

Town of Hamburg  
Planning Board Work Session  
October 3, 2007

The Town of Hamburg Planning Board met for a Work Session on Wednesday, October 3, 2007 at 7:30 p.m. in Room 7B of the Hamburg Town Hall, S-6100 South Park Avenue. Those attending included Chairman Gerard Koenig, Dave Phillips, Steve McCabe, Paul Eustace, Richard Taber and Karen Rogers.

Others in attendance included Andrew Reilly, Sarah desJardins, Attorney Donald McKenna and Attorney Michael Fruth.

Excused: Sasha Yerkovich

### **Steel Winds II Wind Energy Facility**

Mr. Reilly stated that he has learned that the City of Lackawanna Planning Board was expecting a letter from him stating that the Hamburg Planning Board has no environmental issues regarding this project. He stated that the Hamburg Planning Board did issue a resolution to that effect at the September 19, 2007 meeting but he did not realize that the applicant understood that to mean that he (Mr. Reilly) would convey that to the City of Lackawanna. He apologized for any confusion caused and stated that a letter will be forthcoming to the City of Lackawanna Planning Board.

Mr. Mark Mitskovski appeared on behalf of the project, stating that the City of Lackawanna Planning Board did not issue a Negative Declaration at its October 3, 2007 meeting because there are some site issues it wants to clarify as part of the site plan approval process.

Mr. Reilly noted that the Planning Department received comments from Erie County Department of Environment & Planning regarding this project. The County noted that Hamburg's law requires two acres of land be devoted to each windmill and therefore the County believes that ten acres of the site should be dedicated to the windmills so that no additional windmills can be installed in that ten acre area. Additionally, the County noted that Hamburg's law states that windmills must be set back one and one half times the height of the windmill from any public railroads and the County believes that Buffalo Southern is a public railroad.

Chairman Koenig suggested that the applicant get a letter from the railroad stating that it has no problem with the installation of windmills near its railroad. Mr. Mitskovski responded that the applicant already has that letter from the

railroad.

Hamburg Planning Board meeting          October 3, 2007

Mr. Reilly noted that the Planning Board members were given his recommendation that this project has met all of the requirements of the windmill law, as well as a list of potential conditions of approval of this project, which the members can modify as they see fit.

In response to a question about the posting of a bond by the applicant to cover the cost of removing the windmills in the event the applicant walks away from the project some time in the future, Mr. Reilly stated that one of the conditions of approval would be that the applicant will work with the Town to resolve the issue of the amount of the bond.

Mr. Reilly stated that the Hamburg Planning Board cannot by law approve this project until the City of Lackawanna Planning Board issues a Negative Declaration. He further stated that it is the intent of the Hamburg Planning Board to approve this project at its next meeting

Mr. Phillips made a motion, seconded by Mr. Taber, to authorize Mr. Reilly to write a letter to the City of Lackawanna Planning Board indicating that the Hamburg Planning Board does not have any outstanding concerns regarding this project. Carried.

Mr. Reilly stated, for the record, that recently he was made aware of the fact that Wendel Duchscherer has done some survey work for BQ Energy at this site. He further stated that he has been very professional dealing with this project and he does not feel there is any conflict of interest.

Mr. Reilly stated that he has been informed by the Town Engineer, who is the liaison to the Hamburg Waterfront Revitalization Committee, that this project is consistent with Town's LWRP.

Mr. Phillips made a motion, seconded by Mr. Eustace, to table this project until the Board's October 17, 2007 meeting. Carried.

Engineering Department comments are attached.

### **Lutz Mobile Convenience Store (5073 Camp Road)**

Mr. Reilly stated that the Planning Department has not received the Erie County Department of Environment & Planning's input regarding this project yet and therefore, because the thirty day time period allowed for comment has not yet expired, the Planning Board would have to table this request until its next meeting.

Mr. Reilly distributed draft resolutions for granting the Special Use Permit and Site Plan Approval for this project and the Board members will review these draft

Hamburg Planning Board meeting                      October 3, 2007

resolutions in anticipation of its next meeting.

Mr. Reilly stated that the applicant will have to either submit a letter from Tim Horton's confirming the easement shown on the site plan or the easement must be removed from the site plan.

Mr. Phillips made a motion, seconded by Mrs. Rogers, to table this project until the Board's October 17, 2007 meeting. Carried.

Engineering Department comments are attached.

### **Fisher Bus Facility (Southwestern Boulevard)**

Mr. Reilly stated that the Planning Department has not received the Erie County Department of Environment & Planning's input regarding this project yet and therefore, because the thirty day time period allowed for comment has not yet expired, the Planning Board would have to table this request until its next meeting. He further stated that he does not think that the County will have any issues with this proposal.

Mr. Reilly reiterated the Conservation Advisory Board's ongoing concern regarding the possible existence of federal wetlands on the site. He noted that if the Board grants conditional approval to this project, one of the conditions will be that the applicant gains either a sign-off from the U.S .Army Corps of Engineers or a permit from that agency.

Mr. Phillips made a motion, seconded by Mr. McCabe, to table this project until the Board's October 17, 2007 meeting. Carried.

Engineering Department comments are attached.

### **Oakwood Avenue Subdivision**

Mr. Reilly stated that in early 2007 the applicant presented a sketch plan showing zero lot-line duplexes. Initially, the Planning and Building Inspection departments determined that each zero-lot line dwelling would be treated as a single-family dwelling and would require 10,000 sq.ft. per lot instead of 7,500 sq.ft., which is required for regular duplexes. The applicant objected to this interpretation and asked the Zoning Board of Appeals for clarification of the Code. However, the ZBA tabled this request at its October 2, 2007 meeting and referred it back to the

Planning Board because Mr. Reilly submitted a letter to the ZBA stating that, after further review of the regulations, he has found that his interpretation of the Code was wrong and the applicant should be allowed to

Hamburg Planning Board meeting          October 3, 2007

move forward with the layout presented. He added that he would like to change the Code to reflect the difference between regular duplexes and zero lot-line duplexes, but the way the Code reads at this time allows the applicant to only provide 7,500 sq.ft. per zero lot-line duplex.

Mr. Reilly noted that the Planning Department will notify the applicant that the sketch plan as presented does meet the Code and that he can begin the Preliminary Approval process.

The Board discussed some of the potential problems with this request, one of which is the location of the entrance onto Lake Avenue.

Mr. Phillips made a motion, seconded by Mrs. Rogers, to table this project until the Board's October 17, 2007 meeting. Carried.

Engineering Department comments are attached.

### **Stephen Dolber (5363 Southwestern Boulevard)**

Mr. Reilly stated that Mr. Dolber owns property across from the proposed Wal-Mart site on Southwestern Boulevard. The properties adjacent to Mr. Dolber's land on Southwestern Boulevard are zoned C-2 and he would like to rezone this property from R-2 to C-2. Mr. Reilly noted that the Code Review Committee reviewed this request, found it to be in conformance with the Comprehensive Plan and recommended that it be entertained by the Town Board. He further stated that, if the property is rezoned, no access to Able Road would be allowed from Mr. Dolber's parcel.

Mr. Reilly stated that the Town Board is looking for a recommendation from the Planning Board regarding this request and that the Planning Board can issue that recommendation at its next meeting.

Mr. Dolber stated that he was contacted by buyers who want the property to be zoned commercial. He feels it is foolish to be zoned residential when commercial zoning surrounds the parcel.

Mr. McCabe stated that when the Planning Board approved the Special Use Permit for Wal-Mart to be built on the Brierwood Plaza property across the street from Mr. Dolber's property, the Board knew it was altering the essential character of the neighborhood and that the Planning Board should help this applicant rezone his property to commercial to better conform with the surrounding

properties.

In response to a question from Mr. Eustace, Mr. Dolber stated that the prospective purchaser of his property would like to build a child care center at

Hamburg Planning Board meeting          October 3, 2007

that location.

Mr. Eustace made a motion, seconded by Mrs. Rogers, to table this project until the Board's October 17, 2007 meeting. Carried.

Engineering Department comments are attached.

### **Verizon Wireless**

Mr. Reilly reminded the Board that the applicant presented new drawings at the Board's last meeting with revisions based on the Board's previous input. He further noted that the applicant has investigated a list of alternate sites and has not been able to find any other properties that are suitable. Therefore, the applicant has asked the Board to consider the site on McKinley Parkway at this point.

Attorney Jared Lusk from Nixon Peabody appeared on behalf of the project.

Chairman Koenig informed Attorney Lusk that Tops does not own the property the store is located on at Seven Corners. Mr. Reilly gave Attorney Lusk the name of the current owner of the property and asked him to contact that owner to see if he or she would be interested in allowing Verizon to locate the new tower on that property. Mr. Reilly further stated that he thinks the Tops property would be a better location than the McKinley Parkway parcel due to its proximity to the Thruway and the fact that it is further away from residential properties.

Attorney McKenna stated that whether or not the owner will be interested in allowing the tower to be built on the Tops site may depend on the lease agreement between the owner of the property and Tops.

Mr. Phillips stated that he feels Verizon should do more due diligence in looking for additional properties for locating the tower. In addition to the Tops property, Mr. Phillips suggested that Verizon investigate the following properties:

- Behind the dealership on the north side of Big Tree Road, east of Seven Corners
- East of the dealership on the north side of Big Tree Road, east of Seven Corners
- North side of Southwestern Boulevard, west of McKinley Parkway, east of

the Thruway

- Big Tree Road, west of McKinley Parkway and east of the Thruway

Hamburg Planning Board meeting      October 3, 2007

Mr. Reilly reviewed that the applicant reported that none of the alternate sites previously suggested by the Planning Board will work, for one reason or another. He further noted that the Town has done some follow-up work regarding these sites, has found that Tops is not the owner of the property on which the store is located and is requesting that the applicant pursue the owners of the property to see if a tower can be placed there. He stated that the proposed McKinley Parkway site is a difficult location on which to place a tower.

The consensus of the Planning Board members was that if the applicant can come to an agreement with the owners of the Tops property on Seven Corners, that location would be preferable to the proposed site on McKinley Parkway.

Mr. Reilly asked the Board members if there are any outstanding issues to be resolved regarding the site plan for this project, noting that the applicant has revised the site plan to incorporate the Board's concerns at the previous meeting. The Board members indicated that there are no outstanding issues at this time to be resolved.

Mr. Reilly asked Attorney Lusk to provide screening in front of the proposed fence to enhance the appearance of the tower area.

Attorney Maura Danner, representing Mr. James Dunn (nearby property owner), spoke to the Board. Attorney Danner asked whom the applicant contacted regarding the alternate sites to be investigated and indicated that some of the parcels are not owned by the particular business occupying the site. Attorney Danner also asked if copies of certified letters to the owners of the alternate sites were submitted as part of the public record and how many times the owners of the alternate sites were contacted.

Attorney Danner stated that it seems that Verizon has not been entirely forthcoming with the extent of its effort to contact the owners of the alternate sites. She further stated that simply because several of the sites did not respond to correspondence from Verizon in a short period of time does not necessarily mean that the owners of those sites would not be open to the possibility of a tower being placed on their properties. She stated that her client wants to make sure that Verizon has considered all possible alternate sites before moving forward with the Monro Muffler site.

Attorney Danner asked if Verizon has considered co-locating on an existing tower. Attorney Lusk responded that Verizon has considered co-locating and that it is not feasible. Attorney Danner stated that perhaps Verizon is requesting to construct a new tower due to a matter of convenience and the ability to do so.

Mr. Taber asked Attorney Danner what Mr. Dunn's resolution be to this issue. Attorney Danner responded that she cannot speak for her client regarding that question.

Hamburg Planning Board meeting          October 3, 2007

Attorney Lusk stated that it is not accurate to say that property owners of the alternate site were given a "short period of time" to respond. He further stated that if Verizon could co-locate on an existing tower, it would do so and that to say that Verizon is requesting to construct a tower as a matter of convenience is preposterous.

Mr. Phillips made a motion, seconded by Mr. Eustace to table this project until the Board's October 17, 2007 meeting. Carried.

Engineering Department comments are attached.

The meeting was adjourned at 8:45 p.m.

Respectfully submitted,

Paul Eustace, Secretary

Planning Board