

Town of Hamburg  
Planning Board Meeting

December 16, 2009

Minutes

The Town of Hamburg Planning Board met in regular session on Wednesday, December 16, 2009 at 7:30 p.m. in Room 7B of Hamburg Town Hall, 6100 South Park Avenue. Those attending included Chairman Gerard Koenig, Peter Reszka, David Phillips, Steve McCabe and Richard Taber.

Others in attendance included Andrew Reilly, Sarah desJardins, Richard Lardo, Councilman Kevin Smardz and Attorney Donald McKenna.

Excused: Sasha Yerkovich and Karen Rogers

**Whispering Pines Patio Homes (formerly Dorchester Patio Homes)**

Andrew Gow from Nussbaumer & Clarke appeared on behalf of the proposed project, stating that the cluster layout presented had not changed from what was presented at the Board's last meeting. He further stated that the proposed cluster layout includes 56 lots.

Mr. Gow stated that, per the Board's request, the standard R-2 layout had been revised to exclude the oddly-shaped lots the Board did not care for and that the revised R-2 layout allows for 58 lots.

Chairman Koenig stated that the Engineering Department has indicated that an alternate means of ingress and egress for this subdivision should be required. Mr. Gow responded that he is willing to work with the Engineering Department on this issue, noting that the alternate entrance to the subdivision could be from Dorchester or from Brompton Road.

Mr. Reilly stated that the alternate means of ingress/egress will have to be a public roadway, as opposed to simply an emergency access. Mr. Gow responded that the applicant would not like to put in a secondary means of ingress at all but if there is a safety reason for doing so, the applicant would be agreeable to installing an emergency means of ingress.

Chairman Koenig stated that, per Hamburg Town Code, the length of a roadway ending in a cul-de-sac cannot exceed 500 feet and the applicant proposes a roadway such as this that exceeds 500 feet. He noted that the Board would like two public entrances to the subdivision, given the number of lots proposed.

Mr. Lardo stated that the problem with an emergency access, as opposed to a public road, is that in the winter the emergency access cannot be plowed and therefore would be useless for six months out of the year.

Mr. Reilly stated that the use of cluster must be authorized by the Planning Board and, if

the Board decides to approve the use of cluster, it would then need to provide direction on the concept plan and the applicant would proceed to Preliminary Plat. He further stated that if the Board authorizes the use of cluster it would be because the Board feels that the proposed plan is beneficial to the Town of Hamburg.

Chairman Koenig stated that he visited the site and sees benefits to a cluster development in that the nice trees in the area could be saved and there would be a large amount of green space for the benefit of the people who live in the development, as well as those who live nearby.

Mr. Reilly confirmed with Mr. Gow that all of the green space in the development would be owned by a Homeowners' Association.

Mr. Phillips made a motion, seconded by Mr. Reszka, to authorize the use of cluster for the following reasons:

1. The cluster proposal would be beneficial to the Town of Hamburg.
2. The cluster proposal is preferable to a standard R-2 subdivision.

Additionally, it is requested that the applicant install special features in this development to make it a unique subdivision, such as a community garden, walkways, etc. The applicant will also work with the Engineering Department to come up with a secondary means of egress to the subdivision.

Carried.

Mr. Phillips made a motion, seconded by Mr. McCabe, to table this project. Carried.

Engineering Department comments have been filed with the Planning Department.

### **Bill Ciaravino (Howard Road)**

Mrs. desJardins stated that the Planning Department has not been contacted by the applicant since he was advised of the problems associated with constructing a pole barn on the west side of the existing building on the property.

Mr. Phillips made a motion, seconded by Mr. McCabe, to table this project. Carried.

Engineering Department comments have been filed with the Planning Department.

### **First Wind (formerly Steel Winds project)**

Mr. Reilly reminded the Board that the applicant appeared before the Planning Board in September and presented a revised layout and number of the proposed wind turbines. He noted that at that meeting the Board indicated that this change was minor enough in nature that

re-approval of the project was not necessary. Mr. Reilly stated that, at this time, the applicant wishes to revise the number of turbines to four (4). He also noted that the Town Code requires that the turbines be located one and one-half times the height of the turbine away from any property lines and one of the relocated turbines is too close to vacant State-owned property.

Mr. Reilly stated that the applicant can obtain a letter from the State of New York indicating that it does not have a problem with the location of the turbine or the applicant can request a variance from the Zoning Board of Appeals.

Mr. Reilly stated that he has a conflict of interest regarding this project because his firm was hired to do the mapping for the project and therefore he would not participate in the discussion of this project further.

Josh Bagnato from First Wind appeared on behalf of the project, stating that originally the Hamburg Planning Board granted Site Plan Approval and a Special Use Permit for five (5) wind turbines on this property in 2007. He noted that in September 2009 a revised plan was presented to the Planning Board with three (3) turbines proposed in the Town of Hamburg and the Planning Board determined that a re-approval of the project was not necessary, as the change was minor in nature. He further stated that at this time an additional turbine is proposed in the Town of Hamburg bringing the number of proposed turbines to four (4) and the location of one of the turbines has been shifted slightly.

Mr. Bagnato stated that another revision to the proposal is that there now will be no ingress or egress roadway in the Town of Hamburg, as previously proposed.

Mr. Bagnato stated that one of the turbines does not meet the requirement of the Town Code that it be located one and one-half times its height away from any non-participating property lines. He further stated that the applicant proposes to locate the turbine approximately 200 feet too close to the New York State Department of Environmental Conservation (NYSDEC) Parks Department property. He noted that it is his opinion that the intent of the Town of Hamburg's wind turbine ordinance is to protect non-participating land owners' buildings, yards, etc. and not an isolated wetland area that is difficult to access.

Mr. Bagnato stated that he believes a variance is not required and he also believes that he does not need New York State to become a participating land owner, which would be very difficult to do, because the Town's ordinance is not written to protect a beach such as this.

In response to a question from Chairman Koenig, Mr. Bagnato stated that the problem with moving the non-compliant turbine away from the New York State land is that, as the turbine is moved further away, it begins to block the wind for one of the other turbines.

In response to a question from Mr. Phillips, Mr. Bagnato stated that he has posed his opinions regarding the non-compliant turbine to the Town of Hamburg Building Inspector (Kurt Allen) and Mr. Allen has not yet determined whether or not he agrees with Mr. Bagnato.

Mr. Phillips stated that he does not feel that the Planning Board needs to re-approve this project, based on the minor nature of the changes.

Mr. Philips made a motion, seconded by Mr. McCabe that, in the event the Building Inspector determines that a variance is required for the turbine that is proposed to be too close to the NYSDEC property, the Planning Board forwards a positive recommendation to the Zoning Board of Appeals regarding the variance request for the following reason:

1. The Board believes that nothing will ever be built on the NYSDEC property.

In addition, the Board believes that the changes proposed are so minor in nature that a re-issuance of the Site Plan Approval and Special Use Permit for this project is not necessary. Carried.

## **OTHER BUSINESS**

Mr. Reilly stated that when the Planning Board approved the Southtown Market project on Southwestern Boulevard, one of the conditions of approval was that one of the two entrances onto Southwestern Boulevard would be closed, the entrance left open would become a three-lane entrance and cross-access would be provided to the adjoining office park. He noted that when the applicant attempted to get a permit from the New York State Department of Transportation (NYSDOT) to widen the entrance as per the requirement of the Planning Board, he was told that a three-lane entrance was not warranted. Mr. Reilly further stated that he discussed this issue with Ed Rutkowski from NYSDOT and was informed that the NYSDOT's position is that the enlarged entrance should be built at a later date if it is ever warranted. Mr. Reilly stated that he is working with the Engineering Department to determine the best way to ensure that, if the three-lane entrance is warranted in the future, the applicant will pay for the installation. He noted that he is working to ensure that the required cross-access to the office park will also be installed when warranted.

Mr. McCabe made a motion, seconded by Mr. Taber, to approve the minutes of December 2, 2009. Carried.

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

The meeting was adjourned at 8:05 P.M.

Respectfully submitted,

Stephen J. McCabe, Secretary

Planning Board