

TOWN OF MILAN PLANNING BOARD MEETING MINUTES - FINAL  
WEDNESDAY, JUNE 1, 2011

MEMBERS PRESENT:

Peter Goss, Chairman  
Jeffrey Anagnos  
William Fiederlein  
James Jeffreys  
Lauren Kingman  
George Lawrence  
Joan Wyant

MEMBERS ABSENT:

None

ALSO PRESENT:

Glenn Butler, Highway Superintendent

Chairman Goss opened the meeting at 7:00 p.m.

**Public Hearings:**

- **Oyen Three Lot Subdivision:** Maggie Oyen was present for the re-approval of this three lot subdivision of property located on Willow Glen Road, tax grid number 6573-00-648251. This subdivision was conditionally approved on March 3, 2010 but the approval expired while Ms. Oyen was getting the work done to meet the conditions. She is present tonight for the public hearing for the re-approval. Chairman Goss read the legal notice that was posted in the paper and sent to neighboring landowners. Ms. Oyen said she is done with all the conditions except the excavation work to meet sight distance which is scheduled to be done this week.

Mr. Kingman motioned that the Milan Planning Board declare themselves lead agency for the re-approval of the Oyen Three Lot Subdivision Application.

Mr. Anagnos seconded.

Peter Goss, Chairman	Aye	Lauren Kingman	Aye
Jeffrey Anagnos	Aye	George Lawrence	Aye
William Fiederlein	Aye	Joan Wyant	Aye
James Jeffreys	Aye		

Motion carried 7-0.

Ms. Wyant motioned that the Milan Planning Board re-approve the Negative Declaration that was granted for the Oyen Three-Lot Subdivision on March 3, 2010 based on this is a re-approval of a subdivision that received conditional final approval on March 3, 2010 with no changes to the application. Mr. Lawrence seconded.

Peter Goss, Chairman	Aye	Lauren Kingman	Aye
Jeffrey Anagnos	Aye	George Lawrence	Aye
William Fiederlein	Aye	Joan Wyant	Aye
James Jeffreys	Aye		

Motion carried 7-0.

John Mokotoff, a neighbor, was present with questions regarding the maintenance agreement for common driveway #2 which provides access for his lot which would be landlocked without it and Lot #3 of the Oyen subdivision. Ms. Oyen said she attempted to contact Mr. Mokotoff for his input when the maintenance agreement was being drawn up and he did not answer her emails. Mr. Mokotoff said last year, when he tried to get onto his property, there were huge excavation vehicles blocking passage so he was unable to access his property. He said they were parked there for three days. He said he was sent an email by Ms. Oyen in February regarding this agreement and he was told to get a lawyer to read it over. He said he had medical problems at the time so did not address it and received no other correspondence. He tried to call Ms. Oyen and she told him to email her. He did contact the Town offices a few days ago and requested a copy of the agreement and received it. He said he talked with John Greco, the town attorney, and the essence of his objection is that there is a clause in the agreement that says the owner of Lot 3 is obligated to keep the passage clear but if they don't, Mr. Mokotoff can't sue so he has no recourse to get to his property if the entrance is not kept clear. His concern is if Lot 3 is sold to weekend people and they don't keep the road up, the access to his property is cut off as the only way he can reach his property is via that easement. Ms. Oyen said she sent him the standard agreement and when he did not respond, she was advised by the Planning Board that she needed to write a satisfactory agreement. She said Mr. Mokotoff has lost no access, no rights, and she has no intention of impeding his access. Mr. Mokotoff wanted to know why that clause about not being able to sue is part of the agreement. Ms. Oyen explained that the construction vehicles were there to satisfy the town's requirements to achieve sight distance and they will be back again to finish the job. It was and never will be her intention to withhold access to Mr. Mokotoff. She said the attorneys went back and forth at least 3 times on the agreement to ensure he did not lose his rights or access. She said this agreement is not a benefit to me. Mr. Mokotoff said when he spoke to the town attorney, he said there would be no recourse if the plowing and maintenance stipulated by the agreement is not done. Ms. Oyen said she has no intention of plowing the access; she has owned the property for five years and has never plowed the access. Mr. Jeffreys asked, other than the three days the excavation equipment was there, has anyone ever tried to block your access? Mr. Mokotoff said he is not so much concerned about that as he is about not having any recourse if his access is blocked. Ms. Oyen said this agreement can be changed and she would have no problem working with Mr. Mokotoff to change it, but she won't pay the legal fees. Mr. Kingman said it's not that Mr. Mokotoff does not have any recourse although the agreement does say no adjoining property owner may sue. The main reason for this agreement is to keep the access free for emergency vehicles and passenger vehicles and is part and parcel of the ODA which was granted by the Town Board under NYS law. The purpose of that agreement is to certify to the Town Board that this means of egress and access will be kept open for fire and emergency vehicles. The ODA is required before a building permit can be issued. All of this is tied to the requirements in this agreement. Whoever owns lot 3 is obligated to maintain that access for passenger cars and emergency and fire vehicles. There will always be the option to file a complaint with the Town if the access is not

being maintained and that would be Mr. Mokotoff's recourse. Mr. Mokotoff asked how the Town would handle a complaint like that. Mr. Kingman was not sure about that but he said none of this goes into effect until there is a dwelling there. As soon as someone wants to build on lot 3 or the Mokotoff lot, they will have to get a building permit and a CO once the house is built. A CO will not be issued until the driveway conforms to the site plan which means doing the turn around and paving the apron. Once that is accomplished, then the owner of lot 3 is responsible to maintain the common portion of the driveway. The owner of the Mokotoff lot would be responsible for their own part of the driveway, but the owner of lot 3 will be responsible for the common portion of the driveway even if there is no home on lot 3. So, if the access is not maintained, the recourse would be to go to the Zoning Enforcement Office of the Town. Mr. Kingman said normally, with a shared driveway, the responsibilities for upkeep and maintenance are shared by all parties using the driveway and all responsibilities are spelled out in the agreement. In the long term for this case, it would be best for both parties to have that type of agreement because if Mr. Mokotoff ever tries to sell his property, the purchaser would be relying on someone else to maintain the driveway and if Ms. Oyen ever tries to sell, the buyer would be maintaining even if they are not using it. Ms. Oyen agreed and said the two of them should work up a new agreement but she would like to move forward as planned today since the current agreement has been approved by the town attorney and she would like to finish up the line of sight obligations and finish up this process. Mr. Kingman said paragraph 7 of the current agreement does allow that these stipulations are in effect unless otherwise agreed in writing so that means the agreement is open to change. He said what the Board is doing tonight is conditionally re-approving the subdivision and providing a list of items that need to be done prior to the signing of the map, some items which have been accomplished. There is still some time between now and the signing of the map should both parties work out a new agreement to be part of this package or a new agreement can be worked out once the map has been filed. The agreement as it stands now is satisfactory to the Board as it address all the legal requirements. Mr. Kingman said he sees no impediment or diminishing of Mr. Mokotoff's rights except he is not allowed to sue but there are other recourses in place if he finds it necessary to use them. Mr. Pinchbeck, another neighbor, wanted to know what will be done to the other entrance to common drive #1. Ms. Oyen said the adjoining property owner, Mr. Raelson, wants to purchase this piece to provide a buffer to his property. If someone were to build a home there, they would have to do all the engineering and turn offs for the fire trucks, the same things that were required for common drive 2. She said to achieve sight distance, they will have to do some excavating. Mr. Pinchbeck said he has concerns that the driveway is partly on his property due to the location of surveyor's pegs and flags and he told Ms. Oyen to make sure when the driveway goes in, it is not on his property. Mr. Lawrence said those pegs could have been a perimeter or baseline marker and not a property line marker. Ms. Oyen said the driveway is not going to be paved.

Mr. Anagnos motioned to close the public hearing. Mr. Jeffreys seconded.  
Peter Goss, Chairman           Aye                                   Lauren Kingman           Aye  
Jeffrey Anagnos                Aye                                   George Lawrence        Aye  
William Fiederlein            Aye                                   Joan Wyant                Aye  
James Jeffreys                Aye  
Motion carried 7-0.

Mr. Jeffreys motioned that the Milan Planning Board approve the following resolution:

BE IT RESOLVED, an application for re-approval of a three (3) lot subdivision was submitted to the Town of Milan on May 9, 2011 by Maggie Oyen, applicant; and

WHEREAS, the site is located at 265 Willow Glen Road, tax grid number 6573-00-648251, consisting of 30.16 acres in the A5A zoning district; and

WHEREAS, the submittal was accompanied by a Full Environmental Assessment Form dated 06/16/09, last revised 02/01/10 which was signed by the Planning Board Chairman on March 3, 2010 after a Negative Declaration was issued on March 3, 2010; and

WHEREAS, this application is identical to the original application which was granted conditional final approval on March 3, 2010; and

WHEREAS, the conditional final approval lapsed on February 24, 2011.

NOW, THEREFORE, BE IT RESOLVED, the Planning Board of the Town of Milan approves the plat submitted for the Oyen Subdivision prepared by Richard Hanback. L.S. entitled "A Subdivision Map Showing the Oyen Subdivision" dated 04/15/09 and last revised on 02/15/10; and

BE IT FURTHER RESOLVED, the Chairman of the Planning Board is hereby authorized to endorse approval on said plat after compliance by the applicant with the conditions as noted in the conditional final approval granted on March 3, 2010.

Mr. Anagnos seconded.  
Peter Goss, Chairman           Aye                                   Lauren Kingman           Aye  
Jeffrey Anagnos                Aye                                   George Lawrence        Aye  
William Fiederlein            Aye                                   Joan Wyant                Aye  
James Jeffreys                Aye  
Motion carried 7-0.

Chairman Goss read the conditions aloud so everyone understood them.

Mr. Anagnos motioned that the Milan Planning Board re-approve the Findings that were approved on March 3, 2010 for the Oyen Three Lot Subdivision based on this is a re-approval of a subdivision that received conditional final approval on March 3, 2010 with no changes to the application. Mr. Jeffreys seconded.

Mr. Anagnos seconded.

Peter Goss, Chairman	Aye	Lauren Kingman	Aye
Jeffrey Anagnos	Aye	George Lawrence	Aye
William Fiederlein	Aye	Joan Wyant	Aye
James Jeffreys	Aye		

Motion carried 7-0.

### Administrative Items:

- Mr. Jeffreys motioned to approve the minutes of May 4, 2011. Mr. Fiederlein seconded.

Peter Goss, Chairman	Aye	Lauren Kingman	Aye
Jeffrey Anagnos	Aye	George Lawrence	Aye
William Fiederlein	Aye	Joan Wyant	Aye
James Jeffreys	Aye		

Motion carried 7-0.

### Applications:

- 1. North Road Treasures Auctions Site Plan Approval:** Donald Johnson was present for his application for site plan approval to hold bi weekly auctions during the summer months on his property located at 26 North Road, tax grid number 6571-00-957459. Mr. Johnson has been in discussion with Glenn Butler, Highway Superintendent, about sight distance. Mr. Johnson said there is a problem with the hill on North Road but Mr. Butler said if Mr. Johnson can prove this has been an existing business, it would already be considered commercial and would take Mr. Butler out of the loop. Mr. Johnson provided receipts from Conways, his business certificate from when he opened the business, a picture of the garage, and an insurance certificate which states a private garage on North Road. Mr. Johnson said when he built the garage in 2001, he opened up a business account through Lowes. The problem is the address listed for this business is 28 North Road, his mother's house, because that's where the mail goes along with to 90 North Road prior to the changes made by E911. Mr. Johnson has some receipts going back to 2000. He built the garage in 2001. The business was at the store from 1991 to 2001, about 10 years, then when he built the garage, he started the mower repair shop in the garage. He still has mowers in the building waiting to be repaired so the garage is currently used as a mower repair shop. When asked, he said the last time he filed a sales tax return was in 2009. He said he did not file tax returns because there were no receipts coming in. Chairman Goss said he thought the traffic would be more concentrated for an auction as opposed to a steadier pace for a mower shop. Mr. Johnson said the auctions would only be every other Saturday night in the summer. Ms. Wyant said since he is

only planning on holding the auction once every two weeks, why not install yellow caution lights or signs cautioning drivers that there is an auction underway. Mr. Johnson said he would also consider hiring a flag man. Ms. Wyant said there are a lot of bad driveways along North Road, the one right next door to Don's being one of the worst. The speed limit is 35 mph and down the hill is a sign that says blind driveway. Mr. Jeffreys suggested granting conditional approval and revisiting the situation in six months. Mr. Butler said if Mr. Johnson can establish that this is an existing building being used for an existing business, it would avoid further review of the property location for a commercial use and he would not have to provide a review. If this does come to him, he would ask for 300 feet of sight distance which means Mr. Johnson would have to lower the road bed to the north side of the driveway. Mr. Jeffreys asked if Mr. Butler's concern was for traffic coming from the north to the south and Mr. Butler said yes. Mr. Johnson said he believes the majority of traffic will be coming from Route 199. Mr. Butler said if this comes to me for review, I would not accept any substitute for proper sight distance including signs or flagmen. Mr. Jeffreys asked what would be the liability to the Town since it is an existing commercial use today. Mr. Butler said the only idea he can offer up with some caution is if Mr. Johnson wanted to do a speed study and traffic count to prove a lesser sight distance is adequate but that would be expensive and would require town engineer approval. Mr. Butler said the County specification for required sight distance at 35 mph is 390 feet, he would require 300 feet, and it is at about 220 now. Ms. Wyant asked about Mr. Eiffert's business on North Road and Mr. Butler said that driveway never came to me for sight distance approval. Mr. Johnson said he has been told by various people that he should have just gone ahead and done this but he wanted to make sure he did everything the right way. Mr. Kingman said it is admirable that Mr. Johnson wants to do this the right way but it seems like he is playing against a stacked deck. When the building permit was applied for and issued, it was issued for a residential garage. Mr. Johnson said the CO said private garage, not residential. Mr. Kingman said an accessory building can't be on a separate lot, it has to be on the same lot as the principal building. If it's a principal building, it has to fit a use which this does not. This garage is situated on a quarter acre parcel. There are no records indicating a variance was received for lot area. The building inspector was in error in not requiring a variance before the building was put up. Also, for some number of years, this was a commercial operation but there has never been a sight plan for that operation. Mr. Kingman said he went through all the uses and the only use that comes close to a mower repair show is a machine and maintenance shop which specifically refers to automobiles but that use is not permitted in the Hamlet so we have a non conforming situation here. Mr. Johnson has said he wants a legitimate business done the right way. For this Board to approve a site plan, there would have to be a variance for lot area. The building inspector has said he would not require a new driveway permit if a new building permit is not required but if a new building permit was required for whatever reason, he would. A new driveway permit would not be required to issue a new Certificate of Occupancy for site plan approval. Mr. Kingman said since this is public assembly, the Fire Department and the Building Inspector would need to do a site visit to make sure nothing has to be

done to accommodate the public and provide the Planning Board with a review. So to move forward, a variance is required from the ZBA for lot area, we are waiting for the interpretation for the use from the ZBA, and the review from the Fire Department and Building Inspector. This Board will also need to discuss any requirements for sight distance. Mr. Jeffreys said if no building permit is required, then there is no trigger to require a driveway permit, so we could proceed. Mr. Kingman said the code says the Board has to be satisfied that the sight distance is okay. Mr. Kingman did an informal poll of the Board which resulted in at least four people on the Board who are confident that an arrangement can be worked out that they would be comfortable with regarding the traffic situation.

Mr. Kingman motioned that the ZBA approve an area variance on property owned by Donald Johnson located at 26 North Road, tax grid number 6571-00-957459 located in the Hamlet Zoning District, for an existing building on a .47 acre lot where the minimum required acreage in the Hamlet District is one (1) acre. Mr. Jeffreys seconded.

Peter Goss, Chairman	Aye	Lauren Kingman	Aye
Jeffrey Anagnos	Aye	George Lawrence	Aye
William Fiederlein	Aye	Joan Wyant	Aye
James Jeffreys	Aye		

Motion carried 7-0.

- Denise Schmidt Lot Line Adjustment** – Denise Schmidt and Marie Welch, L.S. were present to present this lot line adjustment of properties owned by Denise Schmidt located on Fitzsimmons Road, tax grid numbers 6573-00-117989 and 6573-00-082952. Ms. Welch said originally, they were going to do a three lot subdivision but it proved to be next to impossible to locate the a septic system for the proposed lot. Given that information, Ms. Schmidt decided she would like to give herself a buffer to the neighboring lot so they decided on this lot line adjustment. Ms. Schmidt’s residence is at 483 Fitzsimmons Road, grid number 082952. Her intention is to eventually sell the adjoining lot vacant lot, grid number 117989. The proposal is to convey approximately 1.5 acres from the vacant parcel to Ms. Schmidt’s improved parcel. Ms. Welch said as it stands, the proposed house location on the vacant lot does not meet the minimum lot width requirement so she will have to make some adjustments. Mr. Kingman said the proposed house and septic location will need to be removed from the map to get the Board of Health permission to file signature and for filing at the Dutchess County Clerk’s office. He suggested that the applicant pursue Board of Health approval and get that all resolved. The Planning Board will approve the house location and septic location and the Highway Superintendent will approve a driveway location and then it can be sold as an approved lot so when someone comes in for a building permit, all the work has been done. However, if you don’t want to go that route, he said he would strongly suggest that they at least get the driveway location approved so there won’t be any problems for a potential buyer with sight distance requirements. Mr. Butler pointed out that he can’t deny access on a pre-existing lot but once the lot line adjustment is done, the lot is no

longer pre-existing. Mr. Kingman said if you decide to get all the approvals, the engineered map would not be filed in the County Clerk's office but would be kept in the Town files.

The Board agreed that this lot line adjustment meets the requirements for sketch endorsement.

Mr. Kingman motioned that the Planning Board schedule the public hearing for the July 6, 2011 Planning Board meeting. Mr. Lawrence seconded.

Peter Goss, Chairman	Aye	Lauren Kingman	Aye
Jeffrey Anagnos	Aye	George Lawrence	Aye
William Fiederlein	Aye	Joan Wyant	Aye
James Jeffreys	Aye		

Motion carried 7-0.

**Discussion Items:**

- Mr. Lawrence asked why the Board would automatically require a letter from SHPPO if the property is not located in an archeologically sensitive area. Mr. Kingman said the Board probably would not unless DEC permits are required. If a DEC permit is required, the DEC will submit the application to SHPPO and the DEC will not proceed without the approval of SHPPO.
- Chairman Goss said he will not be able to make the Workshop scheduled for June 30<sup>th</sup> should the Board have a necessity to hold the meeting so he motioned to appoint Mr. Kingman as the Acting Chairman in the absence of the Chairman for the scheduled workshop meeting. Mr. Anagnos seconded.

Peter Goss, Chairman	Aye	Lauren Kingman	Abstain
Jeffrey Anagnos	Aye	George Lawrence	Aye
William Fiederlein	Aye	Joan Wyant	Aye
James Jeffreys	Aye		

Motion carried 6-0-1.

Mr. Anagnos motioned to adjourn the meeting at 8:55 p.m. Chairman Goss seconded.

Peter Goss, Chairman	Aye	Lauren Kingman	Aye
Jeffrey Anagnos	Aye	George Lawrence	Aye
William Fiederlein	Aye	Joan Wyant	Aye
James Jeffreys	Aye		

Motion carried 7-0.

The next workshop is scheduled for Thursday, June 30th and the next meeting is scheduled for Wednesday, July 6th. Both meetings are held at the Town Hall and start at 7:00 p.m.

Respectfully submitted,

Karen Buechele, Clerk  
Planning and Zoning

cc: Catherine Gill, Town Clerk  
Town Board