

Town of Hamburg
Planning Board Meeting

July 15, 2009

Minutes

The Town of Hamburg Planning Board met in regular session on Wednesday, July 15, 2009 at 7:30 p.m. in Room 7B of Hamburg Town Hall, 6100 South Park Avenue. Those attending included Chairman Gerard Koenig, Karen Rogers, Sasha Yerkovich, Peter Reszka, David Phillips and Steve McCabe.

Others in attendance included Andrew Reilly, Richard Lardo and Attorney Donald McKenna.

Excused: Rich Taber, Attorney Cheryl McFaddon Zak

Public Hearing – Villages at Mission Hills

Mr. McCabe read the following notices of public hearing:

“Notice is hereby given that the Town of Hamburg Planning Board will conduct a public hearing on July 15, 2009 at 7:30 P.M. in Room 7B of Hamburg Town Hall to allow public comment on the draft Supplemental Environmental Impact Statement submitted for the proposed Villages at Mission Hills project located on the northeast side of Camp Road, immediately east of the railroad in the Town of Hamburg. Comments on the DSEIS will be accepted through August 7, 2009 and can be submitted to Andrew C. Reilly, Town of Hamburg Planning Department, S6100 South Park Avenue, Hamburg, New York 14075. A copy of the DSEIS is on file in the Town of Hamburg Planning Department and Town Clerk’s office and can be viewed on the Town’s website (www.townofhamburgny.com). No formal action on the project will be taken at this meeting.”

“Notice is hereby given that the Town of Hamburg Planning Board will conduct a public hearing on a proposal by Mission Hills Senior Apartments, LLC for a 347-unit private residential community, two community centers and supporting infrastructure on a 93.28 acre site located on the northeast side of Camp Road, east of the railroad tracks. In accordance with the Town of Hamburg site plan ordinance, a public hearing will be held on July 15, 2009 at 7:30 P.M. in Room 7B of Hamburg Town Hall.”

Mr. Reilly stated that this site was approved for a mobile home park approximately 15 years ago and an Environmental Impact Statement (EIS) was done at that time. He noted that, because the EIS is 15 years old, this developer has been asked by the Town to provide a Supplemental EIS (SEIS) in order to update the information previously provided. He stated that the developer has submitted a draft SEIS, public input is being solicited through this public hearing and then any substantive questions raised will be answered in the form of a Final Supplemental Impact Statement, which will also be available for public review. He further noted that, based upon the DSEIS and the final EIS, the Planning Board will make a decision and, if the decision is favorable, the project would move on to the site plan approval phase, which also requires a public hearing. He stated that this is why the two public hearings are being held simultaneously.

Leanne Voit from Greenman-Pederson appeared on behalf of the project sponsor, stating that the DSEIS submitted is for the entire project, which includes four phases. She further stated that the site plan presented only represents the first phase of the project. Ms. Voit stated that the overall project consists of approximately 347 units of mixed residential development, most of which are rental housing for senior citizens. She noted that Phases I and II would consist of 26 two-story, 8-unit affordable rental apartments for citizens with a community center on a private road. She stated that Phase III would consist of 91 single-family homes and Phase IV would consist of 12 four-unit, single-story market rate apartments for senior citizens.

Ms. Voit stated that a market study was performed recently for the area including the Town of Hamburg to see if there is a need for senior apartments and the results of the study showed that there is a need for 4,500 units of housing for seniors. She noted that the market study will be provided to the Planning Board for its review.

Ms. Voit stated that great effort has been taken to avoid the majority of the approximately 7-acre federal wetland in the center of the site and that the developer proposes to leave approximately 38 acres of the site undeveloped. She further noted that the proposed buildings closest to the railroad tracks are located 250 feet from the tracks.

Ms. Voit stated that Phase I includes 12 of the two-story, 8-unit apartment buildings with a total of 96 units, as well as a community building, gazebo, five garage/storage units, mail pavilions, two detention ponds and a large amount of green space.

In response to a question from Chairman Koenig, Ms. Voit stated that an emergency-only access road connected to Waterfalls Village Mobil Home Park is proposed and will be installed during Phase I, if required by the Planning Board.

Regarding the DSEIS, Mr. McCabe asked Ms. Voit if the proposed conservation easement would be deeded to the Town of Hamburg or to the Homeowners' Association. Ms. Voit responded that she is not sure at this time. Mr. Reilly stated that the conservation easement must be deeded to the Town of Hamburg so that it can be enforced.

Regarding wetlands WB-1 and WB-2, Mr. McCabe stated that he is concerned that the community center and one apartment building are proposed in an area where federal wetlands currently exist. Ms. Voit responded that, as the applicant goes through the permitting process with the Army Corps of Engineers, these two buildings will probably have to be relocated and it will be addressed in the Final SEIS.

Chairman Koenig declared the public hearing open. He then asked if anyone in the audience wished to speak in favor of or in opposition to the proposal. The following people spoke:

1. Henry Zimmer, 3606 Heatherwood Drive, asked how long Phase I would take to complete and how long the entire project would take to complete. He also asked how much green space will be left at the rear of the lots that back up to existing homes. He asked what the depth will be of the single family home lots and how far from the road the houses will be set back. He also asked what the apartments' rents will be.

2. Mike Deni, 3572 Heatherwood Drive, asked if the entire parcel will be clear cut as Phase I is developed.

Chairman Koenig declared the public hearing closed.

Mr. Reilly noted that comments will be received for ten days after the close of the public hearing.

Mr. Phillips made a motion, seconded by Mr. Reszka, to table both the discussion of the DSEIS and the request for Site Plan Approval. Carried.

Engineering Department comments have been filed with the Planning Department.

Public Hearing - Arthur Court Subdivision

Mr. McCabe read the following notice of public hearing:

“Notice is hereby given that the Town of Hamburg Planning Board will conduct a public hearing on a 35-unit townhouse development known as the Arthur Court Subdivision to be located at the end of King Arthur Court, east of South Park Avenue, on July 15, 2009 in Room 7B of Hamburg Town Hall at 7:30 P.M.”

Andrew Gow, from Nussbaumer & Clarke, appeared on behalf of the proposed project, stating that this proposal was originally brought before the Planning Board in 2005. He further stated that two major changes have been made to the project since that time. The original project included a private road with a cul-de-sac at the eastern end of the site and that road is now proposed to be public. In addition, previously the easternmost part of the site was determined to be a federal wetland, but the Army Corps of Engineers has recently determined that this area is non-jurisdictional, making it possible for the project to be extended further to the east.

Mr. Reilly stated that the Planning Board is holding a second public hearing on this proposal (the first was held in August 2008) because some substantial changes have been made to the plan. He further stated that the biggest change to the plan is that, because the road is proposed to be public, the buildings are set back further from the right-of-way and therefore closer to the existing adjoining properties on Quinby Drive and Richwood Drive.

Mrs. Rogers stated that she has noticed that the easternmost buildings are very close to the homes on Richwood Drive and asked Mr. Gow how much of a buffer there would be between those buildings and the homes on Richwood Drive. Mr. Gow responded that the rear yard setback proposed for those easternmost buildings is more than twice what is required by Town Code.

Mr. Reilly asked Mr. Gow how many, if any, of the existing trees on the east end of the property could be saved. Mr. Gow responded that the developer's intention is to save as much of the woods as possible, as a vegetative buffer would be beneficial for all parties involved.

Mr. Reilly stated that the developer must address the fact that the proposed detention pond is too close to the adjacent property line and noted that it appears that the detention pond would be graded right up to the property line, which is not fair to the adjacent property owner.

Chairman Koenig declared the public hearing open. He then asked if anyone in the audience wished to speak in favor of or in opposition to the proposal. The following people spoke:

1. Mr. Reilly read the following letter from Ms. Arlene Duggan:

"My name is Arlene Duggan and I have lived here with my family at 4268 Quinby Drive since 1983. I have also been a widow for the last four years. From the beginning we had frequent issues with children and young people of all ages taking shortcuts through the woods trespassing across our property on their way to Town and the Fairgrounds. Over the years this has continued. Often they are in groups or traveling on foot or by bicycle, snowmobile, ATV or motorcycle. Each year I continue to deal with it. Several times we've had to repair the deep ruts left by the machines. The Hoelschers and Williams on either side of me also deal with trespassers each year and have the same concerns. They still have some woods at the rear of their properties but my property is grassed and fully open at the back boundary. My concern is that clearing the woods for the townhouses will make my back boundary an even more attractive place for trespassers. My request is that Mr. Liberatore please consider placing a dense band of evergreen trees across our rear boundaries as a visual discouragement to trespassers year round. Any efforts will be appreciated. Thank you, Arlene Duggan. P.S. I would also like to note that this new construction will likely put an end to the beer and alcohol parties held along the old railroad line these many years. There has been a great deal of glass and other debris accumulated and the police have been unable to stop it. Years ago it was a wonderful place to walk." Mr. Reilly noted that Ms. Duggan also commented that the back of 4368 Quinby Drive is always wet and asked if there is any provision for general drainage on the Quinby side of the Arthur Court project.

2. Mark Piniarski, 4363 Richwood Drive, stated that he feels that preservation of some foliage behind the homes on Richwood Drive is appropriate. He asked what the distance would be between the proposed buildings and the back of the Richwood Drive lots.
3. Joan Dunham, manager of Bradford Place, 5360 South Park Avenue, stated that the families that live in Bradford Place are very concerned about losing the green space, wetlands, etc. and are also concerned about having that many townhouses in the area.
4. Barbara Piniarski, 4363 Richwood Drive, asked if the people who live in these townhouses would be renters or owners. She also asked what the units would be selling for and asked how close the detention pond would be from her property. She asked if the neighbors could get information regarding whether the developer plans on installing fencing and trees between the townhouse property and the homes on Richwood Drive.
5. Arlene Duggan, 4268 Quinby Drive, stated that there is a water table problem in her area and asked if the proposed drainage will drain the specific area or the general area.

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Chairman Koenig declared the public hearing closed.

Mr. Phillips made a motion, seconded by Mrs. Rogers to table the project. Carried.

Engineering Department comments have been filed with the Planning Department.

Public Hearing – Autumnview Health Care Facility

Mr. McCabe read the following notice of public hearing:

“Notice is hereby given that the Town of Hamburg Planning Board will conduct a public hearing on a proposal by Autumnview Health Care Facility. The applicant proposes to construct a +/- 24,599 sq.ft. addition to the existing health care facility located at 4650 Southwestern Boulevard. In accordance with the Town of Hamburg Site Plan ordinance, a public hearing will be held on July 15, 2009 at 7:30 P.M. in Room 7B of Hamburg Town Hall.”

Ms. Leanne Voit from Greenman-Pederson appeared on behalf of the applicant, stating that a grading plan and landscaping plan have been submitted, per the Board’s previous request. She further stated that the applicant met with the Fire Chief and, as a result, some changes have been made to the plan. Specifically, she noted that a fire hydrant must be installed behind the back of the building and therefore a water line will have to be installed. She stated that any existing trees that are removed because of the water line installation will be cared for elsewhere and replaced when the water line is in. She noted that any trees that die in the process of being relocated will be replaced with the same type of tree.

Ms. Voit stated that additional trees are proposed behind the building, noting that ten of the trees would be spruce trees relocated from the area of the new addition and therefore could be as tall as 15 to 20 feet. She further noted that, in addition to the relocated trees, 32 Colorado Spruce trees would be planted in various areas of the site to create a nice buffer.

Ms. Voit stated that the applicant proposes to go 20 to 30 feet into the woods in order to reveal as little as possible of the building to the adjoining residences. She showed the Board elevations of what the building would look like from Nottingham Terrace.

In response to a question from Chairman Koenig, Ms. Voit stated that the proposed addition would be sprinklered.

Chairman Koenig declared the public hearing open. He then asked if anyone in the audience wished to speak in favor of or in opposition to the proposal. The following people spoke:

1. Dave Russin, 3998 Nottingham Terrace, stated that he is concerned about the trencher the applicant proposes to use to dig the trench in which the new water line would be placed. He asked how wide the machine is, noting that he is concerned that a large amount of land will be disturbed.
2. Brian Davis, 3994 Nottingham Terrace, stated that he is concerned about the existing lights at the health care facility, noting that they are too bright and the light at the top of the building does not have a shield on it. He stated that he would like that fixed and

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would also like the lights on the addition to be shielded, as well, so they do not shine into the neighbors’ homes.

3. Mary Philbin, 4220 Nottingham Terrace, stated that when the original building was constructed in 1982 the applicant stated that the building had to be closer to Southwestern Boulevard due to problems with the soils in the back of the site. She wondered if the soils have changed since then, or how is it now possible for the applicant to build where the addition is proposed. She also asked if the new sidewalks will be constructed wider than the existing sidewalks and wanted clarification regarding where the new trees would be placed. She asked if the facility is bound by the New York State Health Department regarding the level of lighting it must provide at its facility, noting that the lighting is a concern of the neighbors.

Chairman Koenig declared the public hearing closed.

Mr. Phillips made a motion, seconded by Mr. Reszka to table the project. Carried.

Engineering Department comments have been filed with the Planning Department.

Old Time Baptist Church

Jason Utzig from C & S Engineers appeared on behalf of the proposed project.

Mr. Reilly stated that he received a call from the New York State Department of Environmental Conservation (NYSDEC) indicating that the applicant will not be allowed to disturb the vegetated area that is located in NYSDEC's 100-foot adjacent area (located in the northwest corner of the site). He further stated that NYSDEC indicated that it may allow the applicant to do some work within the area that is not vegetated. He noted that the Town of Hamburg South Central Overlay District states that applicants should attempt to preserve the vegetated areas of a site and the Town also has a Wetlands Protection law that states that applicants should try to preserve wetland adjacent areas. He stated that the applicant will have to pull the proposed detention pond out of the disturbed area, noting that the DEC's ruling in conjunction with the Town's two laws means that the applicant will most likely not be able to disturb that vegetated area in the 100-foot adjacent area.

Mr. Reilly confirmed that the existing property line with the adjoining pastor's residence (located to the north of the vacant property) will be removed.

Chairman Koenig stated that, after hearing from several Planning Board members, it seems that surface water drainage is the Board's biggest concern at this point. He noted that the Board has to be satisfied that the surface water from this site will not impact the adjacent properties.

Mr. Phillips stated that it is his understanding that the law is that whatever amount of water runs off this site now cannot be increased by the construction of this project. Mr. Lardo confirmed this, noting also that the church cannot by law point discharge water onto someone else's property unless a natural stream exists.

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Mrs. Yerkovich further confirmed with Mr. Lardo that, if the church discharges its water into the Town ditch along Hickox Road, it would not be allowed to dump that water onto Mr. Los's property further west when the ditch ends.

Mr. Philips stated that he visited the site during a rain storm recently and noticed that the existing ditch on Hickox Road carries the water to a point at the bottom of a hill in the road and then that water floods the whole area. He noted that this is the existing condition and that the church project is not allowed to make this situation any worse. He further stated that this also means that the church is not obligated to improve the existing situation, either. He confirmed with Mr. Lardo that, per State law, the church can still discharge water at the rate at which it comes off the property today as long as it does not make the current situation further west on Hickox Road worse.

Mr. Lardo stated that the applicant must be allowed to discharge water down hill, as there is no other way it can be done (water does not run uphill). He further stated that the Engineering Department has asked the applicant for a profile of Hickox Road so that he can determine if the water would naturally flow from the church property down Hickox Road and what it would take to put a system in. He stated that to date he has not received the profile he requested.

Mr. McCabe asked for the total square footage of impervious surface proposed.

Regarding the parking area proposed in front of the church along Gowanda State Road, Mr. Reilly stated that the Automotive Use Area section of the Town Code states that any parking area that abuts a residential area, even if it is across the street, must include a landscaped hedge or some type of buffer to shield vehicle headlights from the adjoining neighbors.

In response to a question from Mrs. Rogers, Mr. Utzig stated that the size of the proposed future addition would be approximately 4,000 sq.ft.

Mr. Reszka asked what would keep the septic system contents from discharging into the pond faster than it is designed to or the pond, if it's flooded, flooding the septic system. Mr. Utzig stated that the applicant is depending on the percolation rates they received when the percolation tests were done that indicate that it will percolate into the soil before it goes into the pond.

Mr. Reilly stated that it is his understanding that the New York State Department of Health requires that a septic system be located at least 100 feet from any water body. Mr. Utzig responded that a detention pond is not considered a water body because it is generally dry.

Mr. Utzig stated that, since the Board's last meeting, the applicant has addressed some of the comments received, including the concerns of the Fire Department. He noted that the proposed septic system has received approval from the New York State Department of Health and the Town Highway Superintendent has granted approval for the discharge of water to Hickox Road. He further stated that the applicant has recently learned that the NYSDEC will not allow the disturbance of the vegetated area in the northwest corner of the site, noting that the applicant now plans to install underground detention.

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Mr. Utzig stated that the applicant plans to discharge the drainage to Hickox Road but noted that the majority of the water currently drains toward the rear of the property, He stated that a small amount of water now drains to Hickox Road and this would be what the applicant will be limited to for the drainage, since that is what the existing conditions are. He further stated that a

storm sewer will be designed to take the drainage down Hickox Road and into the existing ditch that is further down the road.

Mr. Reilly asked Mr. Utzig whether the applicant could go without the planned future addition to the church, which would give the applicant a lot more room to work with. Mr. Utzig responded that that situation would not be ideal and the addition is planned on an as-needed basis.

Mr. Reilly stated that by proposing this much on the site with the constraints the applicant will have in the back of the property and attempting to fit the building, etc. on the site, the applicant may have a difficult time.

Mr. Reilly stated that, per the Overlay requirements, the applicant must submit elevations of the proposed church for the Board's review.

Attorney Jay Pohlman asked if the required fifty-foot setback is now being violated, considering the location of the septic system, detention pond, etc. Mr. Reilly responded that the fifty-foot setback is a building setback and there is no setback for ponds.

Mr. Rick Los stated that he feels the church's plan for pumping the water and allowing it to flow down Hickox Road at a set rate does not address the fact that the water that now puddles on Hickox Road will stay there for a longer period of time. He further stated that it is wet there now and probably will never dry up if the church is allowed to discharge more water onto the road.

Mr. Phillips stated that, as he understands it, the church cannot make the puddle bigger but can make it stay there longer.

Mr. Los asked the Board how this will affect his use of his own land. Mr. Reilly responded that the laws of the Town of Hamburg and the State of New York have to be adhered to and the Town cannot be arbitrary and capricious by holding this applicant to a higher standard than other applicants.

Mr. Phillips made a motion, seconded by Mr. Reszka to table the project. Carried.

Engineering Department comments have been filed with the Planning Department.

Mr. Phillips made a motion, seconded by Mr. McCabe, to approve the minutes of July 1, 2009. Carried.

Mr. Phillips made a motion, seconded by Mr. Reszka, to adjourn the meeting.

The meeting was adjourned at 9:15 P.M.

Respectfully submitted,
Stephen J. McCabe, Secretary
Planning Board