

Town of Hamburg  
Planning Board Work Session

February 3, 2010

Minutes

The Town of Hamburg Planning Board met for a Work Session on Wednesday, February 3, 2010 at 7:00 p.m. in Room 7B of Hamburg Town Hall, 6100 South Park Avenue. Those attending included Chairman Peter Reszka, Gerard Koenig, Stephen McCabe, Karen Rogers, Sasha Yerkovich and David Bellissimo.

Others in attendance included Sarah desJardins and Andrew Reilly.

**Hamburg Crossings, Phase I**

Mr. Reilly stated that a meeting was held prior to the Work Session between some of the nearby residents, representatives of the proposed project, Mr. Reilly and a few of the Planning Board members. He noted that the purpose of the meeting was to discuss how best to buffer the residents from the project in terms of noise, lighting and aesthetics. He further stated that the residents submitted a letter to the Planning Board discussing concerns about this project with specific emphasis on buffering

Mr. Reilly stated that the applicants have indicated that they would like to return to the Planning Board at the Board's March Work Session, as they would like some time to address the concerns of the residents.

Mr. Reilly discussed the pros and cons of various possible ways to screen the residents, noting that the Planning Board members will review the residents' letter in the next two weeks.

Attorney James Boglioli, representing Benderson Development Company, appeared on behalf of the proposed project, stating that he and Tony Battista met with the neighbors before the Board's Work Session. He noted that the applicant proposes to increase the number of trees to be planted in the area between the existing homes and the proposed building from 50 to 65, as well as install an eight-foot tall fence approximately twenty feet from the neighbors' property lines. He further stated that the loading docks, dumpsters and HVAC units would be adequately screened.

Mr. Reilly stated that during construction fencing should be erected around the Conservation Easement area so that it is not disturbed.

Attorney Boglioli stated that the site plan has been revised slightly and will be resubmitted shortly.

In response to a question from Chairman Reszka, Attorney Boglioli stated that he met with the Building Inspector and was told that the detention ponds are not in the required front yard of the site and that they are in compliance with the Town Code. (The Camp Road Overlay District requires that either underground detention or above-ground

detention in the rear of the site be provided).

Mr. Reilly stated that he will want to see what the front of the site would look like with the detention ponds in front of the buildings.

Doug Nichols, Chairman of the Conservation Advisory Board (CAB), stated that the CAB has done some research regarding green projects and he submitted a packet of information to the Planning Board for its review. He described the articles submitted, noting that Benderson has already done a green project in Florida.

Mr. Nichols stated that the packet contains substantial information indicating that this proposed project can and should be green. He further stated that this site is one of the largest intact parcels of forested land in the Town of Hamburg and that the Town and the applicant should recognize the value of this resource.

Mr. Bellissimo made a motion, seconded by Mrs. Rogers, to table this project until March 3, 2010. Carried.

Engineering Department comments have been filed with the Planning Department.

### **Southtowns Three-Lot Subdivision**

Mr. Reilly stated that the Board previously asked the applicant to submit a sketch of how the proposed subdivision would be laid out if the Board requires that the bulk requirements be increased by 50% per the South Central Overlay District. Board member reviewed both the original proposal and the sketch provided by the applicant.

It was determined that if the Board requires that the bulk requirements be increased by 50%, the applicant can still meet those requirements by proposing one frontage lot on Old Lakeview Road and one "flag lot" in the rear of the property.

It was further determined that the public hearing will be helpful in allowing any nearby residents to provide the Planning Board with their thoughts about which layout they would prefer.

Mr. Reilly stated, for the record, that it is his opinion that it would be better if the applicant just split one lot off of the original piece instead of two lots because it would probably serve to keep the value of the applicant's existing home where it is, noting that it is the applicant's decision.

Bill Savage, applicant, stated that he feels that his original proposal (two frontage lots) is consistent with the surrounding properties.

Mr. Reilly stated, for the record, that it is his opinion that neither layout is any better than the other in terms of fitting in with the character of the neighborhood.

Elizabeth Srutowsky, who lives adjacent to this site, stated that she believes the best layout for the neighborhood would be the layout showing two road frontage lots. She further stated

that she would prefer that the new homes be set back from the road approximately the same distance that her home and Mr. Savage's home are for continuity.

Mr. Savage stated that if the Board decides to waive the increase in bulk regulations, he would be willing to keep the homes' distance from the road consistent. Mr. Reilly noted that this can be accomplished by placing deed restrictions on the lots.

Mr. McCabe made a motion, seconded by Mr. Koenig, to set a public hearing on this proposal for February 17, 2010. Carried.

Engineering Department comments have been filed with the Planning Department.

### **Hamburg Senior Apartments**

Board members were given copies of several environmental studies and maps regarding the Brierwood Planned Unit Development (PUD) from when it was originally proposed through approximately 2003. The maps distributed to the Planning Board members included the Preliminary Plat for Brierwood Village dated 1995, the Composite PUD Map with Heart Trail dated 2003 and the Existing and Proposed Green Space Map for the Brierwood PUD dated 1992.

Mr. Reilly stated that the Existing and Proposed Green Space Map indicates that there was a park/ tot lot planned for the westernmost part of this property, noting that every plan he has seen shows a park in this area. He further stated that therefore that part of the site cannot be developed unless the applicant wishes to ask the Town Board to amend the PUD.

Mr. Reilly stated that the SEQR Law allows a Planning Board, in the case of a project that has been the subject of an Environmental Impact Statement (EIS), to request that the applicant complete an Environmental Assessment Form (EAF). He noted that the Planning Board can use this tool to determine what additional information is required. He further stated that he believes that the applicant should update information previously submitted regarding wetlands, water demands, fire flows and pressures, sewage generation and capacity, drainage, aesthetics, open space requirements, traffic, emergency services demands and railroad traffic / setback requirements. He stated that this updated information will help the Board determine whether or not a Supplemental Environmental Impact Statement (SEIS) is warranted.

Mr. Reilly stated, for the record, that he is not asking the applicant to complete an entire traffic study for the entire PUD, but rather he would like the applicant to study specific points of interest. He further stated that he thinks it would be good idea for the applicant to meet with the emergency services providers to discuss availability of those services and to see how emergency vehicles would access this site.

Mr. Reilly stated, for the record, that the original EIS only addressed the residential development of the PUD and there was no talk of any commercial uses in the PUD.

Mr. Reilly stated that the number of units previously proposed for this site varies throughout the history of the PUD.

Attorney Roland Georger, representing the applicant, stated that the applicant would like to review all of the information submitted to the Board, noting that the critical test as to whether or not an SEIS is warranted is whether the changes to the original plan for the PUD present environmental impacts that are beyond those originally contemplated.

Attorney Georger stated that fewer residential units have been built than what was proposed originally for the PUD and that, even adding the proposed 72 units of senior housing to the number of existing residential units in the PUD, there would still be fewer residences than what was proposed originally. He further stated that the traffic and demographic projections made in 1988 were very accurate and that, although parts of the EIS may be outdated, it is not irrelevant and does contain information that is relevant today.

Attorney Georger stated that the applicant would like the opportunity to provide the Board with the requested information.

Mr. Reilly stated that he is not recommending that the applicant update the EIS on the entire Brierwood PUD, but rather would like the applicant to look at the impacts of this specific project because there is not a great deal of information on this specific location.

Attorney Art Giacalone, representing the residents of the Briercliff Homeowners' Association, submitted to Board members information regarding the progression over the years of what was shown for this site. He stated that a traffic study done in 1991 refers to 88 garden apartments being proposed on this site and that the Open Space Plan done in 1992 shows two "U" shaped buildings.

Regarding the tot lot that appears on all of the site plans over the years for this site, Mr. Reilly stated that the plans all indicate that it is 6.62 acres in size. He noted, however, that the 6.62 acres includes all of the land along the railroad tracks in addition to the play area.

Attorney Giacalone stated that the amount of land the applicant proposes to use for the apartments is almost 50% larger than what was proposed in the past. He further noted that past proposals for this site included the parking area behind the apartments, serving to provide an additional buffer between the apartments and the tracks.

Attorney Giacalone stated that the first time any specific reference to senior housing appears when reviewing the past proposals for this site is in the Composite PUD Map with Heart Trail from 2003, although no buildings are shown.

Attorney Giacalone stated that it appears that there has been a substantial change to the PUD since it was first envisioned, noting that originally zero square footage of commercial buildings was proposed but ten years after the PUD was approved 55,847 square feet of commercial buildings was planned.

Attorney Giacalone stated that the Planning Board, in considering this project, must comply both with SEQR and with Section 280-306 of the Hamburg Town Code, which lists what the criteria are when reviewing a site plan. He further stated that the first criteria listed is "harmonious relationship between proposed uses and existing uses", noting that he believes that this means being highly sensitive to both the existing single family homes on one side of the proposed development and the railroad tracks on the other. He further stated that the fourth criteria listed is "adequacy of landscaping and setbacks in regard to achieving maximum

compatibility with and protection of adjacent property and land uses”.

Attorney Georger asked the Board to keep in mind that the question is not whether there have been changes to the PUD since it was originally proposed, but rather whether there were changes that came about that generated significant environmental impacts.

Chairman Reszka asked Attorney Giacalone whether, if the developer proposed two “U” shaped buildings, which was what was previously proposed for this site, he would still have an objection to the project. Attorney Giacalone responded that the oldest plans that have been found show garden apartments proposed for this section of the development.

Chris Dirr from the NRP Group (applicant) stated that he would be glad to propose a three-story “U” shaped building. He further stated that he would gladly propose a non-senior specific family project of garden apartments and the buildings would only take up the acreage that is shown on the various plans over the years (6+ acres developed).

Attorney Giacalone stated that he feels the requested updates need to be done so that the community, as well as the Planning Board, can make a decision regarding what is needed and what is appropriate for that site.

Attorney Georger stated that the additional information needed does not necessarily have to be in the form of an SEIS.

Mr. Reilly suggested that the applicant work on some hand sketches showing how he would address the issue of how much developable acreage is available to work with, given the requirement of the play area. Attorney Georger responded that he would like to review the Town’s information relative to this requirement.

Mr. Reilly explained to Mr. Dirr that, if he would like to know how the Town would like this site developed, he should contact the Town Board, as the Planning Board is not in the position of telling applicants how to develop their land.

Mr. Bellissimo made a motion, seconded by Mrs. Yerkovich, to table this project. Carried.

Engineering Department comments have been filed with the Planning Department.

### **Becker II Two-Lot Subdivision**

Mr. Reilly stated that the applicant proposes to split one building lot (1.5 acres) off of a large piece of vacant land on the east side of Old Lakeshore Road, south of Eckhardt Road.

In response to a question from Mr. McCabe, Mrs. desJardins stated that when the Planning Board previously approved a subdivision involving this large parcel for Mr. Becker, one of the conditions was that if Mr. Becker wanted to further divide the remaining +/- 20 acre vacant parcel, he would have to present the Board with an overall plan for subdividing the entire parcel.

Mr. Reilly stated that, in his opinion, what the applicant is proposing to do at this time

would not affect what will be done with the rest of the vacant parcel because he is simply dividing off the last piece of the parcel that fronts Old Lakeshore Road. He further stated that an overall plan for the rest of the parcel is not necessary at this time.

Jack Becker, applicant, stated that he has no plans at this time to further divide the large parcel, noting that he has an offer from someone to buy the lot on Old Lakeshore Road.

Mrs. Yerkovich stated that the previous proposal for this parcel was much more dense than the surrounding properties, included a road in from Old Lakeshore Road and was not in keeping with the rural nature of the area. She further stated that Mr. Becker's current proposal is in keeping with the nature of the surrounding properties and that she supports the idea.

Mr. Reilly stated that this proposal is functionally independent from the larger parcel and does not lock the Planning Board into a future decision regarding the larger parcel.

Mr. Koenig made a motion, seconded by Mr. McCabe, to schedule a public hearing on this proposal for February 17, 2010, assuming the applicant provides the Planning Department with the legal description for the entire parcel to be subdivided by Friday, February 5, 2010. Carried.

Engineering Department comments have been filed with the Planning Department.

### **Buffalo Southern Railroad Ethanol Transfer Facility**

Mr. Reilly stated that the applicant proposes to transport ethanol from Buffalo to Hamburg and then unload the ethanol into tanker trucks (approximately six to eight trucks per day), which would then transport the ethanol to various local facilities.

Mr. Reilly noted that, because the applicant does not propose to construct any buildings, the project would meet the criteria for a Site Plan Waiver (the project would not require Site Plan Approval from the Planning Board but would be reviewed by the Building Inspector, Town Engineer and Planning Department). However, the Building Inspector determined that the Planning Board should decide whether a Site Plan Waiver or Site Plan Approval is appropriate for this proposal.

Mr. Reilly stated that, even if the Planning Board decides that a Site Plan Waiver is warranted, the applicant has indicated that they will meet with the Fire Departments (Hamburg and Scranton) to discuss the project and get input from them.

John Cappellino from the Erie County Industrial Development Agency (ECIDA) stated that Erie County owns the railroad line and the ECIDA manages it. He gave a brief history of how the County came to own the railroad and noted that he feels this project would be a very good opportunity for the railroad to provide ethanol to the local market.

Kevin O'Gorman, CEO and majority owner of the Buffalo Southern Railroad, stated that he has been trying to attract business and thinks this proposal is very exciting because this would probably keep the railroad afloat. He further stated that ethanol is a green

fuel and is safe. He stated that he has spoken with the Southtowns Hazmat Director, the Hamburg Supervisor and the Building Inspector about this proposal. He further noted that the Hazmat Director indicated that if the proposal meets Department of Environmental Conservation, Environmental Protection Agency, New York State Department of Transportation and Federal Railroad Administration regulations, he would have no objections to the project.

Mr. O’Gorman stated that the operation would be inspected by the above agencies on a regular basis.

Mr. O’Gorman stated that one of the advantages of this project would be that the tank trucks would be on “return haul” from delivering to local gas stations. A tank truck could deliver to a local gas station, proceed to this proposed facility and load up the ethanol and take it to the distributor, who would blend the ethanol in, and then deliver the gasoline/10% ethanol to a local gas station.

Mr. O’Gorman stated that no gasoline would be handled at this facility. He further noted that ethanol has a very high flash point (the lowest temperature where enough of the fluid can evaporate to form a combustible concentration of gas) and will not even light unless it is above 55 degrees.

In response to a question from Mr. Bellissimo, Mr. O’Gorman stated that the proposed 66,000 gallon containment pond is required and would be dug out, approximately three to four feet deep and lined with rubber. He further stated that, if a catastrophic event were to occur, the containment pond is required to be able to contain 120% of one rail car’s load.

Mr. O’Gorman stated that this proposed project would produce no odors, no additional noise and would not require any sewer or new utilities. He further stated that there would be one additional employee, the project would produce no run off because no paving is planned and just six to eight additional vehicle trips would be generated.

It was determined that this property is zoned M-2 and the proposal is a permitted use in this zone.

Mrs. desJardins explained to Board members that, when Site Plan Waivers are granted, conditions can be placed on the waiver.

In response to a question from Mrs. Yerkovich, Mr. O’Gorman stated that he would approve this project in the Town of Eden (he is a member of the Eden Planning Board).

Mr. Koenig stated that perhaps the Planning Board should get correspondence from Hazmat and the Fire Departments indicating that they have no issues with this project before making the decision as to whether a Site Plan Waiver or Site Plan Approval is warranted.

Mrs. Yerkovich stated that regulatory agencies with far greater responsibility than the Planning Board cover the health, safety and welfare of the community.

Planning Board members agreed that they concur with a Site Plan Waiver for this

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project with the following condition:

- The Hamburg and Scranton Fire Chiefs are to be contacted to make sure they are aware of this project and have no objections to it.

## **OTHER BUSINESS**

### Avanti Mansion

Mr. Reilly stated that the Avanti Mansion project, which the Planning Board approved a few months ago, has changed, noting that the applicant needs to move the building and parking area thirty feet closer to South Park Avenue because of an error involving the topography of the site. He reminded the Board that it waived the requirement of the South Park Overlay that the forty-foot setback from South Park Avenue must be landscaped because the applicant was proposing the parking area and building so far from the road.

Chairman Reszka stated that the landscaping along South Park Avenue should not be optional anymore.

Mr. McCabe reminded the Board that it waived some of the parking requirements for this applicant, as well, because of the proposed location of the building and parking area.

Mr. Reilly confirmed that the Engineering Department has no issues with this change from an engineering standpoint, noting that it still meets all of that department's requirements.

Board members concurred that the applicant will be given the following two options:

- Return to the Planning Board for re-approval of the project without landscaping along South Park Avenue
- Submit a proposed landscaping plan for the area within the required forty-foot setback from South Park Avenue for Planning Department review

### Treehaven Subdivision

Mr. Reilly stated that the developer of this subdivision is proposing to reduce the number of lots by one and therefore has had to reconfigure the remaining lots.

Mr. Koenig made a motion, seconded by Mr. McCabe, to approve the minutes of January 20, 2010. Carried.

Mrs. Yerkovich made a motion, seconded by Mrs. Rogers, to adjourn the meeting. The meeting was adjourned at 9:20 P.M.

Respectfully submitted,  
Stephen J. McCabe, Secretary  
Planning Board