ivan Gunger: We have outstanding closer to 20 that we owe. We are adding these 23 units. We don't have to do another approval. We don't need another community building. We don't need drainage and all these things. There is still a lot of cost. I would estimate the cost at about 200 or 250. That could be revenue closer to 2 million to close part of the loss. We would be able to pay off the existing loans.
- Jennifer Lishansky: The original 40 houses were sold pre deposit?
- Ivan Gunger: There are people who want to buy them out but we can't close them out because of the loans. There are people in contract to buy at 300 but they have to pay more than 300 at closing.
- Jennifer Lishansky: I just want to confirm what you are saying. The original 40 over here were done by contract. Before they were built there were deposits down.
- Ivan Gunger: While they were built.
- Jennifer Lishansky: There is a lot of paperwork and documentations that said there were deposits for all 83 units. That is the part I am a little confused by.

- Ivan Gunger: I am not aware of anything like that. Only 83 units did not close. There are deposits for the first phase waiting to close but we have to see how we can structure the money part. There is not enough to cover the existing loans. If we have to pay off \$300,000 to pay off and release the property but he only owes \$200,000 we have to bring money to close. That is what we are here for. We are trying to pop out a little bit of the water.
- Larry Zierler: The ones that were slated to close.
- Ivan Gunger: They are all stuck because of financial issues.
- Larry Zierler: What will they sell for?
- Ivan Gunger: They are all contracted.
- Discussion.
- Jennifer Lishansky: What about the original 40?
- Discussion.
- Jennifer Lishansky: So only 8 units have this?
- Ivan Gunger: No. There are options to buy. They want to go ahead and buy it but we have to finish financial issues.
- Jennifer Lishansky: Do you have a trust agreement with the seller of the manufactured home?
- Ivan Gunger: Yes.
- Jennifer Lishansky: From what I understand you have to get them out trust and pay them. So you're not closing because you are not sure you have enough money to take them out of trust.
- Larry Zierler: These houses have a lock on them basically.
- Mike Bensimon: You can't sell without paying it off and you can't sell without paying.
- Ivan Gunger: Then there is interest. That's the reason I am here.
- Ellyane Hutchinson: These additional homes are being built outside the financial situation.
- Ivan Gunger: Yes.
- Ellyane Hutchinson: So you can sell these quickly. What happens then?
- Ivan Gunger: Hopefully it will be within the next few years that will be there.
- Larry Zierler: The original developer walked away with bankruptcy?
- Ivan Gunger: No he was just an operator. He operated with all members of this company. He designed a company and walked away.
- Stephen Altman: What is to assure us that you will finish this project? Is there such a thing like a bond? If you don't finish it you could go bankrupt.
- Ivan Gunger: I have invested a lot of money in the last few weeks. As we speak we are working every single down. I am hoping they can come out and issue some C of Os.

- Gregg Pitula: Temporary C of Os.
- Jennifer Lishansky: I understand there were a couple of changes made to the original plan. Wasn't it supposed to be on slab and instead the original developer opted to do foundations. There is no requirement to build the tunnels. That was an extra elective cost.
- Discussion.
- Jennifer Lishansky: It was double the expense. There was slabs.
- Ivan Gunger: The whole property of this was supposed to be 2 and a half million total. Just for the 50 units is 6.1. We are paying interest for the units. We are here for the 2 biggest points. The interest and the Covid impact.
- Jennifer Lishansky: I just want to confirm that the interest is partially due to the fact that this project was approved 9 years ago and has been in various levels of development since then. You also mentioned you opted into making a bigger community building. That is a big expense. Over a million dollars.
- Ivan Gunger: Bigger was just approximately 5 or 6 feet. He under budgeted. He budgeted before Covid. The lumber for the community building was \$100,000 and we paid \$250,000. Now it is back down to 100 or 110. I stepped in after Covid. Everyone knows the lumber doubled. The same thing with the decks. We started building decks during Covid.
- Jennifer Lishansky: I am just trying to get the whole of the cost that is out of the inflation.
- Ivan Gunger: The bulk of the money is in the Covid interest. The rest I will take responsibility for. I am just trying to get through that part so we can finish the project.
- Abe Grunhut: The approval of the additional 22 units would go a long way to avoid bankruptcy.
- Dylan Harris: I have a question. Obviously a reasonable rate of return is part of the use variance test here which is why we're spending a lot of time on the financials. I just need to understand. For the 84 units you said part of the issue is you can't get the units out of trust. I need to understand having 22 more foundations to build units how that gets you out. I understand once everything is bought you have the money. If you need to sell but you don't have the capital to get the units out right now. How does the additional approval help?
- Ivan Gunger: I will explain. The trust is being held by Commodore Homes. He has a loan blanket on the whole project. He will gladly release the units if he knows they will get them a day later. He wants to help the project. He comes down to see the project. If he doesn't come down himself he send people down. When he releases some of them he gets the security down the road.
- Larry Zierler: Will he release them at a percentage?



- Ivan Gunger: Yes.
- Larry Zierler: He is not asking you to be able to front the money in total?
- Ivan Gunger: No because he understands. He was there from the beginning.
- Abe Grunhut: My office represents Barry Shine on occasion. We are familiar with the applicant here. He at one time was the owner of Commodore Homes. He is no longer associated with Commodore Homes but he is responsible for this project. Mr. Shine has been working with Orchards to get them through this.
- Jennifer Lishansky: I am also curious about the 22 figure. You said the original revenue coming in was 22 million and it was a 8 million dollar cost and it was a 4 million dollar revenue. You just said 2.5 million. What is the right one?
- Discussion.
- Larry Zierler: 18 and 22.
- Jennifer Lishansky: If we are just looking at just the numbers because of the decisions around the development of the project which is specifically the interest. That is 2.4 million over. And the cost of the houses.
- Ivan Gunger: Which is another 3.8 million dollars.
- Discussion.
- Audience: It wasn't required by the Planning Board.
- Joel Kohn: Once you have it with the Planning Board then you have to provide it.
- Larry Zierler: It is a hindsight thing. We can say you shouldn't have done that but that is how it was presented and how it was approved.
- Discussion.
- Larry Zierler: Is there something about the properties that makes them stand out about the price?
- Ivan Gunger: One thing. There is nobody selling finished projects. There are no samples. You can walk in there. They can just bring their stuff and move in.
- Larry Zierler: Any amenities?
- Ivan Gunger: The pools.
- Jennifer Lishansky: Looking at just the cost of the units because I want to fully understand. The difference between the units is just 3.7 as far as difference. The interest is 2.4. We are looking at just over 6 million. For the 22 additional it would be 7.7 million in profits.
- Discussion.
- Ivan Gunger: 2 million is the max. If everything goes well. That's way way less.
- Larry Zierler: Once again you're only going to have 2 million dollars when you are hemorrhaging.
- Ivan Gunger: The difference is that money is gone. That will go to interest and the existing mortgages. It is about the guarantees so nobody gets hurt. Just in

taxes we spent \$300,000. It was on hold for the last 2 years. There is way way more of the costs that we did not elect.

- Larry Zierler: Is there anything that will make you run away? What is the compelling?
- Ivan Gunger: The responsibilities. These loans have personal guarantees and my name on it. I've never done this kind of thing upstate but I have in the city.
- Dylan Harris: One more question then we should go to the public. Could you put a different product? I know normally a mobile home is like 60 to 80 thousand. Could you bring it down as far as the unit you are putting in?
- Larry Zierler: Could you substitute for what you plan to put there with a more marketable or perhaps cheaper?
- Ivan Gunger: The zoning only allows trailer parks. If the ZBA would allow me to do stick built I would do that.
- Dylan Harris: As far as the mobile home could you do one that is a lower price that doesn't have the fixtures that these ones have?
- Ivan Gunger: There is nothing luxury about these.
- Mike Bensimon: You look at these units now I don't know how they can sell them at this price. They are like double wides.
- Gregg Pitula: The whole site is built out.
- Ivan Gunger: You don't want to change the units. You want symmetry.
- Larry Zierler: Anyone from the public? No? We can close the public hearing.
- Neil Sapolsky: How many were originally approved?
- Ivan Gunger: Originally approved was 84. 83 were built. We could have gotten approved to 104 because it was the right zone. The zoning was changed but that should not affect this because it is an existing plan.
- Neil Sapolsky: Do we have to see financials or do we go off the word? I have no doubt these are real but for the future? Anybody can go and make an Excel sheet.
- Dylan Harris: The standard is competent financial evidence. We saw that spreadsheet but you could ask for invoices to further determine.
- Ivan Gunger: The biggest line item is the houses. I have invoices and I will show you. This is the invoice from the first house. You see the actual invoice of this project.
- Dylan Harris: Do you mind if we hold those to put in the file?
- Ivan Gunger: Yes go ahead. It is a copy. There is 83 invoices.
- Discussion.
- Ivan Gunger: The smaller ones were 70.
- Neil Sapolsky: Now you are at 150.
- Ivan Gunger: There is a lot more.

- Neil Sapolsky: I just want to see solid.
- Discussion.
- Ivan Gunger: It has really nice views.
- Jennifer Lishansky: Just with these units.
- Ivan Gunger: It is pretty steep so it is going to be a lot lower. It will impact very little. We don't block the view. This has no elevation. This is even lower.
- Gregg Pitula: The ones on top of the hill will be the nicest ones.
- Neil Sapolsky: There is a house on the 2 acres.
- Ivan Gunger: They just moved away. It is a shack.
- Neil Sapolsky: There is nothing on the other side of LaBaugh?
- Gregg Pitula: There is a camp adjoining.
- Ivan Gunger: Yes. There is a camp. They have this.
- Gregg Pitula: The neighbors are all with the community.
- Dylan Harris: Are there any active farms in the vicinity?
- Ivan Gunger: Not as far as I know.
- Larry Zierler: The camp extends around.
- Ivan Gunger: The camp extends here and here. And on the other side also.
- Discussion.
- Larry Zierler: If there is no one else from the public, we will close the public hearing. Board comments.
- Dylan Harris: Let's have a motion to close the public portion.
  - MOTION:
  - Ellyane Hutchinson motions to close the public portion. Jennifer Lishansky seconds. All in favor.
- Mike Bensimon: There are really 2 pieces of this. First they have to establish the hardship for the use variance then we have to mitigate that might arise. Obviously for a use variance one of the things you can show a hardship is financial. I think that is the case being made here. We also want to look at if there is any allowable use for which he can get a reasonable return allowed in this AG district. If this was an empty piece of land you could get a reasonable return if you turned the 60 acres into agricultural operations. Other things that are allowed. Unfortunately we are not there because everything is built so it would cost more to tear everything down. Now that you basically met that hardship you can ask to do things outside of zoning to include some extreme things but you are asking to go back to what it was before. You are mitigating by putting up the housing you need. Now we are looking for what the minimal amount is to escape the hardship. My issue has to do with the character of the neighborhood. When I stand at the front of the property you can't see any of the houses. You can make out 2 or 3 in the distance. Really it is empty. However once you put these 14

houses there you won't be able to drive by without seeing the trailers. I would like to ask if you would be amenable to putting some evergreen trees for when you are driving by you won't see anything there.

- Ivan Gunger: I would definitely agree to that. I am sure the Planning Board they will have these issues for the landscaping.
- Mike Bensimon: I would like to put in the condition.
- Ivan Gunger: Yes that can be done.
- Mike Bensimon: Again there is really nothing else you can do with it. There is this 2 acres. Essentially you could have built to the maximum you were allowed. You wouldn't have had the setback you would have to come here for the area variance. It would have been a different conversation. Now you are looking to incorporate the 2 acres so that you have the room and you don't have the setback issue. I don't know if other members want to take a deep dive into whether or not 22 is that magical number or not. I am comfortable with you meeting the criteria for financial hardship for a use variance. I am still concerned about the character of the neighborhood that you can see these 14 houses.
- Larry Zierler: There will also be a privacy barrier with the camp across the way. It would make it more attractive for the people buying it knowing they would have privacy and something for sight and sound.
- Abe Grunhut: I made a left hand onto LaBaugh and I believe I went in the right direction. I saw your project which I could not see from the right. Then there was a camp. To my recollection there was another development. Hillside Homes. That development you can see from the road. There is no change in the character from my perspective. It seems to me that there would be no change. You'd have this project, the camp, then Hillside. It doesn't really change the nature of the neighborhood. I understand your point with respect to the aesthetics.
- Jennifer Lishansky: The character of the neighborhood is agricultural. I agree with Mike's main concern that it does change the character of the neighborhood. To your point about building trees or incorporating site barrier to help. A site barrier isn't going to work or the multiple layers that would be needed for this to change. One of my concerns is yes in 2014 it could have been approved but it wasn't. This was agricultural district was in 2018 from the comprehensive plan. For 5 years it has had a known zoning situation. It has been there to protect that desolate environment. It would alter the character of the neighborhood. What is the nature of making sure the hardship has not been self-created? The purchase of this 2 acre plot and that the people there were happy to leave. My point is that you guys are real estate developers. You know you have to make sure zoning is in accordance with the development. My point is buying a 2 acre agricultural lot

that is not zoned for what it is you are wanting. I don't know if that is self-created or not. That might be on the border of self-created.

- Abe Grunhut: We already had approval for 84 units. We could have put 103 units. Really the neighborhood is not being changed by the addition of these 22 units.
- Jennifer Lishansky: That was in 2014. I think the other point I have to make is I would be fine if all those units were setback and not visible from the road. That they wouldn't impact the neighbor and driving down the road.
- Abe Grunhut: You can drive down that road right now.
- Larry Zierler: It is ugly right now.
- Abe Grunhut: There is maybe 1 or 2 houses.
- Jennifer Lishansky: There are houses right across the street.
- Larry Zierler: They belong to the camp.
- Abe Grunhut: The camp and the other development.
- Jennifer Lishansky: I am assuming the camp and the other development are not as thrilled about having a ton more development.
- Joel Kohn: The camp is very upset about the zoning. They weren't involved with the comprehensive plan. Maybe if they were aware they would have tried to be involved. They were not aware of the zone change. I understand that the Comprehensive Planning Committee put in a lot of work to come up with the plan. However there are a couple of sites on this that are contiguous that it doesn't make sense to make into an AG district because you are creating nonconforming uses. This was an approved project under a construction with a conforming use and now it is a nonconforming use. The camp was a conforming use in the REC and now it is nonconforming in AG. There is a very good possibility if they were involved in the comprehensive plan the committee would have left these areas as REC zoning.
- Jennifer Lishansky: I understand that and we are working with the comprehensive plan we have,
- Larry Zierler: The comprehensive plan was not perfect.
- Abe Grunhut: I have a philosophical problem also. The way they changed the zoning is by advertising it. A lot of people who did not read the notices in the newspaper were unaware have been devalued because you have to build 1 house per 10 acres instead of the prior zoning. Unfortunately the courts have said that the dramatic reduction in value or property don't have a claim. This methodology of changing zoning from what we could have done to 1 unit for an individual house. This makes it even more expensive for people without adequate funds to build a house. Now if somebody wants to build a starter home

you need 10 acres instead 1 or 2 or 3 acres. This forecloses a lot of people with limited means to buy a house and build a house on that kind of parcel.

- Jennifer Lishansky: It is a compliment to the original site map that this was built for agricultural. The plan was setback so it did have that feel. To me there is a reason this was set to be agricultural because they did a good job with the setbacks. It is a nicely developed space.
- Joel Kohn: We have submitted a site plan. Engineered the site plan. Code Enforcement and Planning Board reviewed. Nobody even noticed the zoning changed. If this was specifically discussed at the comprehensive meetings they could have mentioned the zoning had changed. My point being is if you look at the first zoning draft that was part of this comprehensive plan 60% of the town was changed over. There was a lot of public that saw it and pushed back. The town then reduced that. The Comprehensive Planning Committee and the Steering Committee, which nobody knew existed at the time, did not go through property by property or street by street. They just kind of took areas and made them AG without looking at the use of the property. It is kind of impossible to go through all the properties and uses. Those who were aware and brought it up during those meeting were accommodating. They said let's keep this because it made sense. It conforms to the current zoning. I believe they would be amenable to keeping this property.
- Ivan Gunger: Let me add one more thing. This right here is a house. It is an eyesore. You won't have the house. We will knock it down. This is on the road.
- Joel Kohn: The lot right now is nonconforming. The setbacks are nonconforming. Let's say someone else buys it. You still have a nonconforming house with nonconforming setbacks. With this it will become conforming and blend with the project with greater setbacks from the road.
- Dylan Harris: Is that a summer camp?
- Joel Kohn: Yes.
- Dylan Harris: Is the goal for summer usage? Year round? Mix of both?
- Joel Kohn: Typically it is built to year round standards. It is seasonal and weekends.
- Ellyane Hutchinson: That is my only concern is that a lot of this hardship is neglect in the beginning. If you had completed it by 2019.
- Ivan Gunger: We didn't start building anything in 17 and 18.
- Ellyane Hutchinson: I think if it wasn't a hardship until now (inaudible)
- Discussion.
- Ellyane Hutchinson: I think the question whether 22 is the right number. I am more concerned when that 22 isn't enough. What happens then? You end up with abandoned houses.

- Ivan Gunger: I am will work out with the town attorney some kind of escrow. A bond.
- Dylan Harris: That is something we can talk about with the Planning Board.
- Mike Bensimon: This house that pretty much is along the road.
- Joel Kohn: It is nonconforming in a couple ways.
- Mike Bensimon: It is unoccupied. You are not looking to refurbish it. Rent it. Make it part of this development. You are willing to tear it down and create that buffer.
- Ivan Gunger: It gets like a big buffer with landscaping.
- Mike Bensimon: If you put the trees closer to the house as opposed to closer to the road because of the elevation then that would be it. If you put it at the road but it is all higher than the road it will take 20 years to get up the height.
- Ivan Gunger: I propose a combination. If you are looking at the beginning of the road it needs some landscaping especially if I want to knockdown that house. We could put the taller trees closer to the house.
- Mike Bensimon: That is fair.
- Jennifer Lishansky: I think I get what you are saying. Moving the ones closer to the house over here. Why isn't this land able to be developed?
- Ivan Gunger: There are 3 wells.
- Jennifer Lishansky: But these won't have the same (inaudible)
- Ivan Gunger: It is a possibility. We want to maximize. The fire truck has to come up. He claims the project might not be viable. It might eliminate it. You never start with less. You try to max.
- Larry Zierler: Where will you put these three if you have to move it?
- Discussion.
- Joel Kohn: There is also a possibility that once all the other ones will be built you cannot see other projects. They can possibly sell them for more.
- Jennifer Lishansky: This is less steep than here and this is also going to be quite steep.
- Joel Kohn: There is kind of a shelf here.
- Jennifer Lishankshy: The shelf isn't big enough to hold 3 houses.
- Discussion.
- Dylan Harris: Anymore Board comment?
- Neil Sapolsky: I have a hard time going against this comprehensive plan. Putting this together. We are going to be facing an onslaught over the next few years. We really need to think about this. This is what Covid did with the supply chains. We are going to have an onslaught.
- Ellyane Hutchinson: My issue is the building didn't start until recently.
- Joel Kohn: There are not a lot of projects with this situation.

- Dylan Harris: As far as the invoices you showed were those model homes that you were trying to get people into the neighborhood?
- Ivan Gunger: These are purchased.
- Gregg Pitula: When you first start the project you did set up a model. The one was a model.
- Dylan Harris: You were looking to get people in and contracted.
- Ivan Gunger: That was then. We didn't go any work until 2017.
- Dylan Harris: I know you had the approvals a couple years before Covid. What I am trying to get to is that you had to sell the lots and have people agree. Part of that was getting people in the door.
- Ivan Gunger: I wasn't involved in that part. I was just a passing investor.
- Abe Grunhut: Part of the hardship is the change in zoning. That is the main hardship.
- Larry Zierler: We also have to acknowledge that we didn't see interest right away. Things have to warm up. You also have the operator disappear.
- Dylan Harris: I am asking this question so you can demonstrate why there was that 2 year gap.
- Ivan Gunger: He didn't start. They approved the site but he did not start any work. No work was done from 2014 to 2016. I invested in 2017 through 2019. Then he went away by Covid. There was a lot of blasting and moving rocks. Because it was approved in 14 doesn't mean it started in 14. Right after he started building the comprehensive plan happened after that. It is not like we are sitting idly for 5 years.
- Neil Sapolsky: Is it self-created?
- Jennifer Lishansky: That is what I was saying. This is to your prior developer. I guess what I am trying to say is that all of these things feel self-created.
- Dylan Harris: Were the tunnels something that were already there?
- Ivan Gunger: They were built and designed for the project for the safety of the kids. The hardship is the environment we live in today. This was done now. The issue with the proposal is (inaudible). The 2 units I am adding from the parcel. The REC zone allowed us. I am getting 0 benefit from adding the 2. The only thing I am benefiting is the 2 acre lot. Adding it to the property gets the setbacks and I get the spare units. I am putting in landscaping.
- Abe Grunhut: We could have put in 104 under the old zoning. 103 would have been okay. We are only asking for 3 more units.
- Joel Kohn: 3 more and one is an existing house.
- Abe Grunhut: The change is minimal compared to what we were going to do originally. We are not talking about much if you really think about it.



- Neil Sapolsky: I don't think it is about the units. I think it is about taking that agricultural and turning it into a REC.
- Abe Grunhut: Where is the harm to the community? How do these units change the nature of the neighborhood when you have commercial property one after another? The other property right down the road.
- Neil Sapolsky: There was a whole plan put together by the town to make the districts. Whether it is was done the way Joel says which I have never doubted anything this man has said. Was it really that sloppy?
- Ivan Gunger: You are talking about AG. We are talking about the development. We are not owning pigs. Basically we are taking the existing and expanding. We are not going out and destroying AG.
- Neil Sapolsky: I get that.
- Mike Bensimon: The Town Board creates a zoning through the comprehensive plan. They decide which areas get which zoning. They apply wholesale to the entire area. The Zoning Board of Appeals exists as almost a pressure release valve. By adding a standard to all of the parcels there are unique parcels that may not fit under the zoning for variance hardships. That is why we are here. We are here to enforce the zoning laws as they are written. We are also here to look at each individual case and the variables of the case to see if it meets the legal definition and standards to allow a variance. Not based from what we think is right. We can't legislate from that we are here to enforce what is on the books. When they apply zoning to a wide area to different parcels of sizes and shapes. We are here to arbitrate those cases one by one.
- Larry Zierler: I think the expanse of the comprehensive plan there will be anomalies. It is a desired picture of what course you would like to take. We would be disingenuous to say that the comprehensive plan is taken into consideration as a contingency. There will be some cases. We can orchestrate certain pieces by taking down a house and putting up. They can mitigate what some will feel is a disservice to the comprehensive plan by ameliorating. It is a little bit of trading. The question for each person to consider what each of us feel is our appetite for making exceptions. I want to say it differently but I don't want to lose the tolerance level. I am not saying that as my opinion I am putting that out as the chair.
- Ellyane Hutchinson: Even with the comprehensive plan they were clear that there were already a lot of developments that were already against.
- Larry Zierler: We knew there were going to be certain situations.
- Jennifer Lishansky: This wasn't an issue until this project. That's the thing. It is not an issue of this land not being usable or being used for agricultural. This project wasn't built in a way.

- Larry Zierler: It is playing catch up. It is crazy to sit on one side and say it is your problem. Then the other person who has a lot of systems shut down. I put this out there so we are looking at this in the more equitable and generous way but at the same time maintaining fealty to what we understand to be the original intention of the plan. The plan was not going to answer all situations. It was to give us a road map.
- Ellyane Hutchinson: There is an option to basically to presell these? You can start with these?
- Ivan Gunger: Yes.
- Ellyane Hutchinson: These were a priority to build?
- Ivan Gunger: Yes
- Ellyane Hutchinson: You are building as many units as you need.
- Discussion.
- Mike Bensimon: In addition to the tree coverage they are getting rid of that house.
- Jennifer Lishansky: Yes.
- Larry Zierler: We have to go through the questions.
- Dylan Harris: Lead agency.
  - MOTION:
  - Mike Bensimon motions for lead agency. Ellyane Hutchinson seconds. All in favor.
  - MOTION:
  - Mike Bensimon motions for negative dec. Ellyane Hutchinson seconds. All in favor.
- Larry Zierler: The applicant cannot realize a reasonable return on the property. Such inability has to be shown by competent financial evidence. Can the applicant realize a reasonable return on the property?
- All Board members vote no.
- Larry Zierler: Is the alleged hardship unique and is not applicable to a substantial portion of the district or neighborhood?
- All Board members vote yes.
- Larry Zierler: The requested variance will alter the essential character of the neighborhood?
- 1 Board member votes yes, all other vote no.
- Larry Zierler: Has the alleged hardship been self-created?
- 3 Board members vote no, 2 vote yes.
- Larry Zierler: Do we have a motion to approve?
- Mike Bensimon: Motion to approve with 3 conditions.

- Dylan Harris: The first being that you presell starting inside so the 3 that are on the corner right at the property looking at the map then moving out toward the road for the 22 new. Then trees creating a buffer for the road. Some near the road and some closer to the homes. The third being the house near the road is removed
- Jennifer Lishansky: Can I just confirm one of the conditions is you won't build more than is needed?
- Dylan Harris: That was stated.
- Jennifer Lishansky: For example as you're completing this build say you meet the financial then you stop building.
- Larry Zierler: How do you do that? I think it is understood that the max number that has to be built.
- Abe Grunhut: He can't make right no matter what he does.
- Mike Bensimon: It doesn't really make anything to the applicant. Unless he sells at 500 a piece.
- Dylan Harris: With the use variance we are just saying he has the use. The Planning Board can chop down the number.
- Joel Kohn: Do you want to make a record that the bulk requirement will be the same with the previous REC zoning so it is consistent? Basically we are going to use the original bulk requirement.
- Discussion.
- Joel Kohn: We are creating the use but we have to set the bulk requirement. It is going to be based on the homes permitted. We use the same bulk requirements.
- Mike Bensimon: You're talking about future add-ons?
- Joel Kohn: For this one.
- Mike Bensimon: It is as shown.
- Dylan Harris: It will be clear from the code that you have the use of the mobile home park so the density requirements will apply.
- Mike Bensimon: We are kind of approving the plan as presented with the caveat that you may not build all of this once you reach that point.
- Dylan Harris: I think we all understand that if you get this use the entire parcel can be used for mobile homes and you are going to have the requirements and density. Whatever it is in the REC is what will apply here.
  - MOTION:
  - Mike Bensimon motions for conditional approval. Ellyane Hutchinson seconds. Jennifer Lishansky votes against. All in favor.

Jennifer Lishansky motions to enter executive session. Mike Bensimon seconds. All in favor.